THE

Annotated Indian

Criminal Court Hand Book.

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Author of the Indian Succession Act, the Subject-Noted Index of Cases, The Indian Evidence Act, Principles and Practice of Injunctions etc. etc.

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The Annotated
Criminal Court Hand Book
VOL. II.
THE CODE OF CRIMINAL PROCEDURE, 1898

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THE

Code of Criminal Procedure, 1898.

ACT NO. V OF 1898*

[*22nd. March 1898.*]

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO CRIMINAL PROCEDURE.

Whereas it is expedient to consolidate and amend the law relating to Criminal Procedure ;

It is hereby enacted as follows :—

Object of the Code :—The object of the Code is to provide a machinery for the punishment of offenders against the Criminal law. 13 B. 590 (F. B.) 16 B. 580 ; 43 M. L. J. 710 ; 12 C. 536.

PART I.*

PRELIMINARY.

CHAPTER I.

Short title, Commencement.

1. (*1*) This Act may be called the Code of Criminal Procedure, 1898 ; and it shall come into force on the first day of July 1898.

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* For Statement of Objects and Reasons, *see* Gazette of India, 1897, Pt. V. P. 363 ; for Report of the Select Committee, *see ibid*, 1898, Pt. V. P. 19 ; and for Proceedings in Council*, *see ibid*, 1897. Pt. VI. pp. 238 and 254 ; and *ibid*, 1898, pp. 22, 101 and 175.

This Act has been declared under s. 3 of the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), to be in force (with modifications) in the Santhal Parganas ; as to the modification, *see* the Santhal Parganas Justice Regulation, 1893 (V. of 1893), s. 4, as amended by the Santhal Parganas Justice and Laws Regulation 1899 (III of 1899).

It has been extended, under s. 3 of the Angul Laws Regulation, 1913 (III of 1913), to the District of Angul.

It has been declared in force in Upper Burma (except the Shan States) as to which *see* further subject to certain modifications by the Burma Laws Act, 1898 (XIII of 1898), as to the modification *see* the Upper Burma Criminal Justice Regulation 1892 (V of 1892), as amended by Act XIII of 1898.

It has been declared in force in Arakan Hill District, by s. 2 of the Arakan Hill District Laws Regulation, 1916 (I of 1916).

It has been declared in force in the Chittagong Hill-tracts (with a reservation as to cases tried by certain persons) by s. 4 of the Chittagong Hill-tracts Regulation, 1900 (I of 1900).

It has been declared in force in British Baluchistan by s. 3 of the British Baluchistan Laws Regulation, 1913 (II of 1913).

It has ceased to be in force, by notification under s. 2 of the Assam Frontier Tracts Regulation, 1880 (II of 1880), in the following places, namely :—

The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Sub-division of the Cachar District, the Mikir Hill-tracts in the Nowgong District, the Dibrugarh Frontier Tracts in the Lakhimpur District, and the Lushai Hills—*see* Assam Gazettee, 1898 Pt. II, p. 788.

(2) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force, or shall apply to—

Extent.

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

(*b*) heads of villages in the Presidency of Fort St. George; or

(*c*) village police-officers in the Presidency of Bombay:

Provided that the Local Government may, if it think fit*, by notification in the official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persons.

Extent.—This Act except s. 528 does not apply to village headmen and, therefore, they are not bound to follow the procedure prescribed by s. 476. 2 Weir 1. Sections 480 and 482 have no application to village Munsiffs. 15 M. 131. This Act does not extend to Chittagong Hill Tracts (27 C. 654), Hyderabad State Railway (25 C. 20 P. C.), North Cachar Hills (26 C. 874), Mayurbhanja (8 C. 985), the Civil Station of Rajkot (10 B. 168) and the Tributory Mehal of Keonjhur (16 C. 667). Many native states have adopted the provisions of this code within their own territories although it does not apply to them. 12 M. 39. The Bombay High Court has got power to exercise original Criminal Jurisdiction over Muscat. 24 B. 471. An offence committed in High Seas should be tried under this Code. 7 B. H. C. R. 89; 21 C. 782; 16 C. 238; 1 B. L. R. O. C. 1.

British India.—As regards the definition of British India, vide s. 3 of the General Clauses Act, X of 1897. The following places are within the territory of British India, *viz*:—(1) Ajmer and Merwara (9 B. 244); Andaman and Nicobar Islands (9 B. 244), Island of Perin (10 B. 258) and Aden (13 M. 353).

Withdrawal of Criminal Procedure Code.—It is quite conceivable that, notwithstanding the withdrawal of the operation of the Code of Criminal Procedure Code from a certain district the High Court might continue to exercise appellate and revisional powers over that district. 26 C. 874=3 C. W. N. 564.

As to its application in (1) certain districts on the Sindh Frontier *see* the Sindh Frontier Regulation, 1872 (V of 1872), s. II, and the Sindh Frontier Regulation, 1892 (III of 1892) (2) the Andaman and Nicobar Islands, *see* Regulation III of 1876. s. 13 as amended by Regulation I of 1884, s. 3.

It has been declared in force, by notification under s. 3 (*a*) of the Scheduled District Act 1874 (XIV of 1874), in the Scheduled Districts in Ganjam and Vizagapatam—*see* Fort St. George Gazette, 1898, Pt. I. p. 306, and Gazette of India, 1898, Pt. I p. 869; and by notification under the same section and section 5A in the following other Scheduled Districts namely:—

The Districts of Hazaribagh, Lahardaga (now the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I. p. 44), Manbhum and Palamau and in Pargana Dhalbhum and the Kolhan in the Singbhum District—*see* Calcutta Gazette, 1898, Pt. I. p. 714, and Gazette of India, 1899, Pt. I. p. 779; and in the Pargana of Manipur—*see* Gazette of India, 1899, Pt. I. p. 419. The powers of the Local Government were at the same time conferred on the Agent, Governor General, Central India, and also those of a High Court for the purposes of the Code.

It was extended to the Shan States, by the Shan States Laws and Criminal Justice Order, 1895, as amended by notification No. 29, dated 19th December, 1908.

The Code with certain modification has been declared, by notification under the proviso to s. 3 (2) of the Kachin Hill-tribes Regulation, 1895 (I of 1895), to be applicable to members of a hill tribe in a hilltract; and under the proviso to s. 3. (2) of the Chin Hills Regulation, 1896 (V of 1896), as amended by s. 5 of Regulation II of 1910, it has been declared to be applicable to Chins in the Chin Hills with certain modifications—*see* Burma Gazette, 1912, Pt. I. pp. 227 and 228.—Vide Government Edition of 1923 p. 29.

* The words "with the sanction of the Governor-General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920).

Special law.—This expression refers to statutory enactment and not to local family law. 37 M. L. J. 361. But prosecution under Calcutta Municipal Act is to be proceeded under this Code. 31 C. W. N. 503=45 C. L. J. 469. Code does not override Evidence Act which is special law unless so provided. A. I. R. 1933 All. 440=55 A. 463.

Local law.—This Code has no application in a prosecution under local law. *Vide* 12 C. 536 ; 12 Cr. L. J. 568 ; 31 C. 557.

2. [Repeal of enactments, notifications, etc. under the repealed Acts. Pending cases.] Repealed by the Reapealing and Amending Act, 1914 (X of 1914).

Notes.—The repeal of a statute which repealed another statute does not revive the latter statute. 2 C. W. N. 11 ; 25 C. W. N. 333. The law relating to procedure has no retrospective effect 2 B. 148 ; 2 C. 225 ; 20 M. 481 ; 25 C. 333 ; 3 Bom. L. R. 584.

References to Code of Criminal Procedure, and other repealed enactments.

3. (*1*) In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act XXV of 1861 or Act X of 1872, or Act X of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

Expression in former Acts.

(2) In every enactment passed before this Code comes into force, the expressions "Officer exercising ('or having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class ;" the expression "Magistrate of a division of a district" shall be deemed to mean "Subdivisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate ;" and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge."

Notes—*Vide* 12 M. 94 (F. B.)=1 Weir 875 ; 25 C. 637.

Definitions.

4. (1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context :—

"Advocate General."

(*a*) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time appoint in this behalf :

"Bailable offence." "Non-bailable offence."

(*b*) "bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force ; and "non-bailable offence" means any other offence.

"Charge."

(*c*) "charge" includes any head of charge when the charge contains more heads than one :

(*d*) * * *

"Clerk of the Crown."

(*e*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the "Clerk of the Crown" :

"Cognizable offence." "Cognizable case."

(*f*) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant :

* Clause (*a*) was repealed by s. 3 and Sch. II of the Repealing and Amending Act 1923 (XI of 1923.)

"Commissioner of Police." (*g*) "Commissioner of Police" includes a Deputy Commissioner of Police :

"Complaint." (*h*) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer :

"European British subject." * (1) "European British subject" means—

[(*i*) any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or any Colony, or

(*ii*) any subject of His Majesty who is the child or grand-child of any such person by legitimate descent :]

"High Court." (*j*) "High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras,† Bombay,‡ [Allahabad§ Patna]‖ [Lahore]¶ [**and Rangoon] the Chief Courts of Oudh and Sind†† ‡‡[and the Court of the Judicial Commissioners of the Central Provinces§§] : in other cases "High Court" means the highest Court of criminal appeal or revision for any local area ; or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf :‖‖

"Inquiry." (*k*) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court :

"Investigation." (*l*) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a magistrate) who is authorised by a Magistrate in this behalf :

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* This clause was substituted by s. 2 (1) of the Criminal Law Amendment Act, 1923 (XII of 1923).

† The word "and" was omitted by s. 2 and Schedule 1 of the Amending Act, 1916 (XIII of 1916).

‡ These words were substituted for the words "the High Court of Judicature for the North Western Provinces," by *ibid.*

§ The word "and" was omitted by the Repealing and Amending Act 1919 (XVIII of 1919).

‖ The words "and Lahore" were substituted for the words "the Chief Court of the Punjab" by *ibid.*

¶ The word "and" was omitted by s. 2 and Sch. 1 of the Repealing and Amending Act, 1923 (XI of 1923).

** These words were substituted for the words 'the Chief Court of Lower Burma" by *ibid.*

†† These words were inserted by s. 2 (2) of the Criminal Law Amendment Act, 1923 (XII of 1923).

‡‡ Substituted by Act, 29 of 1925 and 34 of 1926.

§§ Substituted by Act, 34 of 1926.

‖‖ As to (1) Upper Burma, *see* the Upper Burma Criminal Justice Regulation, 1892 (V of 1892), Schedule, art I, as amended by the Burma Laws Act, 1898 (XIII of 1898), (2) the Santhal Parganas, *see* the Santhal Paraganas Justice Regulation, 1893 (V of 1893), s. 4, amended by the Santhal Pargnas Justice and Laws Regulation, 1899), (III of 1899) (3) Ajmere-Merwara, *see* s. 38 of the Ajmere Court Regulation, 1877 (I of 1877), (4) Coorg, *see* s. 16 of the Coorg Courts Regulation, 1901 (I of 1901), (5) Oudh *see* the Oudh Courts Act, 1891 (XIV of 1891), as amended by Act XVI of 1897, (6) the North-West Frontier Province, *see* s. 6 (1) (*c*) of the North-West Frointier Province Law and Justice Regulation, 1901 (VII of 1901), Baluchistan, *see* art. 6 (1) (ii) of the Schedule to the British Baluchistan Criminal Justice Regulation, 1896 (VIII of 1896). —Vide Govt. Edition p. 32.

"Judicial proceeding."

(*m*) "Judicial proceeding" includes proceeding in the course of which evidence is or may be legally taken on oath :

Non-cognizable offence; "Non-cognizable case."

(*n*) "non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police officer, within or without a presidency town, may not arrest without warrant :

"Offence."

(*o*) "offence" means any act or omission made punishable by any law for the time being in force ; it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 :

"Officer in charge of a police-station."

(*p*) "officer in charge of a police station"* includes, when the officer in charge of the police-station is absent from the station house or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the Local Government so directs, any other police-officer so present :

"Place."

(*q*) "place" includes also a house, building, tent and vessel :

"Pleader."

(*r*) "pleader," used with reference to any proceeding in any Court, means a pleader †[or a mukhtear] authorized under any law‡ for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any§ other person appointed with the permission of the Court to act in such proceeding :

"Police-station."

(*s*) "police-station" means any post or place declared, generally or specially, by the Local Government to be a police-station, and includes any local area specified by the Local Government in this behalf :

"Public Prosecutor."

(*t*) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a public Prosecutor and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction :

"Sub-division."

(*u*) "sub-division" means a sub-division of a district :

"Summons case."

(*v*) "summons-case" means a case relating to an offence, and not being a warrant-case : and

"Warrant case."

(*w*) "warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.

Words referring to acts.

(2) Words which refer to acts done, extend also to illegal omissions ; and

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* *Cf.* the Upper Burma Criminal Justice Regulation, 1892 (V of 1892) Schedule. arts, 6 and 7.

† These words were inserted by s. 2 of the Code of Criminal Procedure (Further Amendment) Act 1923 (XXXV of 1923).

‡ *See* the Legal Practitioners Act, 1846 (I of 1846) ; the Legal Practitioners Act, 1853 (XX of 1853); the Legal Practitioners Act 1879 (XVIII of 1879) ; the Legal Practitioners Act, 1884 (IX of 1884); and the Legal Practitioners (Amendment) Act, 1908 (I of 1908).

§ The words "mukhtear or" were omitted by s. 2 of the Code of Criminal Procedure (Further Amendment) Act, 1923 (XXXV of 1923).

Words to have same meaning as in Indian Penal Code.

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Scope.—The function of a Court of law in interpreting a statute is not to make the law reasonable, but to expound it as it stands. *Walter John Brooks* v. *Nee Barwik.* 9 Ind. Cas. 99=A. I. R. 1926 (Sind) 58 (F. B.)

Clause (*c*)—Vide 8 B. 200 ; 9 S. L. R. 37=30 Ind. Cas. 125.

Clause (*f*)—The expression "police officer" in this clause does not mean any police officer. 27 C. 144. The power of arrest referred to in this clause means an unqualified power. 24 C. 691.

Clause (*h*)—The definition of 'complaint' is very wide. 10 C. W. N. 158 ; 33 C. 1 ; 4 C. W. N. 221 N ; 14 C. 707 ; 8 Cr. L. J. 754 ; 5 C. W. N. 10. A police report is a complaint. 1 L. B. R. 58. A petition sent by post to a District Magistrate informing him of an offence is not a complaint. A. W. N. 1899, 201 ; but see 81 Ind. Cas. 971. A statement to a Magistrate that a person keeps a gaming house is not a complaint. 8 S. L. R. 66=15 Cr. L. J. 657=25 Ind. Cas. 98. An order passed by a Judge may be a complaint. 12 A. L. J. 881=15 Cr. L. J. 700=26 Ind Cas. 148. See also 18 A. L. J. 50. Order sanctioning prosecution does not amount to complaint A. I. R. 1934 Oudh. 186. Allegations not stated in complaint are not complaint. A. I. R. 1932 Pat. 72=12 P. L. T. 937=136 Ind. Cas. 842. Assistant Public Prosecutor can file complaint in private capacity. A. I. R. 1933 Sind. 393. Report under child Marriage Restraint Act, is complaint. A. I. R. 1933 Pat. 87=13 P. L. T. 791. Application to Magistrate to have police investigation expedited is not complaint. 35 C. W. N. 1210. Complaint need not contain test of witnesses. A. I. R. 1933 Oudh. 430=10 O. W. N. 1037.

The presentation of a petition by the complainant that his complaint should be enquired into is in effect a complaint. 5 C. W. N. 106. The report of a peon that the accused has obstructed him is not a complaint. 17 C. W. N. 930=20 Ind. Cas. 622=14 Cr. L. J. 462. The complaint need not mention the section under which an accused is to be charged. All that is required is that the facts stated in the petition must disclose a substantive offence. 93 Ind. Cas.69=1926 All. 358 ; 26 P. L. R. 552 =1925 Lah. 631.

The report of an excise Sub-Inspector is a complaint 52 C. 371=100 Ind. Cas. 540=28 Cr. L. J. 316. A President of an Union may complain by a petition. 17 C. W. N. 448. A petition against a Tasildar addressed to a Collector alleging that Tasildar has committed an offence under the Indian Penal Code is a complaint. 20 Ind. Cas. 409=11 A. L. J. 529=14 Cr. L. J. 425. In filing a complaint in a Criminal Court it is not necessary that the complainant should name all the accused persons. 13 Cr. L. J. 588=15 Ind. Cas. 1004. An endorsement of a Superintendent of Police on a report of a Circle Inspector to him is not a complaint. 27 Cr. L. J. 899=A. I. R. 1926. All 566. An oral allegation that on offence has been committed together with an application to summon his witnesses is a complaint. 35 C. 141 ; 1 P. L. J. 592. A complaint may be made by a police officer, if it be made in writing to the District Magistrate 25 Cr. L. J. 1361=1925 Lah. 237=82 Ind. Cas. 753. Any person who is aware of the commission of an offence generally may make a complaint. 41 C. 1013 ; 13 B. 600 ; 25 C. W. N. 357 ; 20 C, 281 ; 21 B. 536 ; 10 C. L. J. 18 : 1 B. 175.

An information by a police officer empowered to lay an information under s. 51 of the Bombay Disirict Police Act is a complaint. 6 S. L. R. 82=17 Ind. Cas. 6=13 Cr. L. J. 752. A petition of objection against a police report asking a Magistrate to make an investigation may be considered as a complaint. 3 P. L. J. 346, 10 C. W. N. 151=33 C. 1. So also a report of a trying Magistrate to the District Magistrate. 81 Ind. Cas. 595=25 Cr. L. J. 947. A District Magistrate cannot authorise the Public Prosecutor to file a complaint on his behalf. 16 Cr. L. J. 251=28 Ind. Cas. 107=13 P. R. 1915 Cr.=20 P. W. R. 1915 Cr. By a complaint the machinery of the Court is set in motion but the real prosecutor in every criminal case is the Crown. 12 C. W. N. 750=7 C. L. J 375=7 Cr. L. J. 312. A report by a civil or revenue officer to the Magistrate for taking action either under s. 193 I. P. C. s. 447 I. P. C or under s. 476 of Cr. Procedure Code is a complaint. Vide 26 A. 514 ; 30 P. R. 1895 ; 8 P. R. 1884 ; 13 B. 109 ; 53 Ind, Cas 610 ; 4 A. L. J. 803 ; 7 A. 87 (F. B.) ; 32 M. 49 ; 23 A. 249 ; 32 B. 189 ; 15 B. 109 ; 26 M. 98. The report of a police officer in a non-cognizable case is a complaint. 32 M. 3 ; 6 S. L. R. 82 ; 23

C. W. N. 481 ; 84 Ind. Cas. 753 ; 25 Cr. L. J. 1361 ; 11 A. L. J. 332 ; 29 Bom. L. R. 742 ; 54 C. 371 ; but see Woodrofte's Criminal Procedure Code p. 12 where he observes :—"A police report in a non-cognizable case was treated either as a complaint under s. 4. cl (h) or as a police report under s. 19 (1) (*b*). But now clause (b) has been amended so as to include any report whether in cognizable or non-cognizable case and therefore the term 'complaint' will exclude both." A police report under section 173 Cr. Procedure Code is a complaint. 17 C. W. N. 824 ; 26B. 158 : 40C. 360 ; 14C. 707 ; 38C. 68. A petition under section 488 of the Criminal Procedure Code is not a complaint. 18B. 468 ; 1905 P. R. 29 ; 1885 P. R. 13 ; 16C. 781 ; 11M. 199. So also a petition under ss. 107, 110 or 145 Cr. Pro, Code. 27C. 662 ; 42 P. R. 1905 ; 20C. 729 ; 6 C. W. N. 163 ; A. W. N. 1900. 206 ; 81 Ind. Cas. 973 : 76 Ind. Cas. 25. A petition in which the warning of a particular person is prayed for is not a complaint. 13 C. W. N. 1051 ; lodging information at a *Thana* or to a Court Inspector does not amount to a complaint. 30C. 910 ; 30C. 285 ; 76 Ind. Cas. 25. An application to a Deputy Commissioner is not a complaint. 75 Ind. Cas. 543=1924 Nag. 115 ; but see 13 N. L. R. 13. A report of a Circle Inspector to the Superintendent of police cannot be considered a complaint. 96 Ind. Cas. 211.

Clause (*i*).— The present amendment has narrowed the definition. *Vide Statement of Objects and Reasons.* Where a prisoner pleaded that he was a British-born subject and that he ought, therefore to be tried before the High Court, and where the evidence showed that the prisoner was the legitimate grand-son of a person said to have been a serjeant in the service of the King or of the East India Company and there was no sufficient evidence to establish a valid marriage between that grand-father and a native Christian woman, through whom the prisoner traced his discent, and there were also doubts about the nationality of the said grand-father, *held*, that there was no evidence to show that the prisoner was a British-bron subject. 2 Weir 11=6 M. H. C. R. 7. A man is not an European British subject by his birth in Europe. 14 Ind. Cas. 197 ; 6 P. R. 1912 Cr. A prisoner can waive his right to be tried as an European British subject. *Vide* 11 Ind. Cas. 620 ; 14 Ind. Cas. 197. After waiver the right cannot be claimed again. 76 Ind. Cas. 695=45 M. L. J. 800.

Clause (*j*).—Before the amendment by Act XII of 1923 the Courts of the Judicial Commissioner of Sind and Nagpur were ousted from exercising revisional jurisdiction when the prisoner claimed to be tried as an European British subject. 12 C. 561 ; 7 N. L. R 93=11 Ind. Cas. 620=12 Cr. L. J. 436. Under the present law, such revisional jurisdiction can be exercised by the Judicial Commissioner of Nagpur. See also 91 Ind. Cas. 99=A. I. R. 1926 Sind. 38 (F. B.) see also A. I. R. 1933 Pesh. 6. The High Court exercising original criminal jurisdiction is not a Court of Session within the meaning of this section. 51 C. 980=29 C. W. N. 384=84 Ind. Cas. 929=26 Cr. L. J. 385. The High Court of Patna has only to deal with appeals under s. 417 against an order of acquittal. It has no power to deal with an application under s. 439 for setting aside acquittal for which the proper forum is the Commissioner of Bhagalpur. A. I. R. 1926 Pat. 449.

Clause (*k*).—An investigation in a case under s. 145 is an enquiry. 28 C. 709=5 C W. N. 749 ; 13 C. W. N. 420=9 C. R. L. J. 278=1 Ind. Cas. 336. But this section is not exhaustive. 46 C. 854 ; 38 C. 68. A preliminary enquiry is an enquiry. 32 M. 218 ; see also 1897 P. R. 3 ; see also 45 A. 700=21 A. L. J. 619. As regards the meaning of the expression "trial" *vide* 27 M. 510 ; 25 C. 863 ; 32 M. 320 ; 15 C. 608 ; 3 C. 754. A proceeding under s. 107 Cr. Pro, Code is a trial. 45 M. 511 (F. B.) ; 27 M. 510. As regards when proceedings are enquiry, vide A. I. R. 1932 Oudh 298=9 O. W. N. 782.

Clause (*l*)—The definition of the term 'investigation' is not exhaustive. 4 Bom. L. R. 271=26 B. 533 ; see also 46 C. 854. Investigation includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted *inter alia* by Police Officer. A. I. R. 1933 Sind. 240.

Clause (*m*)=An enquiry conducted by a Magistrate into the truth of allegations against a subordinate official, contained in a petition presented to a Deputy Commissioner is a judicial proceeding. 28 A. 89=2 A. L. J. 717=2 Cr. L. J. 454. proceedings in execution are judicial proceedings. 10 N. L. R. 177 ; see also 1 P. R. 1910 Cr.=161 P. L. R. 910=5 Ind. Cas. 257=11 Cr. L. J. 90 ; 37 C. 642 (F. B.) ; 10 C. L. J. 450. 10 C. W. N. 55. A proceeding under s. 318 of Cr. Pro. Code of 1861 was held to be a judical proceeding. So also a proceeding under Ch. XLI of the

Code of 1872. 5 A. 224=A. W. N. 1882, 240. An enquiry under the Legal Practitioner's Act or under s. 8 of the Reformatory School Act is a judical proceeding. 6 M. 252 ; 32 ; M. L. J. 402 ; 9 A. L. J. 156 ; 14 B. 181. A proceeding in which the Income-tax Collector hears objection to assessment is also a judical proceeding.

Clause (*n*).—An offence under s. 9 of Act I of 1878 is a noncognizable offence. 27 C. 144 ; see also 24 C. 691.

Clause (*o*).—This definition is wider than the definition given in s. 40 of the Indian Penal Code. It is the same as that given in s. 3 (37) of the General Clauses Act (X of 1897). 26 M. 67. It includes an Act, in respect to which a complaint may be made under s. 20 of the Cattle Trespass Act. 29 M. 517=5 Cr. L. J. 68 ; see also 52 M. L. J. 251=28 Cr. L. J. 301. s. 41, Bombay District Police Act, does not make the use of a house as a brothel an offence. 6 S. L. R, 254=19 Ind. Cas. 1008=14 Cr. L. J. 320 ; see also 37 C. 287. Travelling without ticket in a train is not an offence. 20 A. 95 ; 11 C. W. N. 100. A mere neglect to maintain one's wife and children is not an offence. 4 M. 234=24 M. 600 ; 27 C. 131 ; 4 C. W. N. 201 ; 4 C. W. N. 253 ; 33 B. 22 ; 7 W. R. 10 ; 1885 P. R. 13 ; 16 M. 234.

Clause (*p*).—This section has no application so far as the police of Calcutta and Bombay is concerned 31 C. 557. A person who is not physically present may also be present. 42 M. 446=20 Cr. L. J. 422=25 M. L. T. 274=36 M. L. J. 252. In the absence of a sub-Inspector, the Head constable in charge of a police station can investigate a cognizable case. 2 Pat. 379=4 P. L. T. 521=24 Cr. L. J. 375. In Madras under Judicial Notification No. 3; dated the 31st. January, 1883, the Madras Government has directed that the senior constable present at any such station shall be deemed to be the officer in charge of the police station for the time being, during the absence of the officer in charge as defined in the said section. 9 M. L. T. 414=9 Ind. Cas. 1067=12 Cr. L. J. 190=10 Ind. Cas. 667=1911 M. W. N. 231.

Clause (*r*).—Now the word "pleader" includes "mukhtears", who were not allowed to practise in Criminal Courts as a matter of right, but could do so with the permission of the Court. 30 A. 66 F. B. ; 38 C. 488. But a Magistrate cannot withhold permission to a mukhtear by a general order. 7 C. W. N. 524 ; see also 15 C. W. N. 409=38 C. 488=13 C. L. J. 635 ; see also 9 Ind. Cas. 711=12 Cr. L. J. 118=4 S. L. R. 195. Advocates on appellate side are not pleaders with s. 4 (r) *qua* High Court sessions and are not entitled to appear in High Court sessions. A. I. R. 1934 Bom. 70 (F. B.)

Clause (*s*.)—This clause has no application to the police in Calcutta and Bombay. 31 C. 557.

Clause (*t*). —It is improper to appoint a convicting Magistrate as a public prosecutor. 8 B. H. C. Cr. 126. A pleader appointed by a brother of a murdered man to support conviction of an accused on appeal is not a public prosecutor. 29 P. R 1886 Cr. See also 11 B. H. C. R. 102. A defect in the appointment of a public prosecutor is an irregularity. 35 P. R. 1887 Cr. Legal Remembrances is *ex officio* Public Prosecutor, no vakalatnama is necessary. 37 C. W. N. 276=60 C. 603=A. I. R. 1933 Cal. 118.

Clause (*u*).—In case of abatement of summons case offence, is summons case. A. I. R. 1931 Bom. 199=131 Ind. Cas. 472=33 Bom. L. R. 353.

Trial of offences under Penal Code.

5. (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions herein after contained.

Trial of offences against other laws.

(2) All offences under any other law shall be investigated inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Notes.—A contempt against High Court does not fall under this section. 10C. 109 (P. C.); 17 C. W. N. 1253. This Act has no application where the special Act regulates the manner or place of investigation 23C. L. J. 621=3 Lah. 359; 44 M. L. J. 231=72 Ind. Case 175. Where the special Act is silent as regards

procedure this Act is applicable. 31 B. 438 ; see also 37 C. L. J. 298=71 Ind. Cas. 611 ; 41 C. 694=18 C. W. N. 486; 30 C. W. N, 598; 31 C. W. N. 505; 9 C. W. N. 18; 43 C. L. J 231. A rule framed under an Act is not an enacment : 25 C. W. N. 661. Foreigners Ordinace (III of 1914) is a law and an inquiry into an offence under it must be dealt with according to the provisions of that ordinance. 10 P. R. 1916 Cr.=15 P. W. R. Cr. 1916.

PART II.

Constitution and Powers of Criminal Courts and Offices.

CHAPTER II.

Of the Constitution of Criminal Courts and Offices.

A.—Classes of Criminal Courts.

Classes of Criminal Courts.

*5. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

I.—Courts of Session :
II.—Presidency Magistrates :
III.—Magistrates of the first class :
IV.—Magistrates of the second class :
V.—Magistrates of the third class.

Notes.—A magistrate is a Court only where he is exercising judicial functions 36 C. 433. The terms, District Magistrate and Magistrate of the first class do not include a Presidency Magistrate. 32 M. 303. The terms "Deputy Magistrate' and "General Deputy Magistrate" are unknown in this Code. 23 M. L. J, 67.=13 Cr. L. J, 850. A District Magistrate's Court is only a Court of Magistrate of the First class, and subordinate to the court of the Sessions Judge for the purpose of S. 195 (3) 25 N. L. R. 1=116 Ind. Cas. 77. Section 6 is not inconsistent with the idea that Magistrates may sometimes act in execution and administrative capacity and not as Courts. A. I. R. 1928 Mad. 1108=52 M. 69=55 M. I. J. 621. The High Court exercising Original Criminal Jurisdiction is not a Court of Session with the hearing of the Code 51C. 980=29 C. W. N. 384. The Municipal Magistrate appointed under s. 531 Calcutta Municipal Act is a Court of inferior Criminal Jurisdiction with the hearing of s. 6 Criminal Procedure Code. 29 C. W. N. 898=52 C. 962.

B—Territorial Divisions.

Sessions divisions and districts.

†7. (1) Every province (excluding the presidency towns) shall be a sessions division, or shall consist of sessions divisions : and every sessions division shall for the purposes of this Code, be a district or consist of districts.

Power to alter divisions and districts.

(2) The Local Governments may alter the limits or ‡ the number of such division and districts.

Existing divisions and districts maintained till altered.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

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* In places where the Frontier Crimes Regulation. 1901 is in force, cases may be tried by a Council of Elders. *See* the Frontier Crimes Regulation, 1901 (III of 1901), s. 11.

† As to Courts of Session in Upper Burma, *see* Upper Burma Criminal Justice Regulation, 1892 (V of 1892), Schedule, art, 11.

‡ The words "with the previous sanction of the Governor-General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920).

Presidency-towns to be deemed districts.

(4) Every presidency-town shall for the purposes of this Code, be deemed to be a district.

Clause (1)—"District". means district for purposes of criminal administration. 54 M. 943=A. I. R. 1931 Mad. 697 (F. B.) object of s. 7 (1) is to lay down rule governing relation between Sessions division and Districts. *Ibid.* It is not competent for one District Magistrate to transfer a case to another District Magistrate, on the ground that the boundaries fixed by Government vest the jurisdiction over the offence in the latter. 19 Cr. L. J. 671.

Clause (2)—A Local Government cannot create a Sessions Division. 10 B. 274. Local Government can alter number and limits both of divisions and districts. 54 M. 943=A. I. R. 1931 Mad. 697 (F. B.)

8. (1) The Local Government may divide any district outside the presidency-towns into sub-divisions, or make any portion of any such district a subdivision, and may alter the limits of any subdivision.

Power to divide districts into sub-divisions.

Existing sub-divisions maintained.

(2) All existing subdivisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices outside the Presidency-towns.

9. (1) The Local Government shall establish a Court of session for every sessions division, and appoint a Judge of such Court.

Court of Session.

(2) The Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting ; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.

(3) The Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A sessions Judge of one Sessions division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Local Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

Notes.—The High Court exercising Original Criminal Jurisdiction is not a Court of Session. 51 C. 980=29 C. W. N. 384=26 Cr. L. J. 385. A Session Judge is not ousted of his jurisdiction by making over an appeal to Additional Sessions Judge. 44 A. 157=19 A. L. J. 952=23 Cr. L. J. 107. The powers of a Session Judge under Cl. 32 of the Act, cannot be exercised by a Joint Session Judge. 2 C. W. N. 305 (note) ; 9 B. 104 ; 26 M. 137. There is only one Court of Sessions in each Sessional division sitting at different places and manned by different Judges. A. I. R. 1931 Cal. 190=35 C. W. N.400=58 C. 1117. Section 9 (2) and section 193 (2) contemplate general directions for convenience of people. 55 B. 576=33 Bom. L. R. 675=A. I. R. 1931 Bom. 313 (S. B.). Special Government order as to what place Court of Session should hold its sittings is not *ultra vires*. 33 Bom. L. R. 675=A. I. R. 1931 Bom. 313 (S. B.)=55 B. 576. Local Government only and not High Court can decide whether a Session Court shall try cases with jury or assessors. *Ibid.* Additional Sessions Judge functioning for particular cases is different from Sessions Judge and each is subordinate to High Court. *Ibid.* There is only one Court of Session in each sessions division though sitting at different places and manned by different Judges. 31 C. W. N. 400.

10. (1) In every district outside the presidency-towns the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

District Magistrate.

(2) The Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate * and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code †[or under any other law for the time being in force,] as the Local Governmant may direct.

‡[(3) For the purposes of sections 192, sub-section (1), 407, sub-section (2) and 528, sub section (2), and (3) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.]

Notes.—An Additional District Magistrate is not subordinate to the District Magistrate. 34 C. 918 ; 20 Cr. L. J. 494, but see 25 P. R. 1908. A Deputy Commissioner in a non-regulated province discharges the function of a District Magistrate 16 W. R. I. The term "District Magistrate" does not include Presidency Magistrate. 32 M. 303. An additional District Magistrate with all powers of a District Magistrate conferred on him can pass orders of sanction under s. 197. 17 L. W. 226=71 Ind. Cas. 244. One officer can be District Magistrate for two districts. A. I. R. 1931 Mad. 697 (F.B.)=61 M. L. J. 265.

Officers temporarily exceeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this code on the District Magistrate.

Notes.—No vacancy occurs where the District Magistrate is absent on casual leave. 24 O. C. 255=22 Cr. L. J. 713 ; 63 Ind. Cas. 873=40 C. 256. In such a case there can be no succession. *Ibid.*

Subordinate Magistrates.

12. (1) The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns ; and the Local Government or the District Magistrate, subject to the control of the Local Government may, from time to time, define local areas within which such person may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction.

(2) Except as otherwise provided by such definition the jurisdiction and powers of such persons shall extend throughout such district.

Notes.—A Magistrate ordinarily has jurisdiction over the whole district. 29 A, 389 ; see also 29 C. 389=5 C. W. N. 552 ; 10 C. W. N. 1095 ; 2 L. B. R. 80 ; 24 O. C. 25. So a magistrate appointed for the whole district, has jurisdiction over the whole district, even when he is in charge of a particular part of it. 21 Cr. L. J. 321=1 P. L. T. 632. A Magistrate is not ousted of his jurisdiction when he is transferred to another place which is situate in the same District. 22 M. 47 ; see also 75 P. R. 1884. Jurisdiction when not defined extends to whole district. 36 C. W. N. 796=59 C. 1484=A. I. R. 1932 Cal. 864 ; see also A. I. R. 1933 Lah. 143=34 P. L. R. 365 ; 63 Ind. Cas. 873. A Sub-Divisional Magistrate cannot take cognisance of matters outside the local area with which the District Magistrate has appointed him to act. 59 Ind. Cas. 554=19 A. L. J. 77.

Power to put Magistrate in charge of sub-division.

13. (1) The Local Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrate shall be called Sub-divisional Magistrates.

* The words "for a period not exceeding six months" were omitted by s. 2 the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by *ibid.*

‡ This sub-section was added by *ibid.*

Delegation of powers to District Magistrate.

(3) The Local Government may delegate its powers under this section to the District Magistrate.

Special Magistrate.

14. (1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases or in regard to cases generally, in any local area outside the presidency-towns.

(2) Such Magistrates shall be called Special Magistrate, and shall be appointed for such term as the Local Government may by general or special order direct.

(3)* The Local Government may delegate, with such limitations as it thinks fit, to any officer under its control, the powers conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

Any area.—The words 'any area" in sub-section (1) may include the whole province. 1918 P. R. 7=19 Cr. L. J. 310; see also 1901 P. R. 24; 25 C. 857; 44 Ind. Cas. 326. He can be appointed to try a particular case. 29 Bom. L. R. 996=A. I. R. 1927 Bom. 501. Where an Honorary Magistrate has been appointed for a term of years his jurisdiction to decide cases must be considered to continue beyond such term unless there is an order cancelling such appointment. A. I. R. 1930 Nag. 96=120 Ind. Cas. 223. Where the prosecution of a Deputy Collector was sanctioned in respect of three charges; but the order stated "To try the case of Mr. Deputy Collector under suspension," held, "case" covered all the three charges. 29 Bom. L. R. 996=28 Cr. L. J. 1012=A. I. R. 1927 Bom. 501. "Case" includes offences coming to light during investigation. A. I. R. 1931 Bom. 517=33 Bom. L. R. 1192=33 Cr. L. J. 68.

Benches of Magistrates.

15. (1) The Local Government may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Powers exercisable by Bench in absence of special direction.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Notes.—Where a Bench of Magistrates established by the Local Government under this section, is to consist of not less than two members, one member of the Bench cannot alone adjudicate upon a case. A. W. N. 1902. 148. The absence of some of the Bench Magistrates who were present at the earlier stage of a trial, from the further stages of the trial and at the time of judgment, does not vitiate the trial or, invalidate the conviction. 15 Cr. L. J. 549=24 Ind. Cas. 957=1914. M. W. N. 867. Simultaneous hearing of two cases by a Bench is bad. 69 Ind. Cas. 376=25 O. C. 182. In case of difference of opinion of a Bench the chairman has got a casting

* The wards "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Schedule I of the Devolution Act, 1920 (XXXVIII of 1920).

vote. 18 C. W. N. 384=14 Cr. L. J. 684. Where a Bench is of opinion that a case should be transferred from their file as it involves a difficult question, it should move the matter officially and not to leave it to the parties to move. *Gopal Nair, Inre.* A. I. R. 1929 Mad. 403 (2). It is extremely undesirable that cases involving difficult questions of fact or law should be tried by a Bench of Honorary Magistrates. 47 N. 716=47 M. L. J. 470=81 Ind. Cas. 894 ; see also 105 Ind. Cas. 226=A. I. R. 1928 Nag. 21=10 N. L. J. 184. In cases involving difficult questions, the Bench should move the matter officially and not leave it to parties to move. 29 Cr. L. J. 123=A. I. R. 1929 Mad. 403=106 Ind. Cas. 715. Nothing is intended to be within the jurisdiction of inferior Court but that which is expressly alleged. In inferior courts the maxim *omnia presumunter rite erse acta* does not apply to give jurisdiction. 105 Ind. Cas. 433=22 S. L. R. 157=28 Cr. L. J. 913. Government can invest a Bench of Magistrate of a lower class with all powers conferred or conferrable on a Magistrate of a higher class. *Ibid.* Bench Magistrates cannot revise their own judgments. 1930 M. W. N. 409=1930 Mad. 1001. There only three Magistrates of the Bench heard the evidence and tried the case but the judgment was signed by seven : Held that the judgment was illegal and must be set aside though it might have resulted in an acquittal. 1930 M. W. N. 770 ; see also 23 Cr. L. J. 696 ; 41 A. 116 ; 64 Ind. Cas. 132. Where a complaint is made to a Bench of Magistrates for an offence which they had no jurisdiction to try but they tried the accused for a lesser offence for which they had jurisdiction. *Held*, that the proceeding was not void. 1930 M. W. N. 770. A case is not wrongly decided because one of the three composing the Bench left early and the judgment was written by other two of them. 15 A. L. J. 463=40 Ind. Cas. 749 ; see also 1933 A. L. J. 547=34 Cr. L. J. 701. "Sit together" means constitute. A. I. R. 1934 Bom. 176. Presence of all Magistrates constituting the Bench on all hearing is indispensible for valid trial of case. A. I. R. 1932 All. 127=33 Cr. L. J. 200 ; see also 17 A.L.J. 379 ; A. I. R. 1928 Oudh. 212=29 Cr. L.J. 310 ; A. I. R. 1923 Sind. 192=27 Cr. L. J. 542 ; 76 Ind. Cas. 566=25 Cr. L. J. 198= 10 O. L.J. 614 ; 53 Ind. Cas. 823=26 M.L.T. 362 ; 44 B. 400=21 Cr. L.J. 369. A Magistrate absent during a part of the trial, should not express his opinion on evidence which he has not heard. 23 Bom. L. R. 833=63 Ind. Cas. 151. Even if the President was in the minority, bring for acquittal, the giving of his vote on the question of sentence is not illegal. 28 Cr. L. J. 310=A. I. R. 1927 Mad. 500.

Power to frame rules for guidance of Benches.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code, for the guidance of Magistrate's Benches in any district respecting the following subjects :—

(*a*) the class of cases to be tried ;
(*b*) the times and places of sitting ;
(*c*) the constitution of the Bench for conducting trials ;
(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Notes.—A reference by a Bench of Hony. Magistrates on difference of opinion between them to a District magistrate is irregular and not justified by the provision of the Criminal Procedure Code. 16 Cr. L. J. 113=27 Ind. Cas. 117. In such a case benefit of doubt should be given to the accused. *Ibid.* "In a case where the President of the Bench is in a minority as to conviction or acquittal, the judgment should be written by some members of the majority otherwise there would be a conviction based on an acquitting judgment and we are left without any reasons for conviction which the provision of the Cr. P. Code, the Bench is found to set out." *Salamma* v. *Emperor*, 51 M. 338=A. I. R. 1928. Mad. 197 ; see also A. I. R. 1926 Mad. 354=91 Ind. Cas. 394.

Subordination of Magistrates and Benches to District Magistrate :

17. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches ; and

(2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

to Sub-divisional Magistrate.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Subordination of Assistant Sessions Judges to Sessions Judge.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under section 12, 13, 14, and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

Notes.—A Magistrate of a First Class is subordinate to the District Magistrate 7 A. 893=A W. N. 1885, 257 (F. B.). This section empowers a District Magistrate to make rules or give special orders connected with the Code as to the distribution of work among Subordinate Magistrates and Bench Magistrate. 12 A. L. J. 803=36 A. 468=15 Cr. L. J. 584=25 Ind. Cas. 336. Under s. 17 (1) and (5) neither the District Magistrate nor the other Magistrates are subordinate to the Sessions Judge, except so far as is expressly provided by the Criminal Procedure Code. 13 M. L. J. 272=26 M. 596. A Deputy Magistrate attached to a Sub-division is subordinate to the Sub-Divisional officer of that Sub-Division 19 Cr. L. J. 126=43 Ind. Cas. 414. District Magistrate can not stay proceedings in a Criminal Court subordinate to him and the High Court can do so only under its general powers of Superintendance. 1923 M. W. N. 251=A. I. R. 1923 Mad. 688=76 Ind. Cas. 869; but see 44 M. L. J. 642=25 Cr. L. J. 280=76 Ind. Cas. 872. High Courts the tent power could be exercised in revision against the order of an Assistant Collector. 22 A. L. J. 803=25 Cr. L. J. 1242=82 Ind. Cas. 170=46A. 879. The order of an Additional Sessions Judge granting or cancelling bail is *ultre vires*, when no such power has been conferred on him by the Local Government or the Sessions Judge. A. I. R. 1930 Rang. 335=128 Ind. Cas. 577 District Magistrate is inferior Court to Sessions Judge. 1932 A L. J. 67=A. I. R. 1932 All. 124.

D—Courts of Presidency Magistrates.

18. (1) The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

Appointment of Presidency Magistrates.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates.

* [(3) A Presidency Magistrate, may be appointed under this section for such term as the Local Government may, by general or special order, direct.]

* [(4) The Local Government may appoint any person to be an additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force as the Local Government may direct.]

Notes.—This section confers full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates. 7 Bom. L. R. 833=2 Cr. L. J. 770. As regards powers of Additional Chief Presidency Magistrate, *Vide*, A. I. R. 1934 Cal. 405.

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* Sub-sections (3) and (4) were added by s. 3 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Benches.

19. Any two or more of such person may (subject to the rules made by the Chief Presidency Magistrate under the powers hereinafter conferred) sit together as a Bench.

Local limits of Jurisdiction.

20. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-duse.

Notes.—Presidency Magistrate has jurisdiction to try offences committed at any place within the limits of town. 97 Ind. Cas. 973=27 Cr. L. J. 1213=28 Bom. L. R. 1066. He has also jurisdiction under s. 84 of the Calcutta Port Act to try offence committed outside the limits of Calcutta but within the limits of the port. 47 C. 147=24 C. W. N. 79=20 Cr. L. J. 782.

Chief Presidency Magistrate.

21. (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town ;

(*b*) the times and places at which Benches of Magistrates shall sit ;

(*c*) the constitution of such Benches :

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session ; and

(*e*) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates, *[including Additional Chief Presidency Magistrates] are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

Notes.—Rule 8 of the Rules framed by the Chief Presidency Magistrate under this section is held to be not inconsistent with the provisions of the Code so far as it directed that, in a Bench composed of two members, the decision of the Chairman should prevail. 8 C. W. N. 862. Additional Chief Presidency Magistrate is subordinate to the Chief Presidency Magistrate. 28 C. W. N. 903. Though under Rules 9 and 10 of the Rules by the Government of Bombay the judgment of the Chairman prevails, the dissenting judgment of even the only other Honorary Magistrate should form part of the record. 20 Bom. L. R. 1470=28 Cr. L. J. 1025. Under rule 3 of Bombay Rules, the Chief Presidency Magistrate can transfer any particular classes of cases from other Courts to his own Court, in case of pressure of work in such Courts. 28 Bom. L. R. 1066=27 Cr. L. J. 1213=97 Ind. Cas. 973. Vide also A. I. R. 1934 Cal. 405, where the jurisdiction of the Calcutta Chief Presidency Magistrate is stated.

E.—Justices of the Peace.

Justice of the Peace for the mufassal.

†[**22.** Every Local Government, so far as regards the territories subject to its administration ‡ may by notification in the official Gazette appoint such§ (persons resident within British India and not being the subjects of any foreign State) as it thinks fit to be Justices of the Peace within and for the local area mentioned in such notification.]

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* These words were inserted by s. 4 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Section 22 was substituted by s. 2 and Schedule I of the Devolution Act, 1920 (XXXVIII of 1920).

‡ The words and brackets "(other than the presidency-towns)" were omitted by s. 3 of the Criminal Law Amendment Act, 1923 (XII of 1923).

§ These words were substituted for the words "European British subjects" by *ibid.*

Notes.—Vide 34 M. 343.

23. [Justices of the Peace for the Presidency-town.] Omitted by s. 4 of Act XII of 1923.

24. [Present Justices of the Peace.] Omitted by s. 4 of Act XII of 1923.

Ex-officio Justices of the Peace.

25. In virtue of their respective offices, the Governor-General, Governors, Lieutenant-Governors and Chief Commissioners, the Ordinary members of the Council of the Governor-General, *[and the Judges of the High Courts] are Justices of the Peace within and for the whole of British India, Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

Notes.—The power of suspending a second class Magistrate is given only to Local Government and the Collector and District Magistrate cannot exercise that power and if he suspends him, he nevertheless continues to be a Magistrate. But in such a case he may report to the High Court for orders under s. 438. 30 Bom. L. R. 1050=29 Cr. L. J. 1063.

Suspension and removal of Justices of the Peace.

27. †The Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

Offences under Penal Code.

28. Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried—

(*a*) by the High Court, or

(*b*) by the Court of Session, or

(*c*) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

Notes—Third class Magistrates have no jurisdiction to try offences punishable under s. 20 of Act VI of 1878. 2 Weir 23. This section, subject to the provision of this Code, empowers the High Court and the Court of Sessions to try any offence under the Penal Code. 8 A. 665=A. W. N. 1886, 254. The object of the legislature is to exclude offences of great gravity from the provisions of s. 250 of the Criminal Procedure Code. The words "triable by a Magistrate" in that section mean triable under section 28 of the Code by a Magistrate, 139 P. L. R. 1902. Section 28 is controlled by s. 30 and has reference to column 8 of Schedule 2. 27 Cr. L. J. 728= A. I. R. 1926 Nag. 374=95 Ind Cas. 56. Where a Magistrate tries the accused for an offence under a less serious section when really the offence fell under a more

* These words were substituted for the words "the Judges of the High Courts and the Recorder of Rangoon" by the Lower Burma Courts Act, 1900 (VI of 1900), s. 47 and Schedule I. This Act has since been repealed by the Repealing and Amending Act, 1923 (XI of 1923).

† These words "The Governor-General in Council may suspend or remove from office any Justice of the Peace appointed by him" were omitted by section 2 and Schedule I of the Devolution Act, 1920 (XXXVIII of 1920).

serious section which was beyond his competency, his proceedings are not illegal. 54 M. L. J. 456=29 Cr. L. J. 635.

Offences under other laws.

29. (1) Subejct to the *[other provisions of this Code] any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Code.

(2) When no Court is so mentioned, it may be tried by the High Court or †[subject as aforesaid] by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

Notes.—A third class Magistrate has no jurisdiction to try an offence under section 20 of Act VI of 1878. 2 Weir. 23. The provisions of the Code apply even to Courts which are no specifically mentioned in the Code. 37 C. L. J. 298=71 Ind. Cas. 339.

Trial of European British subjects by second and third class Magistrate.

‡[**29A.** No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such.]

Notes.—The claim to be tried as a European British subject under s. 29A. must be made before the inquiry or trial actually begins. 54 C. 1041=29 Cr. L. J. 245=107 Ind. Cas. 353.

Jurisdictions in the case of juveniles.

§[**29B.** Any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the Local Government to exercise the powers conferred by section 8, sub-section (1), of the Reformatory Schools Act, 1897 or in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.]

Notes.—The words "may be tried" are permissive. So that, a Magistrate other than one of those mentioned in the section can try an offender under 15 years, himself, or send him to be tried by a Magistrate under this section. 33 Bom. L. R. 312 =131 Ind Cas. 476=A. I. R. 1931 Bom. 198. In view of s. 29 B a Magistrate other than a District Magistrate has no jurisdiction to try an offence under s. 130 of the Railways Act. 29 Cr. L. J. 733=A. I. R. 1928 Lah. 909. Offence under s. 304, I. P. Code is not triable by Magistrate of Central Children Court. 36 C. W. N. 164 =59 C. 856=A. I R. 1932 Cal. 487. Section 29B is permissive. Trial of juvinile by ordinary Magistrate is not illegal. Section 29B only enables Special Magistrate to try cases otherwise triable by Sessions alone. A. I. R. 1934 Bom, 211.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governors of the ‖ Punjab ¶ and Burma ¶ and the Chief Commissioners of Oudh ¶ the Central Provinces ¶ Coorg and Assam ¶ in Sind, and in those parts of the other provinces in which there are Deputy Commissioners or

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* These words were substituted for the words and figures "provisions of section 447" by s. 5 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words were inserted by s. 5 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ Section 29A was inserted by s. 6 of the Criminal Law Amendment Act, 1923 (XII of 1923).

§ Section 29B was inserted by s. 6 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‖ These territories included, at the time the Code was passed, the territories which now form the North-West Frontier Province.

¶ The Province of the Punjab, the United Provinces, the Central Provinces and the Province of Assam are now Governor's Provinces, *see* s. 46 of the Government of India Act. The Province of Burma has also been made Governor's Province, *see* Notification No. 225. dated 7 October, 1921 and No. 1192. dated 2nd. January 1923 in Gazette of India Extraordinary, 1921, p. 381 and *ibid*, 1923 p. 37.

Assistant Commissioners the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death.

Notes.—A District Magistrate empowered under this section may try all offences not punishable with death. 3 P. R. 1891 Cr. See also 1 P. R. 1893 (F. B.) Cr. A Magistrate of the first class. who is holding an enquiry in a case of dacoity has jurisdiction either to commit the accused to the Court of Sessions or to discharge him. He has no authority to make over the case to a District Magistrate, who is a Deputy Commissioner especially empowered under section 30. to try such cases. 7 C. W. N. 457. A first class Magistrate simply described in the heading of his judgment as invested with powers under s. 30 but not purporting to act under such powers cannot exercise those powers in passing the sentence. 17 P. W. R. 1908 Cr. The powers conferred on a Deputy Commissioner under this section cannot be exercised by him in a summary trial. *Col. Dig. Cr. 42 of 1876.* As a general rule, the cases which District Magistrates should refrain from trying under their higher powers are those in which a sentence more severe than a District Magistrate can inflict under s. 34, Criminal Procedure Code, 1882. appears to be called for, if the offence charged be established and secondly those cases in which the issues are so complex or the difficulty of ascertaining the true facts or of correctly applying the law to them so considerable, as to make a trial before a Sessions Judge with the aid of assessors clearly more appropriate than a trial before a District Magistrate. L. B. R. (1893-1900) 219. A District Magistrate who is empowered under this section and convicts an accused for an offence under s. 42 I. P. Code, can pass a sentence of 1 year and nine months, *i. e.*, ¼ of seven years, in default of payment of fine. His power is not limited to awarding one fourth of the punishment which, under s. 34, he is competent to inflict without confirmation. 35 P. R. 1885 Cr. When a Deputy Commissioner tries a case exclusively triable by the Court of Sessions, under powers conferred upon him by s. 30 of the Code, he does so as a Magistrate, and if he tenders a conditional pardon to one of the accused, he is precluded from trying the case himself. 10 C. W. N. 847=4 Cr. L. J. 44. Joint trial for offences under s. 19, Arms Act, and s. 29 Frontier Crimes Regulation, and separate sentences passed to run consecutively is proper and whole order is appealable. A. I. R. 1933 Pesh. 90. A Magistrate empowered under s. 30 Cr. Pro. Code can try a case under s. 304 I. P. Code though it would be more proper for him to commit the case to the Sessions. 69 Ind. Cas. 454=23 Cr. L. J. 726 Section 30 must be read as qualifying or controlling the provisions of s. 28. 27 Cr. L. J. 728=A. I. R. 1926 Nag. 374. Where a Magistrate exercises power under s. 30 but not signing as such, the sentence in excess of powers as First Class Magistrate is illegal. A. I. R. 1934 Lah. 361.

B.—Sentences which may be passed by Courts of various classes.

Sentences which High Courts and Sessions Judges may pass.

31. (1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or additional Sessions Judge may pass any sentence authorised by law ; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years.

Notes.—Section 59 I. P. Code does not authorise the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine. 5 M. 28 ; see also 1880. P. R. 17.

Sentences which Magistrates may pass.

32. (1) The Courts of Magistrates may pass the following sentences, namely :—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class :	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law ;
	Fine not exceeding one thousand rupees ;
	Whipping.

(*b*) Courts of Magistrates of the second class ;	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law ; Fine not exceeding two hundred rupees ;*
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month ; Fine not exceeding fifty rupees

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.*

Notes.—A Magistrate whose powers are limited by this section has no power to pass an enhanced sentence under section 75, L. B. R. (1893—1900) 78. Although s. 395 enables a Magistrate in certain cases to impose a sentence of imprisonment in lieu of a sentence of whipping yet it is expressly provided that nothing in section 395 shall be deemed to authorise a Court to inflict imprisonment for a term exceeding that which a Court is competent to inflict under s. 32. 2 Weir. 449. Magistrates when deciding on the question of sentence are justified in taking into consideration the conduct of the accused person in his own defence. *Sanwaldas* v. *Emperor*, A. I. R. 1923 Sind. 253. An appellate Court's power of varying a sentence must be measured by the powers of the court of first instance. A conviction of 3 months simple imprisonment by a second class Magistrate cannot be varied into a fine of Rs. 400. 45 A. 594=76 Ind. Cas. 1032. But any fine could be imposed in lieu of confiscation under s. 12 of the Opium Act as s. 12 is not affected by s. 32. 2 Pat. L. T. 63=1 Pat L. R. Cr. 32=23 Cr. L. J. 747=69 Ind. Cas. 635. Sentence to be passed by a Magistrate under s. 21 of the Emergency Powers ordinance (2 of 1932) is also limited by s. 32. A. I. R. 1933 Bom. 58 (S. B.)=34 Bom. L. R. 1676=34 Cr. L. J. 162. No rule of thumb can be laid down by a higher tribunal as a guide for the trying Magistrate in awarding an adequate sentence. It must in each case be left to the discretion of the Magistrate. A. I. R. 1930 Sind. 58=125 Ind. Cas. 46.

Power of Magistrates to sentence to imprisonment in default of fine.

33. (1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default :

Proviso as to certain cases.

Provided that—

(*a*) the term is not in excess of the Magistrate's powers under this Code ;

(*b*) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Notes.—The effect of this section read with s. 65 of the Penal Code is to limit the maximum imprisonment which a District Magistrate with higher powers may inflict to one-fourth of seven years. L. B. R. (1893—1900) 281. Para 2 does not apply where the substantive sentence is one of fine only. L. B. R. (1872—1892) 486. In summary trials, imprisonment for four months in default of fine cannot be awarded. 3 Lah. L. J. 346=22 Cr. L. J. 145=59 Ind. Cas. 349.

Higher powers of certain District Magistrates.

34. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years.

* The words "whipping (if specially empowered)" in sub-section (1) and sub-section (3) of section 32 were repealed by the Whipping Act 1909 (IV of 1909).

Notes.—In every appeal, and *a fortiori* in every reference under this section, it is obviously the duty of the Session Judge to carefully weigh the evidence himself and not to rely only upon the weight attached to it by the Court whose order is appealed against or is referred to for confirmation. L. B. R. (1872—1892) 516.

Sentences which Courts and Magistrates may pass upon European British subjects.

*34A. Notwithstanding anything contained in section 31, 32 and 34—

(*a*) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and

(*b*) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both.

Notes.—Nagpur Judicial Commissioner's Court can try European British subjects. A. I. R. 1933 Nag. 136=34 Cr. L. J. 505.

Sentence in case of conviction of several offences at one trial.

35. (1) †[When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code] sentence him, for such offences to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, ‡[the aggregate of consecutive] sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.§

Notes.—This section does not empower a District Magistrate or any other Magistrate to pass an aggregate sentence, instead of separate sentences, upon an accused person convicted at one trial of two or more distinct offences. 14 P. R. 1886 Cr. A direction that several sentences of transportation passed on an accused person on a conviction of two or more distinct offences at the same trial, should be concurrent, is illegal being contrary to the provisions of section 35. Rat. Un. Cr. C. 383 =Cr. Rg. 34 of 1884. The fact that an accused person is convicted under s. 411 I. P. C. after having been previously convicted of the same offence, is not sufficient to

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* Section 34A. was inserted by s. 7 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words were substituted for the words "When a person is convicted at one trial of two or more distinct offences, the Court may" by s. 7 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

‡ These words were substituted for the word "aggregate" by s. 7 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ The Explanation and Illustration to s. 35 were repealed by *ibid.*

give the Magistrate the increased powers referred to in this section. 11 A. 393=A. W. N. 1889, 152. This section does not apply to separate trials. A. W. N. 1881,23. The offence under ss. 457 and 380 of the Penal Code not being distinct offences, the trying Magistrate's ordinary jurisdiction is not enhanced by the provision of para. 2 and proviso (b) of section 35, Criminal Procedure Code. The amendment of s. 35 does not alter the law regarding section 71, I. P. Code as laid down in 16 Cal. 442 (F. B.). 35 C. W. N. 184. Sentence of imprisonment in default of fine imposed for two or more offences cannot be directed to run concurrently. 5 S.L.R. 263 : 15 Ind. Cas. 808 ; 118 Ind. Cas. 224 ; 30 Cr. L.J. 907=A. I.R. 1929 Sind. 179 ; 91 Ind. Cas. 543=27 Bom. L. R. 1351. The measure of punishment must vary from time to time according to the prevalence of a particular form of crime and other circumstances. A. I. R. 1930 Lah. 867=127 Ind. Cas. 209. Separate sentences under ss. 148 and 326 read with s. 149 I.P. Code are illegal. 8 Pat. 274=A.I.R. 1929 Pat. 263. Offence of forging and that of using forged document as genuine are separate offences and separate sentences may be passed. 52 M. 532=56 M. L. J. 554=A. I. R. 1929 Mad. 450. Separate sentences can be awarded to run consecutively for participation in separate dacoities and to these can also be added a consecutive sentence to participate the conspiracy. 5 O. W. N. 985=A. I. R. 1928 Oudh. 507=115 Ind. Cas. 276. When the conviction is for rioting and hurt, two months' regorious imprisonment for rioting and Rs. 25 fine for hurt, are illegal. 30 Cr. L. J. 295 ; see also 41 C.L.J. 471=26 Cr. L. J. 1297. Imposing separate sentences where acts constituting two different offences form part of the same transaction against the same accused is not justified. A. I. R. 1928 Pat. 326=108 Ind. Cas. 81. Section 35 is subject to Penal Code 1861, s. 71. A. I. R. 1934 Mad. 388. Where accused is charged and tried for more than one offence, and more than the offence is proved, separate sentence in respect of each conviction must follow. A. I. R. 1933 Sind 9=34 Cr. L. J. 143. Criminal powers can not be granted retrospectively. A. I.R. 1933 Pesh. 97. Separate sentences must be passed for several offences of which Court finds the accused guilty. A. I. R. 1934 Rang. 338. The Court where sentencing an accused at one trial to imprisonment as well as to transportation must determine whether the sentences are to run concurrently or consecutively, otherwise the sentence is defective. 23 C. L. J. 596 =21 C. W. N. 608=34 Ind. Cas. 654. The term 'aggregate sentence' in s. 35 (2) applies only to consecutive and not to concurrent sentences. 3 Pat. L. J. 138=19 Cr. L. J. 90. Court can not direct sentences passed in different trials on an accused for two or more offences to run concurrently. Such a discretion can be given when such sentence have been passed at one trial. 24 C. L. J. 54=20 C. W. N. 1300 ; see also 22 C. W. N. 597=19 Cr. L. J. 702 ; 47 A. 59 ; 19 A. L. J. 310 ; 21 Cr. L. J. 398. Where two or more separate convictions for two or more distinct offences in the same case, a separate sentence should be passed for each offence. 43 Ind. Cas. 799=19 Cr. L. J. 223=46 P. R. 1917 Cr. ; see also 8 L. L. J. 198=27 Cr. L. J. 818 ; 7 L. L. J. 39=86 Ind. Cas. 219.

Separate sentences in case of house-breaking with intent to commit theft, and theft are illegal under this section. 2 Weir. 34. Where the common object of a riot and a criminal trespass was the same, separate conviction for both the offences is not valid. 8 C. W. N. 305. This section being permissive with respect to the passing of separate sentences for each offence of which an accused may be found guilty, a Criminal Court is not bound to pass separate sentences in such a case. L. B. R. (1872—1892) 271. Under this section, if separate sentences are passed for each offence of which an accused has been found guilty, the sentences must commence the one after the expiry of the other. Concurrent sentences of imprisonment are not recognised by the Criminal Procedure Code. L. B. R. (1872—1892), 526. In view of the provisions of s. 35, it is not illegal to direct a sentence of imprisonment to run concurrently with a sentence of transportation for life. 21 P. R. 1913 Cr.=50 P. L. R. 1914=18 Cr. L. J. 68=22 Ind. Cas. 410. The power of passing concurrent sentences is confined to cases where a person is convicted at one trial of two or more distinct offences. 16 O. C. 370=15 Cr. L. J. 300=23 Ind. Cas. 508. See also 11 A. L. J. 263 ; 20 S. L. R. 23 ; 22 C. W. N. 597 ; 20 C. W. N. 1300 ; 19 A. L. J. 310 ; 13 Bom. L. R 200 ; 14 Cr. L. J. 388 ; 21 Cr. L. J. 398. This section has reference only to the conviction of an accused person of two or more offences at one trial. It does not include the case of separate trials held on the same day for separate offences committed by the same person. 2 Weir 30. The restriction is limited to cases in which the Magistrate is at liberty to hold one trial for distinct offences under s. 234 of the Code of 1898. 2 Weir 31. It is not illegal to award concurrent sentences under this section ; when a person is convicted at one trial of two or more distinct offences and sentenced to several punishments such sentences

must not be directed to run simultaneously. 6 C. P. L. R 9 Cr. ; see also 8 C. P. L. R 1. Under the present law it is not necessary that the offences should be distinct to enable a Magistrate to pass consecutive sentences. *Emperor* v. *Hanmatima*, 30 Bom. L. R. 383=109 Ind. Cas. 368=A. I. R. 1928 Bom. 145. By the amendment of this section by Act XVIII of 1923 separate sentences for rioting and hurt are legal, although in practice, it is undoubtedly better to give a single sentence for all the offences or order the sentences to run concurrently. *Ali Akbar* v. *Emperor*, 116 Ind. Cas. 216=30 Cr. L. J. 575=A. I. R. 1929 Lah. 670.

Sub-section (2)—An accused, who has been sentenced to concurrent terms of imprisonment, no one of which is individually appealable has no right of appeal against them collectively. 14 Cr. L. J. 254=17 C. W. N. 825.

Proviso (a)—According to this proviso the maximum term of imprisonment awardable as an aggregate sentence is 14 years. A sentence of transportation in lieu of imprisonment awarded under s. 59, Penal Code, is therefore subject to the limitation, which has been provided by this section in case of sentences of imprisonment. 7 C. P. L. R. 29. An aggregate sentence of 20 years' rigorous imprisonment is illegal. 105 P. L. R. 1910=11 Cr. L. J. 679.

C.—Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrate, Sub-divisional Magistrate and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers".

Notes.—Vide 3 M. L. T. 31=31 M. 315=7 Cr. L. J. 360 (F. B.) ; 17 Cr. L. J. 293.

Additional powers conferrable on Magistrates.

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Notes.—The powers of a second class Magistrate can be extended only to the extent specified the s. 37 and schedule 4 which are to be read with s. 190. 5 Pat. 447=27 Cr. L. J. 704.

Control of District Magistrate's investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance and Cancellation of powers.

Mode of conferring power.

39. (1) In conferring powers under this Code the Local Government may, by order, empower person specially by name or in virtue of their office, or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Notes.—A Magistrate of the second class who begins a trial in that capacity up to the passing of the sentence, and who previously to the passing of the sentence has been empowered as a Magistrate of the first class can inflict a severer sentence than he could have inflicted as a Magistrate of the second class. 7 A. 414 (F. B.)= A. W. N. 1885, 105 ; see also 10 C. W. N. 293 (notes). Notification may empower a second class Magistrate enumerated therein to try offences under the Opium Act. 24 Cr. L. J. 846=A. I. R. 1924 Mad. 256. Criminal powers cannot be granted retrospectively. A. I. R. 1933 Pesh. 97.

Power of officers appointed.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is *

* The word was substituted for the word, "transferred" by s. 8 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

[appointed] to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise direct or has otherwise directed* exercise the same powers in the local area† [in which] he is so [appointed].†

Notes.—Even after transfer and conferring of appellate powers on a Magistrate the original powers continue in him. 2 Bom. L. R. 536. This section relates only to transfer from one district to another. Rat. Un. Cr. C. 322; see also 12 C. W. N. 448 When a Tasildar is invested with the powers of a Magistrate of the first class, while acting as a Deputy Collector his powers continue so long as he is a Magistrate until they are withdrawn by a fresh notification, though he is posted in a less responsible post. 2 Weir. 36. Grant of leave to a Magistrate in the Provincial service does not cause cessation of his powers. 74 Ind. Cas. 958=A. I. R. 1930 Lah. 833. Where a Sub-Judge with powers of First class Magistrate and power to try cases under s. 260 is transferred, he cannot ever in such powers, unless he is empowered by fresh notification. A. I. R. 1933 Sind. 398 =1933 Cr. C. 1438.

Powers may be cancelled.

41. (1) The Local Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III.

General Provision.

CHAPTER IV.

Of aid and Information to the Magistrates, the Police and Persons making Arrests.

Public when to assist Magistrates and police.

42. Every person is bound to assist a Magistrate or police officer reasonably demanding his aid, whether within or without the presidency-towns,—

(*a*) in the taking or perventing the escape of any other person whom such Magistrate or police officer is authorized to arrest:

(*b*) in the prevention or a supression of a breach of the peace or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

Notes.—A police officer is authorized to employ a *chaukidar* to assist him in arresting a person or in preventing his escape. 6 C. W. N. 337. The assistance which can be demanded is the personal assistance of the individual. 2 Weir. 37. Public are not found to assist Police officer who is making arrest of real or suspected dacoits; they can not however be called upon to assist in arresting unknown persons, whose whereabouts are not known. 42 A. 314=21 Cr. L. J. 801. Where a person arrested by police is lying down and is refusing to move, a person asked by police to help him should assist him. 33 Cr. L. J. 736=A. I. R. 1932 All. 506.

Aid to person other than police officer, executing warrant.

43. When a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Notes.—The word "near" in certain cases might include a distance of two miles. Col. Dig. 14 of 1874.

Public to give information of certain offences.

44. (1) Every person, whether within or without the presidency towns aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence

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* The words "continue to" were omitted by *ibid.*

† These words were substituted by Act XVIII of 1923.

of reasonable excuse the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) for the purposes of this section, the term "offence," iucludes any act committed at any place out of British India which would constitute an offence of committed in British India.

Notes.—Sending reports by a Chaukidar is sufficient. 5 P. R. 1989. Omission to send report does not amount to abatement. 14 Cr. L. J. 616=6 Bur. L. T. 153. First information report can be used to corroborate the witness provided he himself had not given information from mere heresay. 6 Lah. 437=7 L. L. J. 259=26 Cr. L. J. 1489. Person witnessing commission of offence must inform the nearest Police officer or Magistrate, otherwise he is commiting an offenee under S. 202. I. P. Code. 21 Cr. L. J. 486=16 N. L. R. 30.

Village-headman, accountants, landholders and and others bound to report certain matters.

*45. (1) Every village-headman, village-accountant, village-watchman, village police-officer, owner or occupier of land and the agent of any such owner or occupier† ‡[in charge of the management of that land], and every officer employed in the collection of the revenue, rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station whichever is the nearer any information which he may‡ [possess] respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer ; or in which he owns or occupies land or is agent, or collects revenue or rent ;

(*b*) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender ;

(*c*) the commission of, or intention to commit, in or near such village, any non-bailable offence or any offence punishable under section 143, 144, 145, 147, or 148 of the Indian Penal Code ;

(*d*) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances †[or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred, or the disappearance from such village of any person in circumstances which lead to a reasonable supicion that a non-bailable offence has been committed in respect of such person ;]

(*e*) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely,§ [231, 232, 233, 234, 235, 236, 237, 238,] 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, ¶[460, 489A, 489B, 489C and 489D] ;

(*f*) any mattter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special

* This section does not apply to areas in which the Burma Village Act, 1907 (Bur. Act VI of 1907), is in force, see s. 7 (2) of that Act.

† These words were inserted by s. 9 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

‡ This word was substituted for the word "obtain" by *ibid.*

§ These figures were added by s. 9 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

¶ These figures, letters and words were substituted for the word and figure "and 460" by *ibid.*

order made with the previous sanction of the Local Government, has directed him to communicate information.

(2) In this section—

(*i*) "village" includes village-lands; and

(*ii*) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Governor General in Council in any part of India, in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Appointment of village headmen by District Magistrate or Sub-divisional Magistrate in certain cases for purposes of this section.

(3) Subject to rules in this behalf to be made by the Local Government, the District Magistrate *[or Sub-divisional Magistrate] may from time to time appoint one or more persons *[with his or their consent]† [to perform the duties of a village-headman under this section whether a village-headman has or has not been appointed for that village under any other law.]

Notes.—When information, as to the commission of a murder is conveyed to the nearest Magistrate or police-officer by one of the parties bound to give such information under s. 45 of the Cr. Pro. Code, it is not reasonable that every other person, who may possibly be bound to give information, should be prosecuted for not having done so, and convicted of an offence under s. 176 of the Penal Code. 20 C. 316. The owner or occupier of a house within a village is not an owner or occupier of land within the meaning of this section. 12 M. 92=1 Wier 102; 30 Bom. L. R. 1570. An order passed by a District Magistrate under the rules framed by Government under s. 45 (3) is an executive order, and not subject to the revisional powers of the High Court. A. W. N. 1907, 168=5 Cr. L. J. 476=29 A. 563. The obligation ceases when the police is informed by a Chaukidar. 23 Cr. L. J. 162. Village Chaukidar need not communicate rumours, but only such information as he possesses of his own knowledge. 5 P. L. T. 505=26 Cr. L. J. 972=81 Ind. Cas. 620. Report by Police Officer is not a "police report" in the technical sense, but must contain facts constituting offence. 51 C. 408=25 Cr. L. J. 732. Where a person fell from a tree and died two days later, his death is not unnatural in the sense of the section, especially as the death did not occur immediately. 23 Cr. L. J. 345=66 Ind. Cas. 1001.

Clause (*c*)—The information required to be given is the commission of an offence. 9 Cr. L. J. 224=5 M. L. T. 257. In cases of bailable offence no information need be given. 32 M. 258; 30 P. R. 1887.

Clause (*d*)—In cases of sudden and unnatural death the village headman is to give information. 23 W. R. 60; see also 11 C. 619; 20 P. R. 1887. Death caused by fall from a tree is not unnatural within the meaning of this section. 23 Cr. L. J. 345.

Sub-section (3)—An order under this sub-section is not subject to revision. 29 A. 563.

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

Arrest how made.

46. (1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

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* These words were inserted by s. 9 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

† These words were substituted for the words "to be village-headmen for the purposes of this section in any village for which there is no such headmen appointed under any other law "by *ibid.*

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with transportation for life.

Notes.—The Punjab Frontier Crimes Regulation makes no alteration in the general principle of the law, that in making an arrest, no more force is to be used than is necessary, and that death should not be caused, unless the arrest can not be effected without causing it. 32 P.R. 1894 Cr. The person making the arrest must have the warrant in his possession. 5 A. 318. Arrest can be effected either by actual contact or submission. 17 Cr. L. J. 87=9 S. L. R. 141. In cases of illegal arrest the right of private defence can be exercised. 16 C. W. N. 549. An arrest by a mere oral declaration without the actual touch of the process-server is not a legal arrest within the meaning of s. 46 (1) of the Criminal Procedure Code. *Har Mohan Lal* v. *Emperor*, 113 Ind. Cas. 288=30 Cr. L. J. 128. Shot over the head of suspect is justified by s. 46. A. I. R. 1933 Sind. 193=34 Cr. L. J. 751. Person stating that he has committed an offence and, making statement to police, submits to police custody under s. 46 (1) and is in police custody within s. 27. Evidence Act. 14 P. L. T. 82=34 Cr. L. J. 349 ; see also 25 C. W. N. 788. Police officer not notifying substance of the warrant under s. 80 can justify his arrest under s. 46 (2). 33 C. W. N. 284=30 Cr. L. J. 703. A trial proceeded by a police investigation in which they have failed to observe Chapter V is not bad in its entirety. 26 Cr. L. J. 492=3 Bur. L. J. 265.

Clause (3).—An Exercise officer cannot fire at a opium smuggler while pursuing him. 21 Cr. L. J. 97.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such plasce, shall, on demand of such person acting as aforesaid or, such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

Notes.—Under this section the house-holder is obliged to give the police facilities in discharging their duties. 41 C. 350=18 C. W. N. 896=15 Cr. L. J. 745.

48. If ingress to such place cannot be obtained under section 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Procedure where ingress not obtainable.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested), who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Breaking open zanana.

49. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors and windows for purposes of liberation.

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.*

Notes.—A magistrate is incompetent to require bail for the personal appearance of an absentee accused person at a future date, where he has been permitted to appear by agent under s. 182. Col. Dig. Cr. 9 of 1873.

Search of arrested persons.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or, is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel found upon him.†

Notes.—Medical examination of an arrested person may not be held without his consent. 35 C. W. N. 1212=33 Cr. L. J. 11. Money may also be kept in safe custody. A. I. R. 1934 Bom. 104.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another women, with strict regard to decency.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.—Arrest without warrant.

When police may arrest without warrant.

54. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest—

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned ;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking ;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Local Government ;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property‡ [and] who may reasonably be suspected of having committed an offence with reference such things ;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;

sixthly, any person reasonably suspected of being a deserter from Her Majesty's "Army, Navy or Air Force"§‖

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* For penalty for unwarrantable personal violence by a police-officer to a person in his custody *see* s. 29 of the Police Act, 1861 (V of 1861).

† As to disposal of such property, *see* s. 523 *infra*.

‡ This word was substituted for the word "or" by s 10 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ Substituted by Act 10 of 1927.

‖ Certain words after this repealed by Act XXXV of 1934 have been omitted.

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881,* or otherwise, liable to be apprehended or detained in custody in British India ;

eighthly, any realeased convict committing a breach of any rule made under section 565, sub-section (3) : and

†[*ninthly*, any person for whose arrest a requision has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully by arrested without a warrant by the officer who issued the requisition,]

(2) This section applies also to the police in the town‡ of Calcutta.‡

Notes.—Under sub-section (1) a constable is empowered to make an arrest without warrant, when he had credible information that the person had committed a cognizable offence. 11 A L. J. 957=15 Cr. L. J. 179=22 Ind. Cas. 755=36 A. 6 ; 21 A. L. J. 791. This section must be construed very strictly. 44 C. 76. A Chaukidar is not a police-officer. 41 C. 17 ; 27 C. 366 ; 3 A. 60 ; 35 C. 361 ; A. I. R. 1929 A. 935. Any police-officer may arrest. 40 M. 1028=13 Cr. L. J. 709 ; 25 Cr. L. J. 652 ; see also 20 C. W. N. 1233 ; 43 A. 186. Detention after orders for immediate release is illegal. 41 A. 483=20 Cr. L. J. 381. Arrest on mere suspicion that accused is concerned in offences is wrong. 47 M. 442=25 Cr. L. J. 563. Village Chaukidar is not police-officer within the meaning of s. 54. 31 Cr. L. J. 120=1930 A. L. J. 242. The mere fact that a party of persons are in certain place at a certain time is no ground for thinking that they are about to engage in a criminal act. 7 P. L. T. 218=26 Cr. L. J. 603. Where constable is acting under invalid warrant, resistance to him is no offence. A. I. R. 1932 Pat. 171=33 Cr. L. J. 706. After a complaint is lodged constable can be seen to arrest the accused on suspicion of offence being committed. 21 A. L. J. 791=25 Cr. L. J. 652 ; see also 73 Ind. Cas. 343=46 M. 705 : 24 Cr. L. J. 325=2 Pat 379.

Clause (1).—A police-officer may arrest any person charged with cognizable offence. 40 M. 1028 ; 81 Ind. Cas. 140 ; 21 A. L. J. 791=25 Cr. L. J. 652 ; 2 Pat. 379=4 P. L. T. 521=24 Cr. L. J. 375 ; 36 A. 6=11 A. L. J. 957 ; 22 Cr. L. J. 758. A reasonable suspicion or a credible information cannot be based on bare suspicion. 29 C. W. N. 98=52 C. 319=26 Cr. L. J. 625=40 C L. J. 489.

Clause (4)—To authorise a police-officer to arrest a person under this clause no formal complaint is necessary. 8 W. R. 28.

Clause (5)—Vide 12 B. 377 ; 40 M. 1028 ; 36 A. 6.

Clause (7)—26 Bom. L. R. 984 ; 34 Cr. L. J. 679 ; 7 Bom. L. R. 463=2 Cr. L. J. 439 ; 29 A. 377.

Arrest of vagabonds, habitual robbers, etc.

55. (1) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence ; or

(*b*) any person within the limits of such station who has no ostensible means of subsistance, or who cannot give a satisfactory account of himself ; or

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* 44 & 45 Vict, c. 69.

† This clause was added by s. 10 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ The letter "S" and the word "and Bombay," repealed by Bom. Act. IV of 1902 have been omitted.

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear or injury.

(2) This section applies also to the police in the town* of Calcutta.*

Notes.—This section is intended for the suppression of habitual bad characters whom an officer in charge of a police station suddenly finds within his jurisdition, or about whom he has good cause to fear that they will commit serious harm before there is time to apply to the nearest Magistrate empowered to deal with the case under s. 112, Cr. Pro. Code. 14 A. 45=A. W. N. 1891, 179. This section applies to the police in the Presidency town of Calcutta. 31 C. 557; 7 C. W. N. 661. A habitual gambler cannot be arrested under this section. 3 L. B. R. 94; 3 Cr. L. J. 20. In order to justify a police to arrest under this section it must be found that the person arrested is a habitual robber or house-braker. 47 M. 442=46 M. L. J. 447=25 Cr. L. J. 563. See also 35 A. 407; 27 Cr. L. J. 628. The powers given under this section are exceptional powers and should be used very carefully. 14 A. 45. For cases of illegal arrest, vide 41 A. 483=17 A. L. J. 458=20 Cr. L. J. 381; 1883 A. W. N. 223. A person arrested under this section should be allowed bail. 14 A. 45. Section 55 is independent of Chapter 8 and may be used as a preliminary to proceedings thereunder. 124 Ind. Cas. 638=31 Cr. L. J. 717. Police-officer arresting a man in order to take proceedings under s. 110 must specify one of the clauses mentioned in s. 55. 20 S. L. R. 85=27 Cr. L. J. 628.

Procedure when police-officer deputes subordinate to arrest without warrant.

56. (1) When any officer in charge of a police-station †[or any police-officer making an investigation under Chapter XIV] requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. †[The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.]

(2) This section applies also to the police in the town* of Calcutta.*

Notes.—The above section was held inapplicable where an arrest for dacoity was made without warrant by a subordinate police-officer, in the presence of a head constable who authorised him to make the arrest. 1 W. R. Cr. 20 (1); 11 W. R. Cr. 20 (2). A Chaukidar is a subordinate police-officer. 26 Cr. L. J. 795; 10 C. W. N. 287. Section 80 is not applicable while a police-officer is acting under this section. 27 C. 320. Where a constable holding a command certificate arrests without notifying substance, arrest is not illegal if he could have independently arrested him under s. 54 without warrant. 5 Pat. 533=27 Cr. L. J. 1310=98 Ind. Cas. 254. Where requisition of arrest is made by police-officer specifying s. 55 it is sufficient compliance with s. 56. A. I. R 1934 All. 879. Endorsement of names of constable making arrest is not necessary. *Ibid.*

Refusal to give name and residence

57. (1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

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* The letter "s" and the words "and Bombay" were repealed by s. 2 (1) and Sch, A of the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

† These words were inserted by s. 11 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Notes.—Arrest and detention by a police constable is justified when the accused refuses to give his name and address. 5 Bom. L. R. 597. But such detention is not legal when his name and address are known to one of two arresting police-officers. 46 M. 605=24 Cr. L. J. 599.

Pursuit of offenders into other jurisdiction.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter pursue such person into any place in British India.

Notes.—British Government has no jurisdiction to arrest at the Gwalior Railway Station a person who has committed an offence in British India not relating to Railway administration. 1 Lah. 406=21 Cr. L. J. 303.

Arrest by private persons and procedure on such arrest.

59* [(1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station].

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Notes.—A Chaukidar cannot properly be regarded as a Police Officer within the terms of s. 59 Criminal Procedure Code. 17 C. W. N. 978=14 Cr. L. J. 494=20 Ind. Cas. 750=41 C. 17; see also 27 C. 366: 3 A. 60. An individual is authorised to arrest for the preservation of peace. 44 M. 913. A private person can arrest only where cognizable offences or abetment of the same are committed in his presence. 11 M. 480; see also 26 Cr. L. J. 1462=7 P. L. T. 65; 1 P. L. T. 60=5 P. L. J. 129: 35 C. 361; 23 A. 266; 23 Cr. L. J. 3. The person arresting an accused under this section need not personally take such offender to the police-station. This section will be complied with if he forwards him to the police-station. Vide 23 A. 226; 29 A. 575; 11 M. 480; 8 P. L. T. 204. Persons preventing arrest will be liable if their intention was to prevent arrest or if pursuers were lawfully empowered to arrest. 64 Ind. Cas. 371=23 Cr. L. J. 3. "In his view" must not be interpreted too strictly. If one person stood at the foot of tree and receives toddy from the others at the top, theft is committed "in the view" of persons arresting them. A. I. R. 1924 Mad. 384=81 Ind. Cas. 312; see also 14 P. L. T. 464=1933 Cr. C. 1079. Amendment of s. 59 makes it impossible to raise the argument that Chaukidar not being police-officer has no power to receive custody of person arrested under s. 59 by private individual and to take him to police-station. A. I. R. 1932 Pat. 214=13 P. L. T. 321. It is doubtful whether s. 59 is the only defence to person responsible for arrest. 60 C. 955=A. I. R. 1933 Cal. 708.

Persons arrested to be taken before Magistrate or officer in charge of police-station.

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

* This sub-section was substituted by s. 12 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Notes.—The provision of this section is complied with when the matter is reported to a Magistrate. 5 B. H. C. R. 99.

Person arrested not to be detained more than twenty-four hours.

61. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Notes.—This section is not applicable to the Police of Calcutta. 52 C. 67=29 C. W. N. 300 ; 44 C. L. J. 134 ; 97 Ind. Cas. 945. The object of this section is to bring the offender before the magistrate, as soon as practicable. Vide 28 C. W. N. 490 ; 25 Cr. L. J. 1203 ; 51 C. 402 ; 36 C. 166 ; 11 M. 98. Provisions of ss. 61 and 167 must be strictly complied with. 32 P. L. R. 493=32 Cr. L. J. 913.

Police to report apprehensions.

62. Officers in charge of police-stations, shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Discharge of person apprehended.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Offence committed in Magistrate's presence.

64. When any offence committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Provisions of sections 47, 48 and 49 to apply to arrest under section 66.

67. The provisions 47, 48 and 49 shall apply to arrest under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

Form of summons.

68. (1) Every summons* issued by a Court under this Code, shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule direct.

Summons by whom served.

(2) Such summons shall be served by a police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

* For forms, *see* Sch. V. Forms I and XXXI, *infra*.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

Notes.—Summons issued to an assessor must be under this section. 1 C. W. N. xvi. Verbal prayer to issue summons against accused is sufficient. 33 C. W. N 446 =56 C. 1013. The law of service of summons in criminal cases is on the same lines as the rules for the service of a summons in a civil case. 20 Cr. L. J. 816=53 Ind. Cas. 720. The procedure of issuing summons for offences under the Motor Act without specifying any details is not justified by law. 29 Cr. L. J. 357. Issue of summons without giving particulars of offence is not justified. A. I. R. 1934 Oudh 207. The validity of a summons depends upon the observance of formalities mentioned in this section. 5 A. 7; see also 7 M. H. C. R. App. 43; 2 Weir 38. 1 Weir 100. A summons must be sealed. 37 M. L. J. 588=21 Cr. L. J. 800.

Summons how served.

69. (1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Notes.—Service of summons is effected by delivering copy of the original to the person summoned. 5 B. H. C. R. 20; 40 A. 557; 6 A. W. N. 93. A mere tender of summons is sufficient to effect service. 40A. 577=19 Cr. L. J. 746. Personal service may be made either by delivery or by tender; in the later case there must be real tender of a document understood by the person to be served and who have wavered actual delivery. Person getting away from serving officer and remaining in his house is intentionally preventing service. 29 Cr. L. J. 263=26 A. L. J. 107. Leaving copy of summons with durwan was held insufficient service. 35 C. W. N. 868=33 Cr. L. J. 264.

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates, for him with some adult male member of his family, or, in a presidency-town, with his servant residing with him and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Notes—Service of summons on the mother of the accused is not proper service. 26 Cr. L. J. 1370. A summons can be left with a servant. 2 C. L. J. 48 (note). But such service on a juror is not proper. 1889 A. W. N. 13.

Procedure when service cannot be effected as before provided.

71. If service in the manner mentioned in section 69 and 70 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Notes.—Service under this section can be made only when provisions laid down in it are strictly complied with. Vide 43 C. L. J. 113=31 C. W. N. 148; 23 Cr. L. J. 739=69 Ind. Cas. 627. The procedure which is provided by s. 71 cannot be made use of unless service in the manner mentioned in both ss. 69 and 70 can be effected by the exercise of due diligence. 43 C. L. J. 113=27 Cr. L. J. 715.

72. (1) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

Service or servant of Government or of Railway Company.

(2) Such signature shall be evidence of due service.

Notes.—This procedure is to be applied only in cases of summons issued by a Court of Justice. 18 Cr. L. J. 733=40 Ind. Cas. 733. A summons to a Sub-Inspector of the Railway Police should be served through the Superintendant of the Railway Police of that district. 6 P. L. T. 215=26 Cr. L. J. 965.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is to be there served.

Service of summons outside local limits.

74. (1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

Proof of service in such cases, and when serving officer not present.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B—*Warrant of Arrest.*

75. (1) Every warrant of arrest issued by a Court under this Code shall be in writing signed by the presiding officer, or in the case of a Bench of Magistrates by any member of such Bench; and shall bear the seal of the Court.

From of warrant of arrest.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it or until it is executed.

Continuance of warrant of arrest.

Notes.—The seal of the Court is essential to the validity of a warrant, and its absence makes the warrant void and an arrest made in execution of such warrant is not legal. 19 C. W. N. 224=16 Cr. L. J 336=28 Ind. Cas. 672; see also 9 B. H. C. R. 154; 18 B. 636. The warrant must also be signed. 6 M. 396; 2 P. L. J. 487=18 Cr. L. J. 526. Signing by initial is a mere irregularity. 3 P. L. J. 493; 8 A. 293; 5 C. W. N. 447; but see 23 C. 896. A signature by stamp is not sufficient. 6 M. 396. A warrant must rightly describe the accused person. 18 B. 636; see also 9 B. H. C. R. 154; 28 C. 399. The offence most be specified in the warrant. 15 W. R. 4. The name of the person, who is to execute the warrant must be mentioned in the warrant. 14 Cr. L. J. 42; 16 P. R. 1913 Cr.; 16 P. R. 1904. Resistance to a warrant not signed by presiding Magistrate is no offence. 18 Cr. L. J. 526=2 Pat. L. J. 487. It is gross negligence for a Magistrate not to sign his name in full on the warrant, but it is mere irregularity. 5 Pat. L. W. 117=19 Cr. L. J. 747. Warrant can be served even after its returnable date unless cancelled or is executed. 7 Pat. 478=29 Cr. L. J. 1007. Where complaint under s. 124A did not set out the alleged speech, but the sanction order alone contained an abstract, and the Magistrate issued non-bailable warrants and refused bail: *Held*, Magistrate did not direct his mind to the question of proper complaint, and order refusing bail is illegal. 30 Cr. L. J. 1129=A. I. R. 1929 Lah. 384. Where there are two magistrates at subdivisional head-quarters with residen-

tial powers in matter of taking cognizance of offences of complaints and of issue of warrants under s. 204, in the absence of one the other is presiding officer. 33 Cr. L. J. 706.

Sub-section (2).—A warrant of arrest remains in force until it is cancelled by the Court which issued it and until it is executed even though it bears a returnable date. *Emperor* v. *Brinda*. 7 Pat. 478=42 Ind. Cas 223=A. I. R. 1928 Pat. 466.

Court may direct security to be taken.

76. (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody,

(2) The endorsement* shall state—

(*a*) the number of sureties ;

(*b*) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound and ;

(*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Notes.—A warrant on which there is an endorsement for bail to be taken for the appearance of the accused on a certain date, does not lapse on the expiry of that date. 13 C. W. N. 1091. Where a technical offence is committed a bailable warrant should issue in non-bailable cases. (1911) M. W. N. 452.

Warrants to whom directed.

77. (1) A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate shall always be so directed: but any other Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons ; and such person or persons shall execute the same.

Warrants to several persons.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more, of them.

Notes.—Sections 77 and 83 of the Criminal Procedure Code are directory and not mandatory, and a substantial compliance with their provisions is sufficient. 1 P. R. 1896 Cr. A warrant issued by the Presidency Magistrate, must always be directed to a police-officer. 8 W. R. 74. Under circumstances mentioned in this section, it may be directed to an unofficial person. 13 W. R. 27. The name and designation of the police-officer need not be mentioned. 3 P. L. J. 493=19 Cr. L. J. 747 ; 26 Cr. L. J 845 ; 33 Cr. L. J. 706=A. I. R 1932 Pat. 171, but see 24 Cr. L. J. 14. Unless a warrant is immediately necessary and no police is available, endorsement on the warrant in favour of a forest officer does not empower the latter to arrest. 51 M. 873=29 Cr. L. J. 541. Where warrant was addressed to "Bailiff of Court" execution by Naib Nazir without endorsement by bailiff is illegal. 22 Cr. L. J. 145=3 L. L. J. 346.

Warrant may be directed to landholders etc.

78. (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land wtthin his district or sub-division for the arrest or any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm or the land under his charge.

* For forms *see* Sch. V. Form II, *infra*.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Warrant directed to police-officer.

79. A warrant directed to any police officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notes.—The endorsement of a warrant must be made by the police-officer to whom it is addressed and it must be by name. 27 C. 457 ; 4 C. W. N. 85 ; see also 22 Cr. L. J. 145 ; 3 Pat. L. J. 493. As regards execution of warrants by other officers in cases of offences under special Acts, *vide* 10 Cr. L. J. 3 ; 37 C 122 ; 21 Cr. L. J. 9. This section has no application to Forest Officers. *Pasupattia* v. *Emperor*, 51 M. 873=109 Ind. Cas. 365. It is immaterial whether the endorsement is an warrant or separate piece of paper. 32 Cr. L. J. 916=25 S. L. R. 117.

Notification of substance of warrant.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required shall show him the warrant.

Notes.—An opportunity of reading the warrant should be given. 26 C. 748 ; see also 3 P. L. J 493=19 Cr. L. J. 747 ; 23 C. 890 ; 10 C. 18 ; 13 Bom. L. R. 168 ; 37 C. 122. In an arrest under section 56 of the Code of Criminal Procedure this section has no application. 27 C. 220 ; 4 C. W. N. 311. It cannot be said that no arrest can be lawfully made without compliance with the provisions of section 80 Cr. Pro. Code, because a police-officer may be able to justify his action under s. 46 (2) Cr. Pro. Code. 33 C. W. N. 284=30 Cr. L. J. 703. Mention of fact of notification of warrant by police-officer for his report is not necessary. 13 P. L. T. 135=33 Cr. L. J. 706.

Person arrested to be brought before Court without delay.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

Notes.—This section is essentially an enabling section. 1 P. R. 1896 Cr. An arrest outside British India is illegal. Vide 21 Cr L. J. 303 ; 25 C. 20 (P. C.) ; 7 Bom. L. R. 83 ; 48 Ind. Cas. 865 ; 31 P. R. 1918.

Warrant forwarded for execution outside jurisdiction.

83. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a Presidency-town within the local limits of whose jurisdiction it is to be executed.

* (2) The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

Notes.—This section is applicable to warrants issued under the provisions of Act XIII of 1859. A. W. N. 1897, 220. Political agent of a Native State cannot be directed by High Court to produce a person in custody in the Native State as he is not in the vicarious custody of the said person. 27 A. L. J. 520=A. I. R. 1929 A. 347=30 Cr. L. J. 1083.

* Sub-section (2) of this section so far as it applies to the police in the Town of Bombay, has been repealed by the City of Bombay Police Act, 1902 (Bom. Act. IV of 1902)—*see* s. 2 (1) of that Act.

Warrant directed to police-officer for execution outside jurisdiction.

84. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the town* of Calcutta.*

Procedure on arrest of person against whom warrant issued.

† **85.** When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police in a Presidency-town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner or District Superintendent..

Procedure by Magistrate before whom person arrested is brought.

† **86.** (1) Such Magistrate or District Superintendent, or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court :

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security,‡ as the case may be, and forward the bond to the Court which issued the warrant.

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

Proclamation for person absconding.

87. (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

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* The letter "s" and the words "and Bombay" were repealed by s. 2 (1) and Sch. A of the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

† Sections 85 and 86, so far as they apply to the police in the Town of Bombay, have been repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902) *see* s. 2 (1) of that Act.

‡ *See* Sch. V., Form III, *infra.*

§ *See* Sch. V., Forms IV., and V *infra,*

(2) The proclamation shall be published as follows :—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village ; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Scope of sections 87-89.—Sections 87-89 of the Criminal Procedure Code form a complete Code by themselves and the remedies provided therein are exclusively subjected, of course, to the right of appeal or revision by the High Court. *Dewa Sing* v. *Fazal dad*, 111 Ind. Cas. 508=A. I. R. 1928 Lah. 562=10 Lah. 338.

Notes—A proclamation issued under this section against an absconding person, should give thirty days' time for his appearance from the date of the proclamation. Where this is not done, the proceedings are liable to be set aside. 17 M. L. J. 438=6 Cr. L. J. 332 ; see also 27 A. 572=A. W. N. 1905, 102=2 A. L. J. 348=2 Cr. L. J. 247 ; 19 M. 3 ; 1919 P. R 32 ; 19 W. R. 19. In proceeding under the Provisions of ss. 87 and 88 of the Criminal Procedure Code the Magistrate ought to take particular care to preserve the proclamation, and the record must be so clear as to satisfy the Court that all the legal formalities were duly observed. 14 Bom. L. R 163=14 Ind. Cas. 757=13 Cr. L. J. 293=1 Bom. Cr. C. 104 A person against whom a warrant of arrest has been issued and who absconds, should be dealt with under the Criminal Procedure Code and not under s. 172 I. P. Code. 7 N. W. P. 302. Where the property of an absconder had been attached and sold, and had vested in a third person (the purchaser) *held*, that the sale could not be set aside on the ground of irregularity in the proclamation, as the property had vested in a person who was not a party to the proceedings in which the proclamation was made. 22 A. 216=A. W. N. 1900, 28. The section prescribes certain rules with regard to time and place. In respect of these matters, the section is imperative and the neglect of the rule with regard to time is no more excusable than would be the neglect of the rule requiring publication in two places. 5 M. L. J. 215. Proceedings by way of attachment must cease on death of the absconder. In the Punjab only the interest of the absconder can be attached and on his death land must be released in favour of his heirs. 26 Cr. L. J. 1148=7 L. L. J. 540. Proclamations must be published in the place where the accused resided and 30 days from date of proclamation must be allowed for appearance. 35 Ind. Cas. 974=17 Cr. L. J. 414 ; see 2 Lah. L.J. 82=21 Cr. L.J. 210. Substituted service is bad in the absence of reasonable difference under ss. 69 and 70. 6 N. L. J. 63=23 Cr. L. J. 739. If a person files petition against order issuing warrant and takes steps to get order of superior Court for remaining on bail he cannot be regarded as an absconder nor can section 87 be applied to his case. 23 Cr. L. J. 454.

Attachment of property of person absconding.

88. (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made ; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(*a*) by seizure ; or

(*b*) by the appointment of a receiver ; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf ; or

(*d*) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under the section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(*e*) by taking possession ; or

(*f*) by the appointment of a receiver ; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf ; or

(*h*) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature the Court may, if it thinks it expedient, order immediate sale thereof and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure*

† [(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part :

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representive].

†[(6B.) Claims or objections under sub-section (6A) may be preferred or made in the Court by which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Presidency Magistrate in accordance with the provisions of sub-section 2, in the Court of such Magistrate].

*[(6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made :

Provided that, if it is preferred or made in the Court of a District Magistrate or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him].

†(6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institue a suit to establish the right which he claims in respect of the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive].

†(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government, but it shall not be sold until the expiration of six months from the date of the attachment ‡ [and until any claim preferred or objection made

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* *See* now the Code of Civil Procedure, 1908 (Act V of 1908.)

† Sub-sections *6A* to *6E* were inserted by s. 13 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words were inserted by s. 13 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

under sub-section (6A) has been disposed of under that sub-section], unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Notes.—This section is not intended to apply to an undivided member of a Hindu joint-family, for his interest connot be seized being unascertained. 2 Weir. 43 See also 33 Cr. L. J. 622=55 M. 1041 ; 18 Cr. L. J. 1037=2 P. L. W. 179 ; but see 39 M. 831=17 Cr. L. J. 296. The attachment of property under this section is intended to enforce the attendance required by a proclamation issued under s. 87. 6 C. P, L. R. 38 Cr. To lay a foundation for the issue of a proclamation under s. 87 with an accompanying order of attachment under s. 88, it is necessary to comply strictly with the provisions of the law relating to the issue of a warrant in a case where a summons is the ordinary mode of enforcing attendance. 5 N. L. R. 125. Ss. 89 and 89 Cr. P. Code debar an absconder from suing for recovery of his property. 21 Cr. L. J. 475=1 Pat. L. T. 451 ; see also 25 Bom. L. R. 228=A. I. R. 1923 Bom. 198. In this section Government is more than in position of attaching decree-holder. It is like a receiver in possession. It is entitled to be made a party to a suit on mortgage of the property. A. I. R. 1930 Mad. 1017. Attachment of property situate in another District, without an order being endorsed by the District Magistrate of that district is illegal. 31 Cr. L. J. 494=11 P. L. T. 402=A. I. R. 1930 Pat. 347. An order under s. 88 is a proceeding within the meaning of s. 435 and is subject to the revisional jurisdiction of the High Court. 25 Cr. L. J. 82=76 Ind. Cas. 18. The doctrine of *lis pendens* applies to sales through civil courts including revenue sales and sales under s. 88. 31 Bom. L. R. 345=A. I. R. 1929 Bom. 200=116 Ind. Cas. 271. It is only after attachment all the right title and interest of the absconder vest in the Government. Words "at the disposal" do not imply that from the moment of non-appearance property vest in Government. 31 Bom. L. R. 345=A. I. R. 1929 Bom. 200. Doors of house are but part of furniture and movables. A. I. R. 1930 Pat. 387. There is nothing in the language of s. 88 to restrict the meaning of the word "property" and it includes the rights and interests of persons, who, as members of an undivided family, are jointly entitled to the property of the family. 2 Weir. 43 (Foot-notes). The provisions of the Criminal Procedure Court do not bar the right of civil suit for recovery of property sold under the provisions of ss. 88 and 89 on the ground that the proclamation and sale were absolute nullities on account of material irregularities. (A. W. N. 1904, 159.)

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under sub-section (7) of sec. 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not aboscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

Notes.—The provisions of the Cr. Pro. Code do not bar the right of civil suit for the recovery of property sold under the provisions of ss. 88 and 89, on the ground that the proclamation and sale were absolute nulities on account of material irregularity. A. W. N. 1904, 159 ; see also 17 Cr. L. J. 414. Section 89 applies where validity of attachment proceedings is challanged. Applicant can show that he was not absconding and that there was no publication or only a defective one containing no date. 42 Ind. Cas. 595=18 Cr. L. J. 979=39 P. R. 1917 Cr. Applicant under s. 89 cannot contest legality of the proclamation though High Court can consider it in revision. 54 Ind. Cas. 994=21 Cr. L. J. 210. It is only the nett proceeds and not property that can be restored. 24 Cr. L. J. 573. Petition must be filed and necessary facts proved within 2 years. 8 L. L. J. 608=27 Cr. L. J. 1025. A proclaimed person can maintain suit to recover property though it has been sold without following the procedure prescribed. 10 Lah. 338=A. I. R. 1928 Lah. 562. Under this section, it must be proved that the accused person had not absconded and the proof must be given within two years. 15 Bom. L. R. 75.

D.—Other Rules regarding Processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant* for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons ; or

(*b*) if at such time he feels to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Notes.—Summons should be issued ordinarily. Where the accused does not appear on the service of summons a warrant may be issued. But the Magistrate must record in writing the reason for issuing warrant. 51 C. 1=27 C. W. N. 857 ; 1918 P. L. R. 50 ; 38 M. 1088 ; 5 N. L. R. 125 ; 15 C. W. N. 1001 ; 4 B. L. R. App. 1 ; 14 W. R. 20. But omission of the Magistrate to record the reason for the issue of the warrant in the first instance amounted to mere irregularity and not to an illegality. 18 A. L. J. 1149=59 Ind. Cas. 415.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

Notes.—A bond to produce a witness may be taken from a Muktear. A. W. N. 1901, 35. Surety bond taken by Police officer for production of a person before the police is void *ab initio*. 25 Cr. L. J. 712. Surety's liability to produce accused to answer one charge does not extend to producing the accused to answer other charges. 25 Cr. L. J. 131=A. I. R. 1924 Lah. 622. Where sureties are affirmed, it is the duty of the Court to accept them, unless they are not proper persons. 20 A. L. J. 760=23 Cr. L. J. 494=68 Ind. Cas. 35. Magistrate may demand a bond for appearance and the accused must obey the terms of the bond and appear and asnwer the charge even though he is ultimately found not guilty. 17 A. L. J. 503=20 Cr. L. J. 384.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court, does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Notes.—This section refers to a case where a person is bound by a bond to appear in Court. 17 Cr. L. J. 132.

Provisions of this Chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. (1) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station, considers that the production of any document or other things is necessary or desirable for the purposes of any investigation, inquiry, trial

* *See Sch.* V. Form VII, *infra.*

or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer, a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872,* sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

Notes.—Inspection of an accused's books cannot be ordered. 5 Bom. L. R. 928. The Court and Magistrate are convertible terms. 39 C. 953 P. C. Documents mean relevant documents. 5 Bom. L. R. 980 ; 19 C. 52 ; 15 C. 109 ; 47 C. 647 ; 4 P. L. W. 65 ; but see 16 Cr. L. J. 225=36 P. R. 1914. This section contemplates the issue of a summons or warrant. 12 C. W. N. 1075 ; 47 C. 164. In a murder case the accused has a right to a copy of the statement made by the witnesses at the inquest. This section empowers the Magistrate to call for its production by the police. 85 Ind. Cas. 42=26 Cr. L. J. 426=20 M. L. W. 745. Discretion of the Court under s. 94 should be exercised judicially. A. I. R. 1934 Bom. 74. Production of thing can be ordered only if such thing is necessary for inquiry and trial, A. I. R. 1934 Nag, 142.

Procedure as to letters and telegrams.

95. (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceedings under this Code, such Magistrate or Court may require the Postal or Telegraph authorities as the case may be to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition.

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search warrant ; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

* Act I of 1872.

Notes.—The first para of this section requires as a condition precedent to the issue of a search-warrant, that the Court must have reason to believe that the person against whom the warrant is issued is not likely to produce the document or thing in his possession, as required by the summons or order under s. 94 or requisition under s. 95 (1) served upon him. 5 Bom. L. R. 1032. Under the provisions of this section, it is lawful for a Magistrate to issue a warrant for the search and production of anything before him, when he considers that such production is necessary for the purposes of investigation or inquiry under the Code. 13 M. 18=2 Weir 44 ; 33 C. W. N. 369. An accused may be asked to produce documents in his possession. 43 Ind. Cas. 793 ; 5 Ind. Cas. 17. The istue of a search-warrant on suspicion as to the nature of a person's business, and the assurance given by the police that a general search is necessary, is illegal *Ghai & Co.* v. *Emperor* A. I. R. 1929 Lah. 837 ; see also 18 Cr. L. J. 837=6 L.W. 287 ; 17 Cr. L.J. 60. Once articles are brought before the Court in execution of a search-warrant, inspection thereof may be allowed to the complainant. 33 C. W. N. 369=30 Cr. L. J. 369. Clause (3) of section 96 does not relate back to s. 94. A. I. R. 1934 Bom. 104. Search-warrant can be issued for purposes of enquiry being made or about to be made but enquiry must be under Criminal Procedure Code. A. I. R. 1934 Bom 104. In case of search by police, reasonable facilities are to be given at their bidding. L. R. 3A. 117 Cr. Search warrant can be issued where offences are disclosed as having been committed by the accused after cognizance of those offences by the Magistrate. 33 C. W. N. 369=30 Cr. L. J. 369. Search-warrants should not be issued to enable complainants to fish for evidence and should be for seizure of documents believed to exist and clearly specified in the warrant. 17 Cr. L J. 543 ; see also 22 C. W. N. 719. Very great particularity is required by law where search warrants are authorized 53 C. 718=30 C. W. N. 713. An order cannot be made to further a police investigation, which may or may not result in an enquiry but the section refers to an enquiry now being made or about to be made. There is a difference between an investigation that is being made and an enquiry about to be made. 24 C. W. N. 405=21 Cr. L. J. 573. A magistrate has power to issue a search warrant for the production of copies of the infringing book for making an order under s. 10 of the Copy right Act. 47 C. 164=21 Cr. L. J. 391. On the application of an officer specially appointed to detect munition scandals, Magistrate issued a search warrant. *Held* that there was no enquiry and there were no materials before the Magistrate on which he could decide and that the search-warrant was illegal. 47 C. 597=24 C. W. N. 403=21 Cr. L. J. 313.

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend ; and the person charged with the execution of warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, etc.

98. (1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for conterfeiting coin or stamp or for forging, are kept or deposited in any place, "or, if a District Magistrate, Sub-Divisional Magistrate or a Presidency Magistrate, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Indian Penal Code or that any such obscene objects are kept or deposited in any place"* he may by his warrant† authorise any police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the wararnt, and

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* The words within quotations have been inserted by Act VIII of 1925.

† *See* Sch. V. Form IX, *Infra*,

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials "or of such obscene objects"* as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials "or such obscene objects"* before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials "or such obsence objects"* knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging "or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported."*

(2) The provisions of this section with respect to—

(*a*) counterfeit coin,

(*b*) coin suspected to be counterfeit, and

(*c*) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply respectively to—

(*a*) pieces of metal made in contravention of the Metal Tokens Act, 1889 or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,

(*b*) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts, and

(*c*) instruments or materials for making pieces of metal in contravention of that Act.

Notes.—A search is illegal in the absence of any search warrant. 15 C. W. N. 343 ; 38 C. 304. But where a house is suspected to contain stolen property, it can be searched even without search warrant. 42 A. 67. A special warrant cannot be endorsed to any other police-officer of similar rank. The only person who can execute such a warrant is the officer who is named in the warrant. 53 B. 367=31 Bom. L. R. 158=30 Cr. L. J. 595.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate ; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Power to declare certain publications forfeited, and to issue search-warrants for the same.

† **99A.** (1) Where—

* The words within quotations have been inserted by Act VIII of 1925.

† Section 99A was inserted by s. 5 and Schedule III of the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

(*a*) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(*b*) any document,

whenever printed, appears to the Local Government to contain any seditious matter, "or any matter, which promotes or is intended to promote feelings or enmity or hatred between different clasees of His Majesty's subjects" * "or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious belief of that class" † that is to say, any matter the publication of which is punishable under section 124A "or section 153A."† "or section 295A"† of the Indian Penal Code, ‡ the Local Government may by notification in the local official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document, to be forfeited to His Majesty, and thereupon any police-officer may seize the same, wherever found in British India, and any Magistrate may by warrant authorize any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

Notes.—In order to justify forfeiture under this section it is necessary for the Government to satisfy the Court that on the evidence produced by the prosecution a conviction could have been had under s. 153A. Penal Code A. I. R. 1928 Lah. 245= 111 Ind. Cas. 659. Advertisement can be forfeited under section 99A. Advertisement of a forthcoming book unless seditious by itself cannot be forfeited. 1930 A. L. J. 713=A. I. R. 1930 All. 401 (F.B.)=125 Ind. Cas. 470.

Application to High Cort to set aside order of forfeiture.

§ **99B.** Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious "or other matter of such a nature as is referred to in sub-section (1) of section 99A." ‖

Notes.—Applicant must convince the Court that for the reasons he gives the order is worng. 49A. 856=A. I. R. 1927 All 649 (S. B).

Hearing by Special Bench,

§ **99C.** Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

Order of Special Bench setting aside for feiture.

§**99D.** (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained "seditious or other matter of such a nature as is," ¶ referred to in sub-section (1) of section 99A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

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* Inserted by Act 36 of 1926.
† Inserted by Act 25 of 1927.
‡ XLV of 1860.
§ Sections 99B to 99G were inserted by s. 5 and Schedule III of the Press Law ,Repeal and Amendment Act, 1922 (XIV of 1922).
‖ Substituted by Act 34 of 1916.
¶ Substituted by Act 36 of 1926.

Notes.—Where a series of books are alleged to be published the whole series must be looked to, to determine whether the passages contained therein are seditious. High Court to consider only the question if the documentary matter is seditious or not. 47 A. 298=26 Cr. L. J. 679=86 Ind. Cas. 55. Government Advocate should begin and state the case in support of the Local Government. But when both parties have been heard fully, onus is of no practical importance. A. I. R. 1930 All. 401 (F. B.). Where document admits of two reasonably possible views, applicant must have the benefit of the doubt. *Ibid.* The meaning of section 99 D. is that if the Court is in doubt after hearing the application it should set aside the orders. 49 A. 856=A. I. R. 1927 All. 649 (S. B.)

* **99E.** On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, which are alleged to be seditious matter in respect of which the order of forfeiture was made.†

Evidence to prove nature or tendency of newspapers.

***99F.** Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of such Courts in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

Procedure in High Court.

Notes.—Proceedings under s. 99F are *sui generis*. Costs of the other side reasonably incurred should be paid by person responsible for it. A. I. R. 1930 All. 401 (F. B.).

* **99G.** No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions of section 99B.

Jurisdiction barred of section 99B.

C.—Discovery of Persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined ; and such search shall be made in accordance therewith, and the person if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Search for persons wrongfully confined.

Notes.—A search-warrant should not be issued for the production of a grown-up ward. 10 Cr. L. J. 29. A search-warrant can be issued on the application of the complainant. A. I. R. 1928 Pat. 550. It is not illegal for a Magistrate to issue a warrant under the section without confining it to any particular place. *chepa* v. *Emperor*, A. I. R. 1928 Pat. 500. Where it is confined to a particular place, a Police Officer can not authorise others to execute it beyond that place. A. I. R. 1928 Pat. 550. It is immaterial what form is used for a warrant provided that the substance of the warrant complies with the requirements of section 100. 45 C. 905=28 C. L. J. 304 =20 Cr. L. J. 47. In an application by adoptive mother for a recovery of a child from natural father, Court is to consider the health and safety of the child in living with natural parents. 24 C. W. N. 104=29 C. L. J. 603=20 Cr. L. J. 729.

D.—General Provisions relating to Searches.

101. The provisions of sections 43, 74, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98‡, [section 99A] or section 100.

Direction etc., of search-warrants.

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* See foot-note § at p. 58.

† Substituted by Act 36 of 1926.

‡ This word, figures and letter, were inserted by s. 5 and Schedule III of the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

Notes.—Warrant issued under s. 6 of the Gambling Act can not be endorsed to another person. This section does not apply to warrants under the Gambling Act. 12 Bur. L. T. 165=21 Cr. L. J. 9=54 Ind. Cas. 57. Search under sections 101 to 103 should be conducted in highly regular manner. A. I. R. 1932 All. 185=1932 A. L. J. 104=33 Cr. L. J. 943.

Persons in charge of closed place to allow search.

102. (1). Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

Notes.—Ss. 102 and 103 Criminal Procedure Code do not apply to the search under the Bengal Excise Act. 54 C. 601=31 C. W. N. 667=28 Cr. L. J. 579.

Search to be made in presence of witnesses.

103. (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search *[and may issue an order in writing to them or any of them so to do].

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is search under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

[† (5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall, be deemed to have committed an offence under section 187 of the Indian Penal Code.].

Notes.—The contents of a search list need not be proved by the search list alone. External evidence of its contents is admissible. 11 Cr. L. J. 136=5 Ind. Cas. 438=7 M. L. T. 362. This section requires the officer about to make the search to call upon two or more respectable inhabitants of the locality in which the place of search is situate to attend and witness the search. 21. M. 83=2 Weir 503; see also A. I. R. 1934 Nag. 156. A search list thus prepared is

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* These words were added by s. 14 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVII of 1923).

† This sub-section was added by s. 14 of the Code of Criminal Procedure Amendment) Act, 1923 (XVII of 1923).

proper evidence of the matters which it should contain. 2 Weir. 47. The word 'locality' in this section does not mean the same quarter of the town as the place which is searched. 12 Cr. L. J. 479=12 Ind. Cas. 87. This section is not applicable where a search warrant has been issued under s. 5 of the Gambling Act. A. I. R. 1929 A. 937. A. I. R. 1934 Oudh. 90. In making the search the formalities must be observed. A. I. R. 1929 A. 901. Provisions of s. 103 regarding search witnesses must be duly complied with. A. I. R. 1934 All. 374. Section 103 is complied with where all witnesses are present before search. A. I. R. 1934 Bom. 16. Merely because person has appeared as search witness in another case and lives about three furlongs from accused's house, he is not disqualified to act as search witness in subsequent case. A. I. R. 1934 Oudh 90. Where independent persons are not of one locality as *Panchas*, the irregularity is curable under s. 537. 33 Cr. L. J. 733=34 Bom. L. R. 901. Where persons are raiding house for discovery of excisable article, raider must be searched upon such raid. 34 Cr. L. J. 641=1933 A. L. J. 746. Dismissed constable is not respectable person. 32 Cr. L. J. 818=A. I. R. 1931 Lah. 408. Section 103 does not apply to search of persons. 29 N. L. R. 67=34 Cr. L. J. 721. "Locality" may include villages within 3 or 4 miles of village where search is to be effected. 32 Cr. L. J. 699=8 O. W. N. 128. Stress is on word "respectable" and not on word "locality". 10 Pat. 821=33 Cr. L. J. 233; A. I. R. 1934 Sind. 159. Non-compliance with this section is not fatal unless accused is prejudiced in any way. 34 Cr. L. J. 723=34 P. L. R. 689; see also 11 Rang. 107=34 Cr. L. J. 652; 2 Pat. L. T. 359. Explanation is required for calling and not for not calling search witnesses. A. I. R. 1933 Pat. 100=34 Cr. L. J. 427. Resistance by public officer is not justified in keeping out occupant of place searched and consequent harm in attempting to get in. 34 Cr. L. J. 439=1932 A. L. J. 530; see also 33 Cr. L. J. 233=A. I. R. 1932 Pat. 66. The object of the section is to obtain reliable evidence of the search and to exclude the possibility of any concoction or malpractice. 50 C. L. J. 518=A. I. R. 1930 Cal. 141=124 Ind. Cas. 486. Failure to call respectable inhabitants to witness search does not render it illegal when a satisfactory explanation therefore is furnished. 27 Cr. L. J. 73=91 Ind. Cas. 249; see also 24 A. L. J. 173=27 Cr. L. J. 265; A. I. R. 1934 All. 873. Independent witnesses are necessary for valid search. 23 Cr. L. J. 609=A. I. R. 1923 Lah. 79. The persons called to witness the search should be of some standing whose words could be believed. 18 Cr. L. J. 1009=42 Ind. Cas. 753. Court is not bound to accept the evidence of search witnesses. 16 A. L. J. 721=19 Cr. L. J. 949. But evidence got by illegal search is not to be discarded but may be considered. 18 Cr. L. J. 49=10 S. L. R. 137. When evidence of search witnesses as to the finding of the articles is discrepant, production of the articles is not beyond suspicision. 5 Lah. L. J. 572=77 Ind. Cas. 895. The provision that the witnesses of the search should be inhabitants of the locality is intended to favour the accused. Witnesses in a crowded city mean persons in the immediate vicinity. 26 Cr. L. J. 827=4 Bur. L. J. 2=A. I. R. 1925 Nag. 205. In case of failure to comply with section 103 leading to unsatisfactory evidence of possession by accused, no conviction can be sustained. 32 Bom. L. R. 344=A. I. R. 1930 Bom. 169. The search witnesses should actually accompany the persons making the search and should be actual witnesses to the finding of the property. *Ibid.* Every search witnesses need not be put into the witness box. The discretion is left to the court. 29 Cr. L. J. 49=46 C. L. J. 368. It is not necessary that the person whose premises are searched must be present at the search. *Ibid.* S. 103 is applicable to searches made under s. 14 of the Opium Act. 6 Bur L. J. 11=28 Cr. L. J. 372.

E.— Miscellaneous.

Power to impound document, etc., produced.

104. Any Court may, if it thinks fit, impound any document or things produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.

Notes—Search can be held by the District Magistrates. 16 C. W. N. 165=16 C. C.L. J. 231 P.C.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.*

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A. Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. (1) Whenever any person accused of † [any offence punishable under Chapter VIII of the Indian Penal Code other than an offence punishable under section 143, section 149, section 153A, or section 154 thereof, or of] assault or other offence involving a breach of the peace or of abetting the same,‡ or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class.

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond§ for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court ‖ [including a Court hearing appeals under section 407] or by the High Court when exercising its powers of revision.

Notes.—The object of this chapter is prevention of crimes. 6 Bom. L. R. 34 ; see also 82 Ind. Cas. 154=25 Cr. L. J. 1226. Proceedings under Chapter VIII are not in the form of a trial nor is the person who is proceeded against an accused. 50 C. 985=81 Ind. Cas. 906. "Breach of peace" implies some offence against the public. 24 Cr. L. J. 491 ; 8 O. L. J. 318 ; 22 Cr. L. J. 709. An order is not illegal even though there was technically no breach of public peace by the accused. 19 Cr. L. J. 929=47 Ind. Cas. 445. The provisions of Chapter VIII are not intended to furnish but to prevent crime and the security demanded should be reasonable. 17 S. L. R. 160=26 Cr. L. J. 176. An order under this section can be passed against a person who has been convicted of house trespass if he committed it with the object of causing hurt. 7 C. W. N. 25. The object of this section is partially served even when an accused is on bail for a long time. 1924 Sind. 120=17 S. L. R. 160. The amendment of this section by the new Code has made an order under that section impossible where the only section under which the accused are convicted is a section of the Indian Penal Code read with section 149. 2 Pat. 870. The word "involve" in this section connotes the inclusion not only of a necessary but also of a probable feature, circumstances, antecedent condition or consequence. 75 Ind. Cas. 983. The expression "other offence" in the section refers *ejusdem generis* with the offences against public tranquility and of assault mentioned in the section. 20 L. W. 481=81 Ind. Cas. 920=47 M. 846=47 M. L. J. 232. "Offences involving a breach of the peace" refer to offences in which breach of the peace is an ingredient. 29 M. 190 ; 30 C. 93 ; 47 M. 846 ; 35 C. 315 ; 81 Ind. Cas. 920 ; (1929) M. W. N. 583 ; 51 A 504 ; 20 Cr. L. J. 543 ; 28 Cr. L. J. 88 ; 27 Cr. L. J. 1112 ;

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* Ss. 20 to 26 of the Sind Frontier Regulation, 1892 (III of 1892) are to be read with and construed as part of this Chapter—*see* s. 97 of Regulation, and s. 3. *supra.*

† These words and figures were substitued for the word "rioting" by s. 15 of the Code of Criminial Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ The words "or of assembling armed men or taking other unlawful measures with the evident intention of committing the same," were omitted by *ibid.*

§ *See* Sch. V, Form X, *infra.*

‖ These words were inserted by s. 15 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

26 Cr. L. J. 1457 ; 20 C. W. N. 197. The appellate Court can take security. 30 Bom. L. R. 373=29 Cr. L. J. 509. Where incidents forming offence under s. 379 fall under s. 106, order under section 106 can also be passed. 32 Cr. L. J. 739=12 P. L. T. 556. "Breach of peace" does not necessarily mean breach of public peace. 34 Cr. L. J. 859=1933 A. L. J. 345. Offences of assault or causing hurt involve breach of peace and order under s. 106 can be passed without separate finding as to breach of peace. 1933 A. L. J. 1345=A. I. R. 1933. All. 609. Clause dealing with 'offences involving a breach of peace" includes cases of evident intention to commit breach of peace. 59 C. 659=35 C. W. N. 1150. In an offence under the Penal Code s. 324, accused can be put on security under s. 106. 33 P. L. R. 588=33 Cr. L. J. 746. But where an accused is convicted under s. 149 I. P. Code, an order under s. 106 is illegal. 33 Cr. L. J. 576=A. I. R. 1932 Lah. 489. Merely committing offence for which person could have been convicted under s. 352 I. P. Code, is not sufficient for order under s. 106. 33 Cr. L. J, 193=8 O. W. N. 1286. What constitutes breach of peace, vide 32 Cr. L. J. 739=A. I R. 1931 Pat. 337. It is sufficient if the judge has recorded his opinion that it is necessary to require the convicted persons to execute a bond for keeping the peace. 24 Cr. L. J. 455=44 M. L. J. 485. Proceedings under this section are to be after notice to the parties. 27 Cr. L. J. 1112. Where the Magistrate has exercised his discretion in the matter the High Court will not interfere in revision with the order. A. I. R. 1921 Pat. 472. Unless the offence necessarily involves a breach of the peace, there must be an express finding of breach of peace. 34 C. W N. 988=A. I. R 1930 Cal. 646 ; see also 47 M. 846=25 Cr. L. J. 1906. "Offences involving breach of the peace" does not include offences provoking or likely to provoke a breach of the peace. 34 C. W. N. 413 ; 22 Cr. L. J. 709. An order under s. 106 Cr. P. Code cannot follow a conviction under s. 504 I. P. Code. 34 C. W. N. 651. No order under section 106 can be passed upon conviction of an offence under s. 143 or s. 427 I. P. Code. 28 Cr. L. J. 140. So also if the conviction be under s 452 I. P. Code. 27 Cr. L. J. 571 *contra* 26 Cr. L. J. 1462. But security can be taken where the convictions are under s. 323 or s. 325 I. P. Code. 71 Ind. Cas. 691 ; 22 Cr. L. J. 668 ; 28 Cr. L. J. 144 ; 24 Cr. L. J. 491 ; 24 Cr. L. J. 319. Wrongful confinement *per se* does not involve a breach of peace. 47 M. 846 ; 24 Cr. L. J. 271. The Court of appeal has powers to pass an order even if trial Court had no such powers. 27 Cr. L. J. 1112 ; 25 Cr. L. J. 657 ; 43 A. 372 ; 18 Cr. L. J. 118.

B.—Security for keeping the Peace in the other Cases and security for Good Behaviour.

Security for keeping the peace in other cases.

107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate * [if in his opinion there is sufficient ground for proceeding] may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

Procedure of Magistrate not empowered to act under sub-section (1).

(3) When any Magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach

* These words were inserted by s. 16, *Ibid.*

of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under* [sub-section (3)] may in his discretion detain such person in custody† [pending further action by himself under this Chapter.]

Notes.—Section 203 does not apply to applications under section 107 but every Magistrate possesses inherent power of refusing an application which he finds groundless. 76 Ind. Cas. 167=25 Cr. L. J. 89. "Convicted person" includes person against whom order has been passed under s. 107. 54A. 861=33 Cr. L. J. 731. The object of s. 107 is not to punish person for his past action but it is meant to prevent his committing in future breach of public peace. 32 P. L. R. 138=32 Cr. L. J. 1207; see also 34 Cr. L. J. 478=33 P. L. R. 370. In appeal against order to give security *de novo* trial cannot be ordered by the Appellate Court. A. I. R. 1934 Mad. 202. Possession of disputed property can be taken under s. 107. A. I. R. 1934 Nag. 142. Finding as to apprehension of breach of peace is not open to revision. A. I. R. 1934 Oudh. 179. In civil dispute only one party should not be bound down. Where dispute is going on for some time and there is no likelihood of breach of peace, security proceedings are uncalled for. A. I. R. 1934 Pesh. 21; see also A. I. R. 1934 Oudh. 179; A. I. R. 1934 Pat. 104; 32 Cr. L. J. 1014. Persons against whom proceedings are taken under s. 107 are entitled to fact as of right. A. I. R. 1933 Rang. 165=1933 Cr. C. 764; A. I. R. 1933 Rang. 164=34 Cr. L. J. 950. Except in exceptional cases, prevention proceeding in a district should not be transferred to another district. A. I. R. 1933 Rang. 165=1933 Cr. C. 764. Proceedings under s. 107 primarily concern local authorities, High Court cannot interfere. 53 A. 148=32 Cr. L. J. 570. Application under s. 107 is not a complaint, consequently s. 436 does not apply to person discharged. 32 Cr. L. J. 570=53 A. 148. As regards essential for order under s. 107, vide A. I. R. 1933 Lah. 36=33 Cr. L. J. 915. Section 203 does not apply to proceedings under s. 107. 32 Cr. L. J. 21=31 P. L. R. 350. In a petition under this section particulars and not mere vague recitals borrowed from words of the section should be stated. 32 Cr. L. J. 1014=12 P. L. T. 535. Evidence of specific conduct on part of accused leading to inference that he was likely to commit breach of peace is necessary. Mere mental excitement without move is not sufficient. 32 Cr. L. J. 693=A. I. R. 1931 Lah. 184. Where person is doing lawful act in lawful manner, the mere fact that it injures susceptibilities of persons of different built is not sufficient to warrant proceedings under s. 107. A. I. R. 1932 Lah. 101=33 P. L. R. 370=34 Cr. L. J. 478. Residence of accused is not essential for Court's jurisdiction under s. 107. But Court has no jurisdiction under s. 107, if person informed against is not within Court's jurisdiction when proceedings are to be initiated. 54 A. 341=33 Cr. L. J. 230; see also A. I. R. 1934 Mad. 255. Section 443 does not apply to proceedings under s. 107. A. I. R. 1933 Lah. 1019. Where a Magistrate on police report includes names of petitioners, he is not proceeding against them under s. 107. 36 C. W. N. 796=33 Cr. L. J. 858=59 C. 1484. In proceedings under this section attachment of property cannot be ordered. 77 Ind. Cas. 238=25 Cr. L. J. 350. An order of a Magistrate refusing to take proceedings under this section cannot be set aside by a Sessions Judge in revision. 81 Ind. Cas. 167=25 Cr. L. J. 679. The object of this section appears to the rather administrative than judicial. 11 O. L. J. 732=81 Ind. Cas. 973=25 Cr. L. J. 1149. In proceedings started under this section the enquiry should, as nearly as practicable be in the manner prescribed for conducting a charge and recording evidence in summons cases. 1924 All. 695. This section is preventive and precautionary and not punitive. 11 C. W. N. 223; 9 C. W. N. 898; 13 C. W. N. 555; 36 C. 562; 31 C. 350. Simultaneous order under ss. 107 and 114 cannot be passed. 7 C. W. N. 142. The expression "wrongful act" means an act forbidden or declared penal by any law. 21 Cr. L. J. 453. This section does not empower a Magistrate to restrain a person from exercising lawful rights. 104 P. L. R.

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* This word, figure and brackets were substituted for the words "this section" by s. 16 of the Code of Criminal Procedure (amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "until the completion of the inquiry hereinafter prescribed" by *ibid*.

1902 ; 19 W. R. 47 ; 7 A. 461. If a proceeding under this section has only reproduced the language of the section without specifying in what way and with reference to what matter a person was likely to commit a breach of the peace and in what way he was likely to do a wrongful act which might occasion a breach of the peace, it can not be supported. *Amanat Ali* v. *Emperor*, 10 Pat. L. T. 639=115 Ind. Cas. 545=30 Cr. L. J. 492. If a person is himself likely to commit a breach of the peace or if any wrongful act on his part other person do which would probably occasion a breach of the peace or disturb public tranquillity he may be dealt with under this section. 32 C. W. N. 477. Mere willingness of a person to give security is no ground for ordering him to keep peace. 23 Cr. L. J. 175 ; 18 Cr. L. J. 847 ; 16 Cr. L. J. 784 ; 25 Cr. L. J. 710 ; 21 Cr. L. J. 656 ; 21 Cr. L. J. 176 ; 21 Cr. L. J. 59 ; 20 Cr. L. J. 105. But Court can act upon solemn and free consent amounting to a plea of guilty and waiving formal evidence. 50A. 599=30 Cr. L. J. 6 ; see also 46A. 109=25 Cr. L. J. 750 ; 28 Cr. L. J. 609=25 A. L. J. 819. Where both parties put forward a claim it is not right to the down only one giving unfair advantage to the other. 8 P. L. T. 645=28 Cr. L. J. 605. Two opposite parties in a dispute cannot be dealt with in one proceeding under this section. 88 Ind. Cas. 864=26 Cr. L. J. 1248=6 P. L. T. 768. If dispute between two parties are expected to end in riot, both must be bound over, and if they are landed proprietors their personal security is sufficient. 22 Cr. L. J. 701=63 Ind. Cas. 829. But where lawful acts of one party is provoked by the unlawful acts of the other party, there is no justification for taking proceedings against both parties. 30 Cr. L J. 981=A. I. R. 1929 Mad. 842. If disputes relate to land ss. 144 and 145 must be resorted to. If one party is admittedly in exclusive possession, order under s. 144 can be passed against the other. But if both are found to be in joint possession both can be bound under s. 107. A. I. R. 1922 Pat. 228. Person against whom proceedings are taken under s. 107 cannot be refused bail if arrested under s. 114. 9 S. L. R. 158=17 Cr. L. J. 77=32 Ind. Cas. 669. A person cannot be arrested and sent under this section except when magistrate has no power to proceed under sub-section (1) and when he is satisfied that a breach of peace cannot be otherwise prevented. 5 P. L. T. 109=24 Cr. L. J. 825=74 Ind. Cas. 857. Persons bound over under s. 107 can institute suits, their bonds cannot be forfeited on that account. 21 Cr. L. J. 702=57 Ind. Cas. 942. No order of attachment of property can be made in proceedings under s. 107. 25 Cr. L. J. 350=77 Ind. Cas. 238. S. 545 does not apply to proceedings under s. 107 and costs of complaint can be ordered. 25 Cr. L. J. 476=A I. R. 1924 All. 694=77 Ind. Cas. 828. Section 203 does not extend to proceedings under s. 107. 32 Cr. L. J. 21=127 Ind. Cas. 716. An application under section 107 is not a complaint within the meaning of section 4 (h) as applicant only fears breach of peace. 1930 A. L. J. 1475=A. I. R. 1931 All. 53. Parties may be bound under s. 107 though proceedings under s. 145 have also been taken. 24 O. C. 21=22 Cr. L. J. 384=61 Ind. Cas. 240. Forbidding people on pain of fine and shoe beating form picking fruit do not come under s. 107. 31 Cr. L. J. 20=A. I. R. 1929 Nag. 328. Right to perform puja or share in offerings is not a right to user of any land. If dispute is likely to cause breach, Magistrate may act under s. 107. 52 C. 959=42 C. L. J. 127=27 Cr. L. J. 239. As proceedings are not punitive but only preventive, clear evidence of specific acts or conduct from which inference of immediate breach could be drawn must be adduced. A. I. R. 1931 Lah. 191=32 P. L. R. 138. Bond can be enforced by proceedings instituted but not completed within one year from date thereof under s. 514. 44A. 657=23 Cr. L. J. 623=20 A. L. J. 693. Abetment by instigation or conspiracy of voluntarily causing hurt is likely to cause breach of peace. 6 N. L. J. 274=23 Cr. L. J. 394. Where apprehension as to breach arose out of undisputed facts even if charge of murder failed proceedings under s. 107 could be continued. 9 O. L. J. 285=A. I. R. 1922 Oudh. 273.

Dispute about land.—Section 107 applies to a case of undisputed possession ; where possession is in dispute, proceedings under s. 145 should be instituted. 22 Cr. L. J. 574=22 C. W. N. 212. Where Magistrate apprehends breach of peace in a dispute relating to land he must act under s. 145 or proceed against both parties under s. 107. 30 Cr. L. J 492=10 P. L. T. 639 ; see also 27 Cr. L J. 734=28 Bom. L. R. 488. Magistrate has jurisdiction to proceed under s. 107 even though apprehended breach relates to immovable property. If there is a *bona fide* claim and dispute about land s. 145 is the appropriate one. 23 Cr. L. J. 123. Criminal Court can maintain possession of Court auction purchaser by proceeding under ss. 107 and 144 and by granting leave to aggrieved party to sue for possession in Civil Court. 1 Pat. 1 L. T. 81=21 Cr. L. J. 575=57 Ind. Cas. 95. But Magistrate cannot re-open the

question of possesions in an inquiry under s. 107, 144 or 145 of an offence. 3 Pat. L. T. 335=23 Cr. L. J. 321. In a dispute about land proceedings under both ss. 145 and 107 can be instituted. Where complainant is out of possession his remedies are under s 145 or in Civil Courts. His attempting to regain possession is no ground for binding over the opposite party. 23 Cr. L. J. 567. Where there was over whelming evidence of the widow being in possession, the agent of the deceased can be notified under s. 107. 1 Pat. L. T. 681=22 Cr. L. J. 861 (Pat). Where civil suit is pending to determine rights it is not proper to last proceedings under s. 145, but only under s 107. 24 C. W. N. 1039=22 Cr. L. J. 131. If dispute relates to land ss. 144 and 145 must be resorted to. If one party is admittedly in exclusive possession, order under s. 144 can be passed against the other. But if both are found to be in joint possession both can be bound under s. 107. A. I. R. 1922 P. 228.

Grounds of granting relief.—Order based on vague evidence which does not refer to any petitioner as being particularly hostile is not legal. 3 Lah. L. J. 480. The section intends to person who is keeping himself in the back ground and acting through a servant. 1 P. L. J. 361=18 Cr. L. J. 374=38 Ind. Cas. 758. If acts of accused show a probability of public peace being disturbed order under s. 107 is proper. 14 A. L. J. 430=17 Cr. L. J. 301. Lessee is entitled to possession of his land attached under s. 146. Even he can be proceeded against under s. 107. 18 Cr. L. J. 1007=42 Ind. Cas. 735. "Wrongful acts" is one forbidden by or declared to be such by penal statutes of India. 21 Cr. L. J. 453=56 Ind. Cas 437. Where acts committed are of such a nature as if repeated, or similar acts would cause breach, s. 107 applies even if the acts already committed constitute specific offences. 19 Cr. L. J. 246 (Pat.)=41 Ind. Cas. 38. Magistrate can not bind over persons surely because their doing a lawful act would occasion a breach of peace. 16 A. L. J. 279=19 Cr. L. J. 437. Mere enmity between factions in the absence of evidence of imminent breaches is not sufficient ground for instituting proceedings. 10 L. L. J. 72=29 Cr. L. J. 417. Where no overt act is proved mere opinion of witnesses that breach of peace is likely is insufficient to prove that there is really any danger. 27 Cr. L. J. 1002. As section 107 appears in a chapter designed to prevent breach of peace, existence of circumstances leading to a reasonable apprehension, without proof of any overt act by the accused is enough. 1930 A. L. J. 866=A. I. R. 1930 All. 408. Threatening to beat a person because he served a particular person, and warning a second one to serve another are not such threats of violence as to invoke s. 107. 31 Cr. L. J. 20=A. I. R. 1929 Nag. 328=120 Ind. Cas. 215. Person who is himself likely to commit breach of peace, or by whose wrongful acts others would commit it, is unable to be proceeded against. 47 C. L. J. 444=32 C. W. N. 477=29 Cr. L. J. 844. Order binding over a person is bad unless there is apprehension of actual breach of peace. 8 O. L. J. 282=22 Cr. L J. 540=62 Ind. Cas. 830. In an anticipated breach to be committed by the other side the only point is whether act which brings it about is wrongful in itself. 7 Lah. 482=27 Cr. L. J. 1063. To demand security Court must be satisfied of apprehension of breach of peace. 22 Cr. L. J. 590=8 O. L. J. 282. Where civil suit is pending proceedings under s. 107, rather than 145 are appropriate. 24 C. W. N. 1039=32 C. L. J. 255=22 Cr. L. J. 131. Where allegations are too vague Magistrate should not call upon the petitioners to show cause. 5 P. L. T. 353=25 Cr. L. J. 369. Some tangible evidence that a wrongful act is contemplated, which if committed would cause a breach, must be had before proceedings under this section. 21 Cr. L. J. 483=56 Ind. Cas. 437 ; see also 20 A. L. J. 694=23 Cr. L. J. 612 ; 2 Pat. L. T. 669=22 Cr. L. J. 745=64 Ind. Cas. 137.

Evidence.—Order under s. 107 binding down a party must be supported by more than the mere *ipse dixits* of a witness. Evidence of specific conduct from wihch breach of peace can be reasonably apprehended must be given A. I. R. 1931 Lah 184 ; see also 3 L. L. J. 480. Deposition need not be read over to witness in the presence of the accused. 52 C. 668=26 Cr. L. J. 1456=A. I. R. 1925 Cal. 940. In proceedings under s. 107 Magistrate must base his order on evidence recorded and not also on his own knowledge of certain facts. Order must be passed only after finding that the persons are likely to commit a breach of peace. 14 A. L. J. 769=17 Cr. L. J. 784=36 Ind. Cas. 164. Before initiation of proceedings information must be given to person concerned. 21 Cr. L. J. 511 (Lah.) Proceedings under s. 107 can not be found upon hearsay evidence. 21 Cr. L. J 560=56 Ind. Cas 864. Where proceedings are pending under s. 107, evidence of the accused attempting to commit a breach proves their intention. 1930 A. L. J. 866=124 Ind. Cas. 706. Mere fact of dispute between Zamindars is no ground to bind over all their servants and officers.

24 Cr. L. J. 230=71 Ind. Cas. 694. Consent to be bound over being a plea of guilty other evidence is not necessary. 46 A. 109=25 Cr. L. J. 750.

Fresh proceedings.—The same facts in previous proceedings cannot be the object of repeated proceedings under the Cr. Pro. Code. 41 M. 244=78 Cr. L. J. 878=41 Ind. Cas. 990 ; see also 30 Cr. L. J. 931=A. I. R. 1929 Mad. 842. Though Magistrate can not re-opon the same case, a second one can be instituted against the accused who were previously discharged, and new notices may be sent to them. 21 A. L. J. 215=24 Cr. L. J. 232=A. I. R. 1932 All. 332.

Joint-trial.—Where all accused had only one object of harassing P. W. 1 joint trial of all is legal. 29 Cr. L. J. 77=A. I. R. 1927 Mad. 542. Court should not treat the case of all the opposite parties in a lump but should find out the persons who could definitely be said to have contemplated a breach of the peace. 1930 A. L. J. 866 A. I. R. 1930 All. 408 ; see also 34 C. W. N. 144 ; 38 A. 468=14 A. L. J. 656 ; 14 A. L. J. 268=17 Cr. L. J. 165.

Jurisdiction—Magistrate cannot delegate to arbitrator power to make order under s. 107. A. I. R. 1931 Pat. 92. Magistrate cannot order a person to leave a particular place on threat of being prosecuted as a bad character. L. R. 2 A (Cr.) 165. Temporary residence gives jurisdiction. 59 Ind. Cas. 413. In proceedings under s. 107 an order for compensation cannot be passed. 23 Cr. L. J. 474=20 A. L. J. 624. If the place was within the District Magistrate's jurisdiction proceedings by him are valid even though the person informed against was out side. 20 A. L. J. 523=23 Cr. L. J. 396. Magistrate can deal with bad characters who are found within his jurisdiction though they may not be residing there. 39 A. 139=14 A. L J. 1074=17 Cr. L. J. 390. To have jurisdiction magistrate must have some tangible evidence of a wrongful act contemplated which if committed would cause breach. 21 Cr. L. J. 453.

For doing lawful acts.—No action can be taken against a person doing a lawful act unless he is himself likely to cause breach merely because it may cause a breach of peace by others. Magistrate may take action against such person. 11 Bur. L. T. 59=18 Cr. L. J. 512 ; see also 42 A. 283=21 Cr. L. J. 337 ; 31 Cr. L. J. 75=A. I. R. 1929 Lah. 138.

Appeal—Order directing security for good behaviour under s. 107 can be appealed against, but no appeal lies in proceedings instituted under s. 107 read with s. 118 for keeping peace. 25 Cr. L. J. 67=19 N. L. R. 160.

Revision.—Sessions Judge can make report to High Court under s. 438 against order of discharge by Magistrate under s. 107. A. I. R. 1931 All. 53=1930 A. L. J. 1475. Persons invoking revisional powers of the High Court must act with promptitude, certainly within 30 days. 27 A. L. J. 44=27 Cr. L. J. 1132. Order refusing to take action under s. 107 cannot be removed by Sessions Judge nor can he direct Magistrate to draw up proceedings. 25 Cr. L. J. 679=A. I. R. 1925 Cal. 262. High Court seldom interferes with the discretion of Magistrates in the preliminary stages of proceedings based on clearly insufficient proceedings. 25 Cr. L. J. 189=28 C. W. N. 28 ; see also A. I. R. 1934 Pat. 463.

Serurity for good behaviour from persons disseminating seditious matter.

108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is within the limits of his jurisdiction any person who, within or without such limits either orally or in writing,* [or in any other manner intentionally] disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

(*a*) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, or

(*b*) any matter the publication of which is punishable under section 153A of the Indian Penal Code, or

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* These words were inserted by s. 17, *ibid.*

(*c*) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate, * [if in his opinion there is sufficient ground for proceeding] may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher or any publication registered under, † [and edited, printed and published] in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, * [with reference to any matter contained in such publication] except by the order or under the authority of the Governor-General in Council or the Local Government or some officer empowered by the Governor-General in Council in this behalf.

Notes.—This section is applicable where seditious matter has been disseminated and there is fear of the repetition of the offence. 11 Bom. L. R. 743; see also 47 B. 438=25 Bom. L. R. 97. To take proceedings under this section that ought to be evidence that if not prevented the person accused would continue to act in the way in which he had done. 26 A. L. J. 813=50 A. 854. A speech advocating establishment of Home Rule in India and attainment of it by constitutional means does not in itself amount to disseminating siditious matter. 19 Bom. L. R. 211=18 Cr. L. J. 567. It is not necessary to prove intent, it is enough if feelings of enmity are likely to be disseminated. 43 C. 591=20 C. W. N. 199; see also 30 C. W. N. 958=54 C. 59. Speech not included in the complaint cannot be relied on. 33 Cr. L. J. 831. Mere joining procession does not make one liable to be dealt with under s. 108. 32 Cr. L. J. 1172. This section is preventive and not punitive. 33 P. L. R. 911=33 Cr. L. J. 831. Amount of bond should not be excessive and should be fixed with regard to circumstances. *Ibid*; see also A. I. R. 1933 Lah. 236. Order passed by the lower court cannot be interfered with in revision ordinarily. A. I. R. 1933 Lah. 736. "Disseminates or attempts to disseminate" refers not to number of acts performed but whether evidence showed indication of repetition of offence was probable. 33 Cr. L. J. 711=13 P. L. T. 275=A. I. R. 1932 Pat. 213. Government can remand person after releasing him. 33 Cr. L. J. 831=33 P. L. R. 911. Where accused is taking part in activities of siditious character disseminating seditious matter and organizing breach for such object, mere doing of such breach is no ground for invalidating an order under s. 108. A. I. R. 1933 Lah. 236. No proceedings can be started on the isolated speech. A. I. R. 1934 Oudh. 70.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

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* These words were inserted by s. 17 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "or printed or published" by s. 17 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Notes.—As sections 109 and 110 have the same object, an order under section 110 is not valid during the continuance of an order under section 109. A security order should be in an amount which the accused may be reasonably expected to be able to furnish. L. B. R. (1872-1892) 422. There must be separate proceedings in security cases against each accused person. L. B. R. (1872-1892) 421. The fact that a man does no work, does not necessarily mean, what the law requires, that he has no ostensible means of subsistence. 5 C. W. N. 28. Clause (a) refers to the case of a continuous act and not the case of a isolated effort at concealment. 50 C. L. J. 181; see also A. I. R. 1929 Cal. 775. Question whether circumstances are suspicious is mainly one of fact. High Court will rarely reverse order refusing security. A. I. R. 1934 All. 24. Where a beggar's son poses as Maharaja in order to cheat another, the case does not come under s. 109. A. I. R. 1934 All. 45. Clause (a) does not apply to persons who prepare to conceal themselves as a criminal would do. 34 C. W. N. 194=A. I. R. 1929 Cal. 775; 25 A. L. J. 99=27 Cr. L. J. 1116. Order under s. 109 Cr. P. Code passed more on suspicion than on any good basis of fact must be set aside. 17 A. L. J. 432=20 Cr L J. 401=51. Ind. Cas. 161. Conviction under s. 411 I. P. Code bars proceedings under s. 109 Cr. P. Code. 29 Cr. L. J. 1043=A. I. R. 1928 Lah. 928=112 Ind. Cas. 467. "Satisfactory account" means satisfactory in accordance with the known facts, consistent with the surrounding circumstances. 49 A. 844=25 A. L. J. 679. Clause (a) refers to a continuous act and does not apply to a case of a momentary effort at concealment to avoid detection or arrest. 41 C. L. J. 142=26 Cr. L. J. 842. Concealing presence cannot be inferred from refusal to give correct name. 21 A. L. J. 847=25 Cr. L. J. 950. The object of this section is to enable Magistrates to take action against suspicious strangers living within their jurisdiction. 30 C. W. N. 380=53 C. 345=43 C. L. J. 202. "Gives a satisfactory account of himself" is akin to "who has no ostensible means of subsistence" and its meaning cannot be extended. 50 A. 909=26 A. L. J. 1257=30 Cr. L. J. 145. According to section 121 the commission or attempt to commit or abetment of any offence punishable with imprisonment is a breach of bond taken under s. 109 or s. 110. 31 Cr. L. J. 130=120 Ind. Cas. 606. Concealing presence in part of the jurisdiction of a Magistrate receiving the information is equivalent to concealing presence within the whole jurisdiction and such Magistrate can therefore demand security. 50 A. 909=26 A. L. J. 1257=30 Cr. L. J. 145; see also 49 A. 844=28 Cr. L. J. 567. Clause (a) is not limited to cases where the persons are not arrested. Clause (a) is to be used with proper discretion. 27 Cr. L. J. 1121=A. I. R. 1926 P. C. 569=97 Ind. Cas. 648. Attempt to avoid police patrol does not bring a resident and shop-keeper within the ambit of s. 109. 27 Cr. L. J. 573=A. I. R. 1926 Lah. 368; see also 26 A. L. J. 896=A. I. R. 1928 All. 476. Facts of accused again being found in suspicious circumstances without any means of livelihood or unable to give satisfactory explanation of himself does not result in forfeiture of bond. A. I. R. 1932 All. 58=33 Cr. L. J. 281.

Security for good behaviour from habitual offenders.

110. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate or a magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person when the local limits of his jurisdiction—

(*a*) is by habit a robber, house-breaker, *thief, †[or forger], or

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen, or

(*c*) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

‡[(*d*) habitually commits, or attempts to commit, or abets the commission of the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code, or under section 489A, section 489B, section 489C or section 489D of that Code, or]

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* The word "or" was omitted by s. 18, *ibid.*

† These words were inserted by *ibid.*

‡ This clause was substituted for the original clause (*d*) by *ibid.*

(*e*) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

Notes.—The word "habit" means persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts. 'Habitually' must be taken to mean repeatedly or persistently. 25 Ind. Cas. 761=25 Cr. L. J. 60=1924 Nag. 19. Where accused is discharged from dacoity case before trial immediate proceedings under s. 110 are not injustifiable. A. I. R. 1934 Cal. 482. The procedure of joint trial, although illegal does not vitiate trial unless prejudice to accused is proved. A. I R. 1934 Cal. 482. Section 30 of the Evidence Act applies to proceedings under s. 110. A I. R. 1934 All. 927. Previous conviction 12 years before by itself is not justification for binding over under s. 110, A. I. R. 1934 All. 735. Magistrate has no right to arbitrarily limit number of defence witnesses. *Ibid.* Court should proceed in a fair way. *Ibid.* Where a man has been arrested on a substantive charge but released because that charge could not be sustained, a prosecution under this section on the same evidence is not desirable. 77 Ind. Cas. 302. A person cannot be bound down under this section upon evidence of repute unless such evidence is very strong and almost universal. 25 Cr. L. J. 808=81 Ind. Cas. 344. Mere suspicion is not sufficient to bind a man down to be of good behaviour under this section. 5 Pat. L. T. 129=2 Pat. L. R. 79=25 Cr. L. J. 35. This section might be used against persons combining together for the purpose of cheating. 4 Bom. L. R. 38=26 B. 418. It is in the power of the Court, in ordering securities to be given to asign some geographical limit within which such sureties must reside. 24 A. W. N. 1902, 122. The general reputation of a man is that which he bears among his fellow-townsmen. 113 Ind. Cas. 909=30 Cr. L. J. 220; 28 Cr. L. J. 813. Inferences drawn by forest officers as to the persons who committed forest offences are not evidence of repute. 19 Cr. L. J. 905. It is not always easy to say where rumour ends and reputation begins. 25 C. W. N. 334. Evidence of bad repute is to be tested by tangible facts. 31 Cr. L. J. 301=A. I. R. 1930 All. 37. Evidence of even of a large number of witnesses is of no value unless they have knowledge of the general repute. 51 A. 663. Court need not consider whether the accused has or has not committed a specific offence but whether his general repute justifies demand for security. A. I. R. 1930 Oudh. 357; see also L. R. A. 175 Cr. Evidence of general repute is evidence of general character founded upon the general opinion of the neighbourers which need not be based on personal knowledge, or which need not have been publicly expressed. 26 Cr. L. J. 1283=12 O. L. J. 413. General reputation is the reputation formed among the neighbours; but this definition is not always conclusive. 26 Cr. L. J. 528=4 Bur. L. J. 6. The mere fact that a man promotes litigation does not make him a dangerous or desparate character. 19 Cr. L. J. 781=16 A. L. J. 776; see also 32 P. L. R. 92=32 Cr. L. J. 271. Accused should not be sent to jail under this section because evidence is insufficient to prosecute him for any specific offence. 22. Cr. L. J. 269. Solitary confinement cannot be avoided for failure to furnish security under s. 110. 28 Cr. L. J. 534. Numerous cases of rumour form reputation. A. I. R. 1933 Pat. 189=34 Cr. L. J. 643=14 P. L. T. 482. Number of similar incidents become evidence of habit and character. *Ibid.* This section is a preventive one and should not be used to punish accused for offences committed. 1933 A. L. J. 883=A. I. R. 1933 All. 859. Words "within local limits of his jurisdiction" mean not "residence" but actual presence of persons proceeded against. 35 C. W. N. 255. Cases of troublesome and ill-tempered person who at times has thrown brick-bats at others is not covered by s. 110. A. I. R. 1931 All. 437=32 Cr. L. J. 1070, Regular habit to protect thieves must be proved. 34 Cr. L. J. 643=14 P. L. T. 482. Evidence of general repute is admissible, 34 Cr. L. J. 160=9 O. W. N. 1012. Fact that accused has committed definite offence is no obstacle for proceedings under s. 110. 1933 A. L. J. 777; see also A. I. R. 1933 Oudh 251. Reports regarding commission of burglaries and causing suspicion upon particular person can be used for corroboration in proceedings against that person. 34 Cr. L. J. 852=A. I. R. 1933 Oudh. 251. S. 256 does not apply to proceedings under s. 110. 34 Cr. L. J. 468. Magistrate should discuss as to how evidence of general

repute affects accused. 34 Cr. L. J. 476. Evidence of prosecution witnesses should not be discarded simply because they are enemies of accused. 34 Cr. L. J. 643. All members of secret society for spreading terrorist activities can be proceeded against at the same time under s. 110 (f). 1933 A. L. J. 777 ; see also A. I. R. 1933 All. 674 ; A. I. R. 1934 Cal. 482. Evidence of particular instances of commission of offences coupled with evidence of general bad repute justifies order under s. 110. A. I. R. 1934 Oudh. 49. In revision from order under s. 110, High Court will not weigh evidence. A. I. R. 1934 Oudh. 49. A joint notice to show cause to more than one person is undesirable. 51 A. 663.

111. [*Proviso as to European vagrants*] *Omitted by s. 8 of Act XII of 1923.*

Order to be made.

112. When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Notes.—It is not open to a Magistrate to reject sureties as unfit because they do not comply with certain arbitrary conditions which were not included in the order under this section. 89 Ind. Cas. 154. An order not setting forth the substance of the information received about the petitioner is illegal. 10 Lah. 155=117 Ind. Cas. 807. "Substance of information" means such information as would enable party to understand under what clause of s. 110 he is charged. 33 C. W. N. 852 ; see also 26 Cr. L. J. 1398 ; 43 M. 450=21 Cr. L. J. 354. Ordinarily in the notice the particular clause of s. 110 which is applicable to the case is specified. 1930 A. L. J. 389=31 Cr. L. J. 627 ; see also A. I. R. 1930 Mad. 859=1930 M. W. N. 698 ; 49 A. 5=28 Cr. L. J. 9. Where allegations against petitioner are vague, petitioner should not be called upon to show cause. 5 P. L. T. 353=25 Cr. L. J. 369. Substantial compliance with this section will do. 25 Cr. L. J. 132 ; 20 Cr. L. J. 763. An order under s. 112 is illegal in so far as it travels beyond the terms of s. 110. 47 A. 733=26 Cr. L. J. 1130. The object of this section is to prevent future offences and not to punish past one. 25 Cr. L. J. 1226=18 S. L. R 238. Sufficient details regarding the charges should be given to enable the accused to prepare for his defence. 26 Cr. L. J. 673=47 M. L. J. 689. Magistrate does not act judicially until order under s. 112 is passed. Discretion to issue notice under s. 112 is absolute. 34 Cr. L. J 42=54A. 1036. Magistrate can call report from police before issuing notice. *Ibid.* Where two persons are reported to be members of same gang of bad characters, joint trial is legal. 34 Cr. L. J. 793. When order has been communicated, period cannot be altered. 39 Cr. L. J. 919=A. I. R. 1933 Sind. 8.

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Notes.—A Magistrate may initiate proceedings even in cases of person illegally arrested. 12 Cr. L. J. 533.

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court ;

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Notes.—An *exparte* order cannot be passed. 1 C. L. R. 48. The proviso does not give power to a Magistrate to re-arrest persons who had been already discharged

after executing surety bond. 19 Pat L. T. 801=117 Ind. Cas. 623=30 Cr. L. J. 809 =A. I. R. 1927 Pat. 654. Proviso does not empower the Magistrate to re-arrest a person who has been discharged after executing surety bond. 30 Cr. L. J. 809=10 P. L. T. 801. Magistrate should put on record the substance of the report on which he acts before committing the person to custody. 5 P. L. T. 93. This section is not limited to arrest within jurisdiction. 46 C. 215=23 C. W. N. 193.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Copy of order under section 112 to accompany summons or warrant.

Notes.—Strict compliance is required of an order under this section. 17 M. L. J. 438 ; 25 Cr. L. J. 132 ; 1 Pat. L. T. 631 ; 11 Bom. L. R. 740 ; 24 Cr. L. J. 804.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Power to dispense with personal attendance.

Notes—The Code makes a marked distinction between bonds for keeping the peace and bonds for good behaviour and this section is limited to the former. 2 Weir 54.

117. (1) When an order under section 112 has been read or explained under section 103 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

Inquiry as to truth of information.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases ; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

*[(3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person, in respect of whom the order under section 112 has been made, to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that—

(*a*) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and

(*b*) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall be more onerous than those specified in the order under section 112 ;]

*This sub-section was inserted by s. 11 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

* [(4)] For the purposes of this section the fact that a person is an habitual offender †[or is so desperate or dangerous as to render his being at large without security hazardous to the community] may be proved by evidence of general repute or otherwise.

* [(5)] Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

Notes.—The evidence of a mere suspicion of a person having taken part in certain criminal offences is not evidence of general repute. 5 Pat. L. T 129=2 Pat. L. R. 79=25 Cr. L. J. 35=75 Ind. Cas. 723. Under this section a Magistrate is bound to enquire into the truth of the information, in the manner prescribed for conducting trials and recording evidence in warrant cases, though the accused may undertake to give security. 1 U. B. R. 1902-1903, Cr. Pro. Code. 1. The reputation of a person means what is generally said or believed of his character. *Emperor* v. *Kumera*, 51A. 275. Where persons are alleged to be members of association committing thefts, cases of all such persons can be dealt with in one enquiry under s, 117. A. I. R. 1934 Rang. 121. Section 117 requires the whole procedure of a summons or warrant case respectively to be followed. 43 M. 511=21 Cr. L. J. 402=38 M. L. J. 370. The law however allows joint inquiries under s. 117, though there is the danger of one accused being prejudiced by evidence against another. 20 Cr. L. J. 750=53 Ind. Cas. 158. All members of secret society for spreading terrorist activities can be proceeded againt at same time under s. 110 (*f*). 1933 P. L. J. 777=A. I. R. 1933 All. 676. Evidence of general repute is admissible. A. I. R. 1933 Oudh 58=34 Cr. L. J. 160. Evidence of general repute is admissible to prove whether person is habitual offender or not. A. I. R. 1934 All. 735.

Order to give security.

118. (*1*) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly, that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Notes.—It is not competent to a Magistrate who has passed an order under this section to delegate to another the duty of inquiry into the sufficiency of the security tendered, but should make an inquiry himself. 25 Cr. L. J. 91=76 Ind. Cas. 27. An order under this section clearly does not amount to a conviction. L. B. R. 1872—1892, 490. The order should show that the person is likely to commit a breach of the peace. 7 C. W. N. 32. A report of a Police-officer and the evidence given by the same officer are not sufficient to justify an order binding down a person to keep the peace. A. I. R. 1929 Lah. 504. Amount of bond should not be excessive and should be fixed with due regard to circumstances. 33 P. L. R. 911=A. I. R. 1932 Lah. 559. A person cannot be bound over on the ground that he may commit breach of peace on the happening of certain event. 1931 M. W. N. 42. A proceeding under s. 118 is not a trial but an enquiry through section 117 applies to such proceeding. 11 P. L. T. 261=9 Pat. 131. Order under s. 118 is not a conviction or acquittal. 26 A. L. J. 99=29 Cr. L. J. 92. Where a bond has been executed by an offender, with sureties under s. 118 it is illegal to pass an order against him under the Burma Habitual Offenders Restriction Act. 1 Bur L. J. 257=24 Cr. L. J. 755. A security of immovable property can be accepted under s. 118. 16 A. L. J. 503=19 Cr. L. J. 711.

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* Original sub sections (3) and (4) were re-numbered (4) and (5) respectively by s. 19 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by *ibid.*

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Discharge of person informed against.

Notes.—The "discharge" of section 119 is merely a permission to depart. 33 M. 85 ; see also 6 C. W. N. 163 ; 15 Cr. L. J. 531 ; 24 Ind. Cas. 843. Discharge under s. 119 is discharge when full enquiry is made and not as contemplated by s. 436 when person is discharged before completion of trial. 34 Cr. L. J. 519=29 N. L. R. 201. Person discharged under this section is not accused within the meaning of s. 437 and District Magistrate cannot order further enquiry. 31 P. L. R. 350=32 Cr. L. J. 21.

C.—Proceedings in all Cases subsequent to order to furnish Security.

120. (1) If any person in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reasons, fixes a later date.

Notes.—The Magistrate has power to postpone the date from which the security should take effect. 24 A. L. J. 327=92 Ind. Cas. 889. The period of security is to be calculated from the date of final order and not from date of preliminary order. 29 Cr. L. J. 77.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abatement of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Contents of bond.

Notes.—This section is explicit and so far as bonds for good behaviour are concerned, is exhaustive, though it might not be so as regards bonds for keeping the peace. 5 P. R. 1910 Cr.=169 P. L. R. 1910. The contention that the provision of this section is not exhaustive cannot be supported. 50 A. 666. This section makes no reservation, but lays down that a breach of the bond is committed as soon as a person bound over commits any offence punishable with inprisonment. 50 A 666. Facts of accused again found in suspicious circumstances without means of livelihood or unable to give satisfactory explanation of himself does not result in forfeiture of bond. 1932 A. L. J. 112=33 Cr. L. J. 281.

*[**122.** (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter, on the ground that such surety is an unfit person for the purposes of the bond :

Power to reject sureties.

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the

* Section 122 was substituted by s. 20 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923).

report of such Magistrate (if any) that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.]

Notes.—The ground for refusal by a Magistrate to accept a surety for good behaviour under this section must be valid and reasonable and must be dealt with in each case as it arises. 15 Cr. L. J. 169=22 Ind. Cas. 745=41 C. 764. An enquiry under this section is a judicial enquiry and a Magistrate cannot import his own personal knowledge without giving evidence. 7 S. L. R. 94=15 Cr. L. J. 378=23 Ind. Cas. 746. The Magistrate has a wide discretion under this section to accept or reject a certain surety. 12 A. L. J. 1004=26 Ind. Cas. 646=16 Cr. L. J. 54. Section 122 prescribes the procedure of testing the fitness of the sureties by the Magistrate. 9 Pat. 741=A. I. R. 1930 Pat. 217. Rejection of surety merely on police report is bad. 23 Cr. L. J. 142=24 O. C. 303. The failure of surety to show that he has sufficient control over the accused is not a valid ground for rejection of the surety. 43 C. 1024=20 C.W.N. 1133. That surety was convicted for assault is not sufficient to reject him. 25. C. W. N. 140. Where sureties are respectable and solvent, they cannot be rejected for living at some distance. 44 B. 385=21 Cr. L. J. 377. Mere solvency of surety is not enough. 24 Cr. L.J. 795=10 O.L.J. 299. The mere fact that a person was *challaned* for theft does not mean that he is not a reliable person. 18 A. L. J. 324=21 Cr. L. J. 365.

123. (1) If any person ordered to give security under section 106 or section 118 does not give such security* on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison† or, if he is already in prison, be detained in prison* until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

Imprisonment in default of security.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court ; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Proceedings when to be laid before High Court or Court of Session.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit.

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

[‡(3A.) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.]

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* *See* Sch. V. Forms XIII, XIV and XV, *infra*.

† As to punishment for escaping or attempting to escape, see s. 224 of the Indian Penal Code (XLV of 1860).

‡ Sub-sections (3A) and (3B) were inserted by s. 21 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

*[(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge, or Assistant Sessions Judge and upon such transfer, such Additional Sesssons Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.]

(4) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

Kind of imprisonment.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour †[shall, where the proceedings have been taken under section 108‡ be simple and, where the proceedings have been taken under "section 109 or" § section 110], be rigorous or simple as the Court or Magistrate in each case directs.

Notes.—Proceedings under this section are not proceedings in confirmation but for orders and a Sessions Judge has to pass a definite order binding over and not to confirm an order passed by a Magistrate. 1 O. W. N. 773. Sub-section (2) seems to contemplate more of administrative than judicial functions to be exercised by the Sessions Judge when a case is submitted to him under this section A.I.R. 1924 Sind. 120. This sub-section does not authorise a Sessions Judge to hear a case. 81 Ind. Cas. 936=25 Cr. L. J. 1112. Sessions Judge cannot accept or reject sureties. He must send back the proceedings to the Magistrate. A. I. R. 1934 Cal. 482 ; A. I. R. 1930 Pat. 217. Proceedings under s. 123 should not be taken without notice to person affected by order. A. I. R. 1933 Pat. 276=12 Pat. 770=34 Cr. L. J. 813. "Sentence" includes order of detention under s. 123. A. I. R 1931 Rang. 127 (F. B.)=32 Cr. L. J. 714 ; see also 8 O. W. N. 888=32 Cr. L. J. 1186. Where a case is submitted by Sub-divisional Magistrate under s. 123 to Sessions Judge, he cannot order S. D. M. to try case *de novo*. 26 S. L. R. 200=33 Cr. L. J. 898. Imprisonment in default of fine must run after expiry of sentence under s. 123. 33 Cr. L. J. 174. According to s. 123 a person who fails to furnish security shall be detained in prison for the period for which security was demanded. 31 Cr. L. J. 583 ; see also 106 Ind. Cas. 218=53 M. L. J. 762. An order under s. 123 directing that petitioner should in default of giving security ; suffer simple imprisonment for one year cannot be upheld. 53 M. L. J. 762=28 Cr. L. J. 1034 ; see also 28 Cr. L. J. 657=A. I. 1928 Lah. 189. When accused is undergoing imprisonment, an order of imprisonment in failure to furnish security is premature. Proper course is to adjourn the case till time of imprisonment ends. 28 Bom. L. R 1038=27 Cr. L. J. 1163=A. I. R. 1926 Bom. 545. Until case is referred for final order to Sessions Judge, proceedings in Magistrates' Court are not terminated so as to end the sureties' liability. 24 A. L. J. 327=27 Cr. L. J. 377=92 Ind. Cas. 889. After a Magistrate has submitted the record to Sessions Court under s. 123 (2) the seisin of the case is thenceforth with that Court. 28 Cr. L. J. 657. The function of the Sessions Judge under this section is administrative rather than judicial. But he has to hear both parties. 17 S. L. R. 160=26Cr. L. J. 179=83 Ind. Cas. 883. Under s. 123 Sessions Judge has to pass definite orders and not confirm an order passed by Magistrate. 26 Cr. L. J. 656=A. I. R. 1925 Oudh. 517=85 Ind. Cas. 944. Period should ordinarily begin from the date of Magistrate's order and not from date of Sessions Judge's order. 17 S. L. R. 160=26 Cr. L. J. 179=83 Ind. Cas 883. A Magistrate cannot award imprisonment for default of furnishing security. 57 Ind. Cas. 287. Where case is submitted to Sessions Judge by Sub-Divisional Magistrate under s. 123, Sessions Court is Court of first instance and not court of appeal. 26 S. L. R. 201=33 Cr. L. J. 898=A. I. R. 1932 Sind. 88. Committing person to prison amounts to sentence of imprisonment. A. I. R. 1934 Mad. 457.

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* See foot note ‡ at p. 75.

† These words and figures were substituted for the word "may" by s. 21 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

‡ Certain words and figures after this repealed by Act X of 1926 have been omitted.

§ Certain words and figures before this were inserted by Act X of 1926.

Power to release persons imprisoned for failing to give security.

124. (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter, * may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

†[(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.]

‡[(4) The Local Government may prescribe the conditions upon which a conditional discharge may be made]

‡[(5) If any condition upon which any such person has been discharged is, in the opinion of the District Magistrate or Chief Presidency Magistrate by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.]

§[(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate.

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge, and the date on which, except for such conditional discharge he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made ; or to its or his successor.]

Notes.—Vide 37 M. 125 F. B.

Power of District Magistrate to cancel any bond for keeping the peace or for good behaviour.

125. The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

Notes.—The provisions of this section only gives the power to cancel any bond executed. 32 C. 948=9 C. W. N. 860 ; see also 11A. L. J. 16=35 A. 103, A Magis-

* The words "whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate," were omitted by s. 22 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was substituted for the original sub-section (3) by the Code of Criminal Procedure (Amendment) Act, 1923, XVIII of 1923.

‡ Sub-sections (4) and (5) were inserted by *ibid.*

§ Sub-section (6) was inserted by s. 22 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

trate is not competent under this section to send a person to jail. 8. A. L. J. 658. Though no appeal lies from order under s. 107, District Magistrate can discharge security and cancel bond in his executive capacity. 24 Cr. L. J. 627=73 Ind. Cas. 515; see also 24 Cr. L. J. 616=A. I R. 1924 Oudh. 241; 24 Cr. L. J. 204; 19 Cr. L. J. 246=44 Ind. Cas, 38; 15 A. L. J. 469=18 Cr. L. J. 630. District Magistrate can cancel bond under s. 125 only on the ground that something has supervened since the date of the first Court's order and there is no longer any security to keep accused under bond and not on ground that first Court's order was not proper in his opinion. 44 A. 614=20 A. L. J. 521=23 Cr. L J. 398; see also 23 Cr. L. J. 394=6 N. L. J. 274. District Magistrate can cancel bond ordered by Sub-divisional Magistrate but has no jurisdiction to quash proceedings which can be done only by High Court. 23 Cr, L. J. 281=3 Pat. L. J. 103. Where District Magistrate finds an order irregular he must set it aside, 24 Cr. L. J. 221.

Discharge of sureties.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first classs to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person, for whom such surety is bound to appear or to be brought before him.

Security for unexpired period of bond.

*[**126A.**] [†When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section (3) of section 122 or under section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond executed by such person] and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 116, or section 118, as the case may be.

CHAPTER IX.‡

UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or police-officer.

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town§ of Calcutta§.

Notes.—A Deputy Commissioner of police can act under this section 7B. 42. Military and citizens must supply all necessary force unconditionally in quelling disorders and breaches of peace. 55 B. 263=32 Cr. L. J. 403. Police is not final authority to judge character of assembly. 34 Cr. L. J. 705=A. I. R. 1933 Nag. 277. For procession with music, use of public road is not unauthorized. *Ibid.* Conduct of the procession is a material element to be considered. *Ibid.* Legality of command is to be determined from previous and not subsequent conduct. *Ibid.*

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* Sub-section (3) of section 126 was re-numbered as s. 126 A by s. 23 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923),

† These words were substituted for the words "When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond" by *ibid.*

‡ The whole of this Chapter, so far as it applies to the City of Bombay, is repealed by the City of Bombay Police Act, 1902 (Bombay Act IV of 1902) *see* s. 2 (1) and Schedule.

§ The letter "s" and the words "and Bombay" were repealed by s. 2 (1) and Sch. A of the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer, "soldier, sailor or airman in His Majesty's Army, Navy or Air Force*" or a volunteer enrolled under the Indian Volunteers Act, 1869,† and acting as such, for the purpose of dispersing such assembly, and, if necessary arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commission or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869† to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such person.

Powers of commissioned military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any person forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Notes—A Magistrate cannot make an order under s. 131 absolute without complying with the provisions of s. 137 which are mandatory. 38 Ind. Cas. 1008.

Protection against prosection for acts done under this Chapter.

132. No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the ‡ [Local Government]; and—

(*a*) no Magistrate or police-officer acting under this Chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

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* The words within quotations have been substituted by Act 35 of 1934.

† The Indian Volunteers Act, 1869, (XX of 1869) has since been repealed by the Auxiliary Force Act, 1920 (XLIX of 1920).

‡ These words were substituted for the words "Governor-General in Council" by s. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920.)

(*c*) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence :

* [Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in His Majesty's Army except with the sanction of the Governor General in Council.]

Notes.—Prosecution cannot be started without sanction. 16 M. 473 ; 2 B. 288. Police officer in charge of patrol boat has no power to disperse unlawful assembly by force. 50 C. 318=25 Cr. L. J. 467. Policy of lagislature is to afford adequate protection to public servant. A. I. R. 1933 Mad. 268=34 Cr. L. J. 528.

CHAPTER X.

Public Nuisances.

Coditional order for removal of nuisance.

[133† (1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is a likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed confined or otherwise disposed of,

such Magistrate may make a conditional order‡ requiring the person causing such obstruction or nuisance, or carriying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order.

to remove such obstruction or nuisance ; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation ; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed ; or

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* This proviso was added by Act XXVIII of 1920.

† Section 133 was substituted by s. 24 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ *See* Sch. V. Form XVI, *infra*

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure ; or

to remove or support such tree ; or

to alter the disposal of such substance ; or

to fence such tank, well or excavation, as the case may be ; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order ;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Courrt.

Explanation.—A public place includes also property belonging to the state, camping grounds and grounds left unoccupied for sanitary or recreative purposes.]

Notes—This section deals with the condition of things at the time when the inquiry is held. 22 A. L. J. 436=1924 All. 667. It is open to a Magistrate under this section, to order the removal of a *bund* but he cannot order its reconstruction after its removal. 40 C. L. J. 597. A Magistrate cannot make an order under this section, absolute without recording evidence and simply on the basis of local inspection made by him. 49 A. 475=25 A. L. J. 377=28 Cr. L. J. 291=100 Ind. Cas. 371. Where a Magistrate appointed a jury the nominies of the two parties with a foreman appointed by himself in proceedings under this section, the jury is not lawfully constituted. A. I. R. 1928 Lah. 1036. Community means same as neighbour or public. 53 A. 706=33 Cr. L. J. 331. This section deals only with occupations or trade which are injurious to health and has nothing whatever to do with harmless trade. Where two rival steamers vied with each other in attracting passengers, the section does not apply. 35 C. W. N. 118=A. I. R. 1930 Cal. 757=129 Ind. Cas. 106. Under this section a license which is injurious to the physical comfort of the community is a nuisance. 32 C. L. J. 42=21 Cr. L. J. 669. Magistrate has jurisdiction to regulate manner of business if injurious to health of community. But Magistrate should not generally interfere where Municipality has licensed the same. 1932 A.L.J. 49=54 A. 359=33 Cr. L. J. 524 ; see also 22Cr. L. J. 582=62 Ind. Cas. 822. Sub-Section (1) para 2 gives ample power to prohibit discharge of an effluent from a factory into a river which might be injurious to health. But pollution must be proved by scientific and convincing evidence. 8 P. L. T. 302=28 Cr. L. J. 317. Construction of a latrine on one's own land is not a nuisance. But there may be a nuisance in the way in which it is used. 26 A. L. J. 86=29 Cr. L. J. 233=A. I. R. 1928 All. 128. Encroachment of public way is nuisance by itself without proof of obstruction of way. Question of possession is relevant to dicide whether encroachment was *bona fide*. 6 Pat. 428=28 Cr. L. J. 910=8 P. L. T. 452. Where public right of way is denied, the Court must first proceed under s. 139 A. 33 Cr. L. J. 618=1932 A. L. J. 339 ; see also 1933 Cr. Cas. 987=A. I. R. 1933 All. 615. It is not incumbent on Magistrate to make an inquiry first as to whether there has been encroachment on public road or not. It is after both parties appear before him that he has to make the enquiry. 32 Cr. L. J. 565=1930 A. L. J. 1335. Person raising his low land and causing overflow of red water into other lands cannot be proceeded against under s. 133. 34 Cr. L. J. 679=A. I. R. 1933 Cal. 150. Where street is not included in municipal *jama bandi prima facie* road is not public. A. I. R. 1933 Nag. 267=1933 Cr. C. 1001. Where Magistrate passes order without recording evidence or listening to objections while accused is answering notice to show cause under s. 133, such procedure is improper. 8 O. W. N. 651=32 Cr. L. J. 1165. Under this section magistrate should not decide intricate question of title. 33 Cr. L. J. 809=7 Luck. 583. This section is not intended for long standing obstructions but for an unlawful obstruction lately built in a public place. 31 Cr. L. J. 167=A. I. R. 1930 Lah. 361 ; see also 27 Cr. 27=24 A. L. J. 112. Section 133 deals with only public nuisances and not with private nuisances. So an application for removal of obstruction of a private path way does not lie. 25 Cr. L. J. 1118=11 O. L. J. 659. Danger must exist at the time of injury and not at future indefinite time 12 A. L. J. 436=26 Cr.

L. J. 104. This section only empowers removal of obstruction and not re-construction of obstruction removed under the section. 40 C. L. J. 597=26 Cr. L. J. 517; see also 51 A. 489=1929 A. L. J. 177=30 Cr. L. J. 561. Section 133 clearly contemplates that in suitable cases the order conditionally made, may be modified. 23 A. L. J. 43=26 Cr. L. J. 731=86 Ind. Cas. 219. There is nothing in law to prevent a Magistrate drawing up fresh proceedings under s. 133 based on proper materials. 34 C. W. N. 957=A. I. R. 1931 Cal. 2. Section 133 is not intended to be applicable to a case when that is a *bona fide* dispute which should be left to be determined by a Civil Court. 22 Cr. L. J. 700 (Lah.)=63 Ind. Cas. 828. Moreover the nuisance must have been committed in a public place. 20 Cr. L. J. 566=51 Ind. Cas. 844. The mere throwing of rubbish on vacant land between two persons is not sufficient to justify proceedings under s. 133. 24 O. C. 327=23 Cr. L. J. 57. Occupation as to the mode of carrying on the manufacture of bricks and not to the occupation itself is not sufficient to bring the case within the section, as it refers only to prevent nuisance. 21 Cr. L. J. 462=1 Lah. 163=56 Ind. Cas. 446. Chapter X aims at enabling the Magistrate to make speedy orders in cases of public nuisance and for this reason, the jurisdiction of Civil Courts is barred. 23 Bom. L. R. 844=22 Cr. L. J. 605=62 Ind. Cas. 877. There is nothing in law to prevent a Magistrate drawing up fresh proceedings under s. 133 based on proper materials. 34 C. W. N. 957=128 Ind. Cas. 810.

Obstruction.—Chabutra obstructing public way is a nuisance itself. A. I. R. 1930 All. 751=128 Ind. Cas. 604. Obstruction must be of public use of a public river, way or channel. 50 A, 871=26 A. L. J. 1285=29 Cr. L. J. 661. Railway land is not necessarily a public place. 4 P. L. T. 402= 24 Cr. L. J. 855. An order directing the removal of a dam constructed across a public river, forming an unlawful obstruction to the river course and causing damage to the lower riparian owners is justified. 6 O. L. J. 916=21 Cr. L. J. 55. In considering whether an encroachment is unlawful obstruction, the width of the road and the normal traffic are to be considered. 22 A. L. J. 436=26 Cr. L. J. 104.

Jury.—Before referring the matter to jury magistrate has to see whether the claim is made in good faith. 24 Cr. L. J. 457=4 Lah. 224=5 L. L. J. 420=A. I. R. 1932 Lah. 525; see also 12 Cr. L. J. 459; 26 P. L. J. 67=18 Cr. L. J. 452. Trial by a jury of three instead of five is not legal. 22 Cr. L. J. 511=62 Ind. Cas. 338. Report of jurors is illegal if only 4 out of 5 were present at the investigation. Magistrate should begin with a fresh jury. 24 C. W. N. 928=31 C. L. J. 377. A Magistrate should not accept only a part of the verdict of the jury and base his judgments thereon. 40 C. L. J. 597=26 Cr. L. J. 517. Irregularity in appointment of jury is not in itself a ground to set aside proceeding. A. I. R. 1933 Pat. 676. Where inquiry is under s. 130 A, still enquiry by jury under s. 135 can be claimed. 34 Cr. L. J. 532=56 C. L. J. 249.

Bonafide claim.—Magistrate can take action even where a *bona fide* right is raised by defendant. 50 A. 871=26 A. L. J. 1285=29 Cr. L. J. 661; see also 45 A. 656=21 A. L. J. 529=24 Cr. L. J. 817; 28 C. L. J. 211=19 Cr. L. J. 947. Where Magistrate finds that the claim is bound on substantial grounds he has no jurisdiction to refer party to a Civil Court to establish his right. 24 C. W. N. 247=21 Cr. L. J. 87=54 Ind. Cas. 487; see also 23 C. W. N. 774=20 Cr. L. J. 752. Where there is *bona fide* question as to public nature of the object of dispute the question should be left to a Civil Court for adjudication. But whether there is a *bona fide* question is for the Magistrate to decide. 24 Cr. L. J. 690=A. I. R. 1924 Pat. 418; see also 22 Cr. L. J. 200=63 Ind. Cas. 818; 9 P. L. T. 587=29 Cr. L. J. 422; 4 Pat. 783=7 P. L. T. 136=27 Cr. L. J. 9; 22 Cr. L. J. 577=62 Ind. Cas. 817; 49 C. 682=26 C. W. N. 442=23 Cr. L. J. 59; 22 Cr. L. J. 351=61 Ind. Cas. 175. The existence of a genuine dispute as to title is a sufficient ground for holding that the conditional order is not proper. 24 Cr. L. J. 635=73 Ind. Cas. 523.

Procedure.—Evidence must be taken for an order under s. 133. 5 Lah. L. J. 81. It is not incumbent on Magistrate to hold an enquiry first as to whether there has been encroachment on public road or not. 1930 A. L. J. 1335=1930 Cr. C. 417. Order without opportunity being given to one party to establish claim, while other was asked to establish denial of right cannot stand. 31 C. W. N. 963=28 Cr. L. J. 859; see also 33 C. W. N. 201; 27 Cr. L. J. 1254; 25 Cr. L. J. 266; 24 Cr. L. J. 615; 8 O. W. N. 651. Magistrate proceeding under s. 133 must proceed in conformity with the rule laid down in Chapter 10. 9 L. L. J. 522=29 Cr. L. J. 530. Where

notice is served and accused appears, Magistrate must take evidence of both sides. 24 O. C. 267=22 Cr. L. J. 765. Magistrate cannot make conditional order absolute without taking evidence. 23 Cr. L. J. 250=9 O. L. J. 64 ; see also 47 B. 89=23 Cr. L. J. 587.

Service or notification of order.

134. (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Notes.—Omission to follow the direction as contained in this section is a mere irregularity. 12 M. 475 ; 16 C. 9 ; 3 W. R. Cr. 4. If service of notice of conditional order under s. 133 is effected in the manner provided by s. 71 regardless of s. 69 or s. 70, service of notice is defective. 43 C. L. J. 113=27 Cr. L. J. 715=31 C. W. N. 148. When order is communicated to those concerned, the method of service is immaterial. "Person" includes any company or association or body of persons. 24 Cr. L. J. 457=4 Lah. 224.

Person to whom order is addressed to obey or show cause or claim jury.

135. The person against whom such order is made shall—

(*a*) perform, within the time *[and in the manner] specified in the order, the act directed thereby ; or

(*b*) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a Jury to try whether the same is reasonable and proper.

Notes.—Where a party shows cause an application for jury is not maintainable. 13 C. W. N. 367. In case of encroachment of public road under control of District Board, member of District Board nominated by District Board is not unsuitable person to serve the jury. 32 Cr. L. J. 565 ; 1930 A. L. J. 1335.

Consequence of his failing to do so.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

Notes.—An order absolute is passed when a person does not appear either to show cause or to apply for jury. 12 M. 475 ; 20 A. 501. A magistrate might set aside an order passed under s. 136 *ex parte* on the ground that the opposite party was able to attend on the day fixed. Magistrate must proceed to record evidence as provided by s. 137. 19 Cr. L. J. 214=4 Pat L. W. 50.

Procedure where he appears to show cause.

137. (1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

Notes.—The provisions of section 137 (1) are imperative and the failure of the Magistrates to follow the same vitiates the entire proceedings. 49 A. 475=25 A. L. J. 377 ; see also 28159=49 A 270 ; 25 C. L. J. 349=18 Cr. L. J. 738 ; 20 Cr. L. J. 217. The failure to follow procedure in sub-section (1) vitiates the order and is not mere irregularity. 49A. 475=28 Cr. L. J. 291 ; see also 11 Lah. 247=31 P. L. R. 503 ; 28 Cr. L. J. 510 ; 28 Cr. L. J. 60=27 P. L. R. 764 ; 8 O. W. N. 651. Notice should specify obstruction. 32 P. L. R. 11=130 Ind. Cas. 834. High Court has power to confirm or modify order under s. 137. 1929 P. L. J. 385=30 Cr. L. J. 670. When accused first appears in Court pursuant to the notice, Magistrate has

* These words were inserted by s. 25 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

to first ask him whether he denied the existence of the right. 57C. 368=A. I. R. 1930 Cal. 486. Order based on tashildar's report is not valid as section requires that Court should itself go into the evidence and give a judicial decision. 20 A. L. J. 657=27 Cr. L. J. 864. Magistrate has to hear evidence in support of the order before calling a defence 47A 471=26 Cr. L. J. 905; see also 4 P. L. T. 402=24 Cr. L. J. 855. A Magistrate has no power to refer a dispute under s. 133 to Arbitrator. 2 P. L. T. 6=22 Cr. L. J. 327. Where accused appears and protests, Magistrate should proceed under s. 137 as if it were a summons case. 25 Cr. L. J. 266=20 A. L. J. 692; 32 P. R. Cr. 1917=18 Cr. L. J. 888; A I. R. 1934 Pat. 145; A. R. 1934, Pat 316. But where Magistrate finds that there is no reliable evidence in support of denial, Magistrate must proceed under s. 137. A. I. R. 1934 All. 131. Magistrate should stay proceedings only if there is some reliable evidence in support of denial. A. I. R. 1934 Pat. 145.

Procedure where he claims jury.

138. (1) On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury* consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summons such foreman and members to attend at such place and time as the Magistrate thinks fit;

(*c*) fix a time within which they are to return their verdict.

(2) the time so fixed may, for good cause shown, be extended by the Magistrate.

Notes.—This section is imperative in its terms. 13 C. W. N. 367. Both Magistrate and party showing cause must nominate jury. 22 Cr. L. J. 577=62 Ind. Cas. 817. The word "forthwith" merely means as soon as he reasonably can. 24 Cr. L. J. 457=4 Lah. 224=5 L. L. J. 420. Where the majority of jurors refused to to return verdict Magistrate can discharge them and appoint fresh jury. 44 A. 575 20 A. L. J. 472=23 Cr. L. J. 276. Error in nomination of jury is an irregularity, which goes to the root of the proceedings. It is doubtful whether it can be cured by s. 537. 31 Cr. L. J. 53=A. I. R. 1930 Pat. 199. Pending civil suit does not bar continuance of proceedings under s. 138. 56 C. L. J. 249=34 Cr. L. J. 532. In case of encroachment on public road under control of District Board, member of District Board is not unsuitable person to serve on jury. 1930 A. L. J. 1335. Magistrate must exercise his discretion in selecting the jury and must not merely accept the names, suggested by the complainant. 31 Bom. L. R. 74=30 Cr. L. J. 785. When nominees of two parties are appointed as Jury and only foreman is appointed by Magistrate, jury is not legally constituted. 28 Cr. L. J. 1036=A. I. R. 1928 Lah. 184=106 Ind. Cas. 220.

Procedure where jury finds Magistrate's order to be reasonable.

139. (1) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(2) In other cases no further proceedings shall be taken under this Chapter.

Notes.—The decision of the jury is binding on the Magistrate. 40 C. L. J. 597; 12 W. R. Cr. 38. 22 W. R. C. 86. Where three of the jury refuse to give verdict fresh jury can be constituted. 44 A. 575=23 Cr. L. J. 276. The recommendations of a jury can only be enforced under clause (2) of s. 139. 18 Cr. L. J. 305.

Procedure where existence of public right is denied.

†[**139A.** (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall on the appearance before him of the person against whom the order was made, question him as to

* *See* Sch. V Form XVII, *infra*.

† Section 139A was inserted by s. 26 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

whether he denies the existence of any public right in respect of the way, river, channel or place, and, if he does so, the Magistrate shall, before proceeding under section 137 or section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and if he finds that there is no such evidence, he shall proceed as laid down in section 137 or section 138, as the case may require.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permited to make any such denial, nor shall any question in respect of the existence of any such pubiic right be inquired into by any jury appointed under section 138.]

Notes.—Where the party causing obstruction to a right of way adduced reliable evidence in support of his denial of the existence of the public right in respect of the way by producing the revenue records, the Magistrate is bound to stay proceedings under this section. 100 Ind. Cas. 119=28 Cr. L. J. 247. By passing an order of stay under this section the Magistrate ousts his own jurisdiction to decide anything about the question of title including the onus of proof. 28 Cr. L. J. 363=100 Ind. Cas. 971. The Court has not to consider whether a denial is *bona fide* or not but only whether there is reliable evidence in support of it. *Manohar* v. *Emperor*, 27 A. L. J. 385=116 Ind Cas. 786. Magistrate cannot depute another Magistrate to make enquiry and report, and omission to conduct it himself is irregularity not curable by s. 537. 50 C. L. J. 291=34 C. W. N. 228=57 C. 666. Where there is dispute as to existence of public right, best method is to stay proceedings until right is decided by Civil Court. A. I. R. 1927 Oudh 632; see also 57 C. 368. The object of s. 139 A is to prevent an elaborate enquiry as to rights of parties. 34 C. W. N. 957. Where accused denies right of way, Magistrate cannot continue proceedings without adopting procedure under s. 139A. A. I. R. 1930 Lah. 1046=129 Ind. Cas. 222. There is nothing in s. 139A. which can exclude the exercise of Court's inherent powers under s. 540. 58 C. 461. This section does not state who is to have the right decided by Civil Court, and what order Magistrate has to pass to end proceedings. The Magistrate need not stay proceedings indefinitely but must dismiss application, if matter is not settled by Civil Court within a certain time. 51 A. 890=A. I. R. 1929 All. 709. No length of user can justify encroachment upon public way. Order removing such encroachment is legal. A.I R. 1931 Lah. 159. When second party denies the right, he has to produce reliable evidence. Magistrate may allow cross examination. 58 C. 461. Magistrate cannot compel a party to go to Civil Court and specially party in whose favour he is inclined. A. I. R. 1930 All. 958=125 Ind. Cas. 452. Magistrate has to see whether there is any reliable evidence in support of the denial and if so, to adopt procedure under s. 139 A. A. I. R. 1930 Cal. 144=124 Ind. Cas. 832: see also 24 A. L. J. 361=27 Cr. L. J. 473; 4 Pat. 783=7 P. L. T. 136=27 Cr. L. J. 9. It is doubtful whether there can be a waiver of mandatory provision such as is contained in section. 139 A. 31 Cr. L. J. 53=A. I. R. 1930 Pat. 199. The Magistrate is not to see the sufficiency but the reliability of evidence in support of the denial. If there is, he must stay his hand till other side has gone to the Civil Court. 29 Cr. L. J. 698=30 P. L. R. 687=10 Lah. 151; see also 29 Cr. L. J. 254=A. I. R. 1928 Lah. 664. Where there is denial of the existence of the public right, it is the duty of the Magistrate to inquire into the matter under s. 139A, and on the result of his conclusion, depends the question whether he should stay proceedings or should proceed under s. 137 or 138. 30 C.W.N. 648=27 Cr. L. J. 878=96 Ind. Cas. 126; see also 29 C. W. N. 649=26 Cr. L. J. 1168. Summary preliminary inquiry is essential before appointment of jury or starting of serious inquiry A. I. R. 1933 Pat. 676. Where Magistrate fails to call upon petitioner to produce evidence in support of his denial, proceedings before Magistrate was held to be without jurisdiction. 32 Cr. L.J. 621=32 P.L.R. Proceedings under s. 139A even when stayed, Magistrate can draw up fresh proceedings. 34 C. W. N. 957=32 Cr. L. J. 189=A. I R. 1931 Cal. 2. The object of this section is to prevent Magistate arrogating to himself functions of Civil Court by instituting elaborate enquiry. 34 C. W. N. 957=32 Cr. L. J. 189. Enquiry by jury under s. 135 can be claimed, even after enquiry under s. 139 A. 34 Cr. L. J. 532=56 C. L. J. 249. Magistrate may allow

cross-examination of witness of second party and s. 139A does not exclude Court's power under s. 540. 58 C. 461=32 Cr. L. J. 1187. No length of user can justify encroachment upon public way. 32 Cr. L. J. 1234 =1931 Cr. C. 271. If there is reliable evidence of denial of right, person moving Court has got to go to Civil Court and not person against whom order is made. A. I. R. 1934 Cal. 545.

Procedure on order being made absolute.

140. (1) When an order has been made absolute under section 136, section 137 or section 139, the the Magistrate shall give notice* of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Consequence of disobedience to order.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building. goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

Notes.—Sub-section (2) indicates the proper procedure to be adopted in enforcing an order under s. 133. 44 C. L. J. 211. Clause (3) refers to suits for damages. 15 C. 460. (F. B.). Under section (2) Magistrate has discretion to give direction to some one else to carry out the order under s. 140 or leave the matter there, until conclusion of civil suit. If the Magistrate has not exercised discretion judicially, High Court can be moved. 35 C.W.N. 571. As soon as a person against whom an order under ch. X is passed dies, the order ceases to have effect and a Magistrate is not entitled to act under s. 140. 26 A.L.J. 405=29 Cr.L J. 445. Sub-section (1) is mandatory and Magistrate cannot refer to issue notice as required by the sub-section. 35 C.W.N. 571=58 C. 1088.

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Notes.—Where jury fails to give a verdict the party may ask for the appointment of a fresh jury. 12 C. W. N. 1047, but see 24 A. L. J. 165. Where jury did not return verdict in time, Magistrate must enquire before he passes order. 4 P. L. T. 13=24 Cr. L. J. 583. Where jury failed to return verdict, Magistrate has jurisdiction to make order absolute. But party may be allowed to revert to the other alternative given by s. 135. 4 Pat. L. T. 15=24 Cr. L. J. 492=72 Ind. Cas. 956.

Injunction pending inquiry.

142. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction† to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

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* *See* Sch. V., Form XVIII, *infra*.

†*See* Sch. V., Form XIX, *infra*.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Notes.—An injunction should be issued only in case of imminent danger. 21 W. R. 86; 1 W. R. 8.

Magistrate may prohibit repetition or continuance of public nuisance.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order* any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code† or any special or local law.

Notes.—Object is to prevent repetition of nuisance and not original use. A. I. R. 1934 Pat. 305. Party complained against must have right to set up defence on merits. Summary order without giving party opportunity of being proved is not proper. A. I. R. 1934 Pat. 305.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate or of any other Magistrate‡ [not being a Magistrate of the third class] specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, §[there is sufficient ground for proceeding under this section and] immediate prevention or or speedy remedy is desirable.

such Magistrate may, by a written order ‖ stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *exparte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, ¶(either on his own motion or on the application of any person aggrieved) rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

**[(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.]

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* *See* Sch. V. Form XX, *infra*.

† XLV of 1860.

‡ These words and brackets were inserted by s. 27 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ The words were inserted by *ibid*.

‖ *See* Sch. V. Form XXI, *infra*.

¶ These words were inserted by s. 27 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

** This sub-section was inserted by *ibid*.

*[(6) No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

Notes.—The object of this section is to provide a speedy and emergent remedy in case of disputes which are likely to lead to breach of the peace. 11 O. L. J. 54=77 Ind. Cas. 721=125 Cr. L. J. 433. This section is not intended to restrict the liberty of an individual if there is no apprehension of a breach of the peace on account of any act to be done by him 82 Ind. Cas. 42=25 Cr. L. J. 1178=1924 P. 767. Undue importance should not be attached to a temporary injunction under this section and in a case of rioting an order under this section should not be treated as substantive evidence of possession. Pat. L. T. 656=81 Ind. Cas. 535. Where there is no *bonafide* dispute as to actual possession, an order under section 144 can be more appropriately passed. 10 Pat. L. T. 542.

Scope and object.—The meaning of "annoyance" in s. 144 is not confined to physical annoyance but includes mental annoyance also. 33 Bom. L. R. 59=A. I. R. 1931 Bom. 135. A Magistrate passing an order under s. 144 is not acting as a "Court". 44 M. L. J. 328=17 L. W. 409=24 Cr. L. J. 424. Section 144 does not enforce Magistrates to make positive orders requiring people to do particular things. A. I. R. 1931 Cal. 263=53 L. L. J. 175. No order can be passed against the public without limitation as to the place. 1930 M. W. N. 841=A. I. R. 1931. Mad. 236=131 Ind. Cas. 449. Section 144 is applicable only to temporary orders in urgent cases of nuisance or apprehended danger; it is not applicable in cases, where there is a dispute as to land for the settelement of which s. 145 provides the proper remedy. 5 P. L. T. 90=24 Cr. L. J. 947=75 Ind. Cas 531. If property is found to be in joint possession of both parties, no order under s. 145 can be passed and danger to a breach of peace can only be overted or avoided, by finding both parties or by finding both of them under s. 107, for none has a right to exclude the other from joint possession. If one of them is found to be in exclusive possession, other side can be restrained under s. 144 from interfering with exclusive possession of the other and by binding him down. Unless the exclusive possession is undisputed or admitted or concluded by decision of competent Court, enquiring into claims of parties as to exclusive or joint possession must be held. It is only when after an enquiry a decision is arrived at as to the possession of the contending parties, separate or joint, an order under s. 144 or 107 against one of the parties will not be justifiable. A. I. R. 1922 Pat. 228. The test to see whether order under s. 144 was justified or not is to find out, whether the act was likely to lead to breach of public tranquillity. The likelihood or tendency must be a reasonable or proximate one. 1930 M. W. N. 841=A. I. R. 1930 Mad. 236. This section is not intended to vest a Magistrate to decide disputes of a civil nature between private individuals and to usurp the functions of civil Court. 50 A 414=26 A. L. J. 83=28 Cr. L. J. 991. Where probability of breach of peace exists over a dispute concerning immovable property a proceeding under s. 145 is proper. 21 Cr. L. J. 627=1 Pat. L. T. 369=57 Ind. Cas. 449; see also 21 Cr. L. J. 241=55 Ind. Cas. 193; 20 Cr. L J. 829=1 Pat L. T. 44; 19 Cr. L. J. 1002; 3 P. L. J. 243=19 Cr. L. J. 869. The jurisdiction of a Magistrate to pass an order under s. 144 depends on the urgency of the case. A mere statement that it considers the case to be urgent is not sufficient, if facts show that in reality there is no urgent necessity. In a proceeding to set aside an order under s. 144 High Court would not consider whether the opinion of Magistrate on civil rights of parties is right or wrong, but whether Magistrate's order was made with injurisdiction or not. 23 C. W. N. 145=28 C. L. J. 483=19 Cr. L. J. 95. Unless possession of a party is undisputed s. 144 can have no application and a Magistrate has no jurisdiction to pass final orders under s. 144. 1 Pat. L. T. 377=28 Cr. L. J. 646=57 Ind. Cas. 662. An order under s. 144, Cr. Pro. Code has not the effect of disturbing either title or possession, though it may prevent exercise of rights entitled to by a person in possession. 64 Ind. Cas. 572. Section 145 and not section 144 applies where the possession is disputed. 2 Pat. L. T. 484=22 Cr. L. J. 685; see also 3 Pat. L T. 826=24 Cr. L. J. 241; A. I. R. 1933 Pat. 585. Section under s. 144 (2) can be taken only where immediate prevention or speedy remedy is desirable. A. I. R. 1934 Cal. 139. Several methods are open to Magistrate. He can adopt any proper method to meet emergency. A. I. R 1934 Pat. 308. Orders under s. 144 are judicial and

* Original sub-section (5) was renumbered (6) by *ibid.*

not administration. 33 Bom. L. R. 673=32 Cr. L. J. 1144. Annoyance includes mental annoyance also. 32 Cr. L. J. 507=33 Bom. L. R. 59. Magistrate should be cautious in exercising power under s. 144. 34 Cr. L. J. 334=A. I. R. 1933 Cal. 262 =34 Cr. L. J. 334. Opinion of Magistrate visiting the place should not be lightly passed over. 34 Cr. L. J. 334=A. I. R. 1933 Cal. 348. Magistrate can depute another Magistrate to hold inquiry but he should come to his own conclusion on the materials. 34 Cr. L. J. 334=A. I. R. 1933 Cal. 348. There is neither revisional nor appellate jurisdiction of Magistrate under cl. (4) of s. 144, but there is a jurisdiction to rescind or alter any order made under s. 144, either by himself or by a Magistrate subordinate to him or by his predecessor in office. 72 Ind. Cas. 171=1 Pat. L. R. Cr. 53. There is a clear distinction between interfering with the rights of private proprietors and the perpetration of wrongful acts by such proprietors. The Criminal Court assumes jurisdiction to interfere with lawful exercise of a person's right of ownership, when such exercise in its ulterior consequences being directed primarily against the lawful exercise of another person's right of ownership, is likely to cause a breach of the peace. 35 C. L. J. 397=26 C. W. N. 663= 24 Cr. L. J. 164; see also 16 L. W. 452=1922 M. W. N. 612=69 Ind. Cas. 369.

Power given in the 4th clause need not be confined to cases where there has been a change of circumstances since the original order. There is no valid reason why words of limitation should be read into the section which would have the effect suggested. The word "alter or rescined" clearly empowers the District Magistrate to modify or cancel the order upon any ground whatsoever. 23 Cr. L. J. 549=2 Pat. 94. Where s. 107 or s. 145 will meet requirements of the case s. 144 is not an appropriate remedy, and if it is found that the danger was not so imminent that it could not be otherwise averted and order under s. 144 will be without jurisdiction. What is deprecated is the habitual and unjustifiable case of s. 144 as a substitute for s. 107 and 145. *Ibid*; see also A. I. R. 1924 Pat. 228. The word 'alter' in s. 144 (4) cannot nean the substitution of the names of one party for those of the other. The District Magistrate, in going beyond altering or rescinding an order, acts without jurisdiction. 42 M. L. J. 352= 15 L. W. 423=23 Cr. L. J. 404. Although under section 144 (4) District Magistrate can resined or alter any order made by himself or any subordinate Magistrate, this section does not cover a reversal of an order on grounds which interfere with the discretionary power of the Magistrate who originally made the order. 2 Pat. L. T. 654=23 Cr. L. J. 27; see also A. I. R. 1934 Pat. 313. Jurisdiction under this sub-section is one specially provided and is not appellate or revisional. 56 M. 149=33 Cr. L. J. 826. In passing an order under s. 144 it should be shown that it was necessary in interest of public peace. Likelihood of disturbance must be reasonable and prominent. 33 M. L. W. 632=32 Cr. L. J. 744; see also A. I. R. 1933 Nag. 277=344 Cr. L. J. 705. Magistrate should not go beyond necessities of case. Even expired order can be set aside. A. I. R. 1933 Pat. 185=14 P. L. T. 379. Order cannot direct public generally simpliciter. 33 Bom. L. R. 1178=33 Cr. L. J. 75. Order prohibiting public generally and certain persons named therein from taking part in procession within Municipal limits is *ultra vires*. *Ibid*; see also 32 Cr. L. J. 763=60 M. L. J. 370. No civil suit lies to question propriety of order under s. 144. 53A. 484=1931 A. L. J. 354. Order addressed to general public must be limited to particular place. 33 Bom L. R. 673=32 Cr. L. J. 1144; see also 33 Bom. L. R. 59=32 Cr. L. J. 507. *Prima facie* Magistrate alone can decide whether emergency exists or not and High Court can only interfere if order is not reasonable or *bona fide*. 33 Bom. L. R. 59=32 Cr. L. J. 507. The right of public discussion is a right of every subject and persons convening a meeting to discuss religious matters are not doing anything unlawful. 11 Bur. L. T. 59=18 Cr. L. J. 512=39 Ind. Cas. 480. It is the duty of the execution to uphold civil rights declared by Civil Courts by all means available before resorting to s. 144. 52. M. L. J. 298=25 M. L. W. 375=28 Cr. L. J. 325; see also 23 Cr. L. J. 689=16 M. L. W. 452. Magistrate acting under this section cannot direct a village Munsif to take possession of the property in dispute but can only direct a party to the proceeding to do or abstain from doing something. (1916) 2 M. W. N. 88=33 Ind. Cas. 830. Where one order under s. 144 does not prove sufficient for the purpose, the right procedure to adopt is to commence proceedings under s. 107. 20 C. W. N. 758=17 Cr. L. J. 200=24 C. L. J. 272.

S. 144 (5) was not intended to be exercised as an appellate or revisional power, but was intended to be exercised when the circumstances arose rendering the continuance of the order useless. 2 P. L. T. 484=22 Cr. L. J. 685. Where the opponent

applied to Chief Presidency Magistrate to have the noises from an adjoining house stopped under the provisions of s. 144. *Held*, that though the order was in substance outside it as opponent's application was for prevention of nuisance permanently. 22 Bom. L. R 157=22 Cr. L. J. 521=62 Ind. Cas. 409. Where trustee of a temple was directed by order under s. 144 to abstain from interfering with conduct of the *adyapakan* service, order was definite as it sufficiently defined the acts from which the trustee was required to abstain. 19 Cr. L. J. 933=47 Ind. Cas. 657. District Magistrate cannot set aside an order of a Magistrate against one party and substitute a similar order against the opposite party. If it is clear that it is not a mere pretence. 3 Pat. L. J. 287=19 Cr. L. J. 800=47 Ind. Cas. 76. An order under s. 144 does not affect the civil rights of the parties and does not by itself give a right of suit. 42 Ind. Cas. 337. Where question of possession is in dispute proper procedure is to act under s. 145 but in cases of great emergency a Magistrate can act under s. 144. 18 Cr. L. J. 967=42 Ind. Cas. 327. Order directing abstention from residing at particular place is illegal. A. I. R. 1934 Rang. 124. An *ex parte* order under this section cannot be made. A. I. R 1934 Cal. 393. Order after efflux of time should not be interfered. Remedy is civil suit for declaration. A. I. R. 1934 Oudh. 87. Magistrate cannot make mandatory order directing party to do some act. He can only make restrictive order. A. I. R. 1933 Cal. 724=146 Ind. Cas 169. Magistrate should be cautious in exercising power under s. 144. A. I. R. 1933 Cal. 348=34 Cr. L. J. 334.

Dispute about land—It is immaterial whether the dispute relates to land. A. I. R. 1929 Pat. 714. Where a person wants to enforce his right to possession of property, Criminal Courts ought not to lend him aid under s. 144. 30 Cr. L. J. 1010 =A. I. R. 1929 Mad. 845. Where Magistrate finds that there was no *bona fide* dispute as to actual possession, but the opponent was merely trying to get possession, order under s. 144 is warranted and is the best means of preventing the imminent breach of the peace. 30 Cr. L. J. 510=10 P. L. T. 542. It is only when possession is either undisputed or clear beyond doubt that section 144 applies. 2 P. L. T. 484= 22 Cr. L. J. 685=63 Ind. Cas. 62A ; see also 61 Ind. Cas. 691=2 P. L. T. 455=22 Cr. L. J. 442 ; 22 Cr. L. J. 685=2 P. L. T. 484, Where Magistrate on an order under s. 144 makes an incidental observation as to possession of the property it cannot have the force of an order under s. 145. 6 P. L. T. 746=26 Cr, L. J. 1229. Questions of title, fraud, etc., cannot be tried in proceedings under s. 145 or 144. 3 Pat. 809=26 Cr. L. J. 268. The Criminal Court is bound to maintain an auction purchaser in possession of property purchased after a decree by a Civil Court and service of writ of delivery of possession. 3 P. L. T. 335=23 Cr. L. J. 321 ; see also 3 Pat. L. T. 570=23 Cr. L. J. 200.

Exparte order.—Section 144 provides speedy remedy in cases of emergency and under sub-section 2, a Magistrate can pass an *ex parte* order immediately on receiving a police report that he is satisfied that immediate action is necessary. 25 Cr. L. J. 433=A. I. R. 1924 Oudh 338. To justify an order *ex parte* under s. 144 (2) Magistrate has to stay whether an emergency exists. High Court cannot interfere in revision, unless there is clear evidence showing that there was no such emergency. 33 Bom. L. R. 59=A. I. R. 1931 Bom. 135=32 Cr. L. J. 507=130 Ind. Cas. 396 ; see also 60 M. L. J. 378=A. I. R. 1931 Mad. 236. Sub-divisional Magistrate is the sole judge of emergency. A. I. R. 1934 Oudh 87. It is not proper for a Magistrate who has passed an *ex parte* order under section 144, the propriety or legality of which is challenged, to postpone the hearing of the matter from time to time until about the termination of the force of the order. 26 C. W. N. 663=24 Cr. L. J. 164.

Nature of proceedings.—Order of Magistrate under s. 144 is not the order of a Court. 30 Cr. L. J. 119=52 M. 69=55 M. L. J. 621 ; see also 24 Cr. L. J. 424= 47 M. 56=44 M. L. J. 328.

Procedure.—Magistrate is justified in passing an emergent order under the section without setting out in the order the grounds of his action. 18 Cr. L. J. 892=41 Ind. Cas. 1203. Proceedings under s. 144 being judicial, the accused has a right to know what the information was, on which the Magistrate acted in order to show that it was unfounded or insufficient. 1930 M. W. N. 849=131 Ind. Cas. 649. Under section 144 (4) District Magistrate has power to set aside proceedings drawn up by Sub-Divisional Magistrate, but he could not direct him to draw up proceedings under any other section as under s. 145 (1). 33 C. W. N. 723=A. I. R. 1929 Cal. 751 ; see also 2 P. L. T. 392=22 Cr. L. J. 498. Record should show in

clear and unmistakable terms, the authority under which a Magistrate taking action under s. 144, profess to act. 2 Bur. L J. 22=1 Rang. 49=24 Cr. L. J. 735 ; see also 10 P. L. T. 862=A. I. R. 1930 Pat. 162. An order under Chapter XII should specify the section under which it is passed, and the Court of appeal or revision should not be put to the difficulty of finding, whether it was under s. 144 or s. 145. 18 Cr. L. J. 395=38 Ind. Cas. 327. Under section 144 something more is necessary than a mere recital of District Magistrate's opinion. An order issued under the section must state the material facts of the case, justifying the issue of the order. 25 Cr. L. J. 1178=A. I. R. 1924 Pat. 767. A case in which it would have been better to draw up proceedings under s. 145, should not be proceeded with under s. 144. 28 Cr. L. J. 1039=A. I. R. 1927 Pat. 432. Where Magistrate disposes of the matter by taking evidence *ex parte*, and making enquiries in the absence of petitioners and without giving them an opportunity of adducing their own evidence and examining witnesses, procedure is wholly unjustifiable and order must be set aside. 5 P. L. T. 419=25 Cr. L. J. 415 ; see also 43 M. L. J. 716=24 Cr. L. J. 429. A Magistrate can rely on documentary evidence as to title to corroborate oral evidence as to possession, even if the oral evidence were not quite satisfactory. 23 Cr. L. J. 197=65 Ind. Cas. 853.

If the effect of the order under s. 144 is that no Mahomedan would be allowed to say his prayers in the mosque, order is not justified. 26 C. W. N. 904=24 Cr. L J. 154. The orders of Magistrate under s. 144 based on the rent decree will be good, if passed with a view to prevent a breach of the peace which is imminent. 3 Pat.. L. T. 570=23 Cr. L. J. 200.

Temporary order.—Section 144 is applicable only to temporary orders in urgent cases of nuisance or apprehending danger. 5 P. L. T. 90=24 Cr. L. J. 947= A. I. R. 1924 Pat. 145=75 Ind. Cas. 531. Though a person has absolute right to use his property as he pleases, if mode of enjoyment, though innocent and lawful, results or tends to result, in acts likely to lead to breach of peace, an order under s. 144 restraining person temporarily from enjoying property in that way is justified. 55 C. 1077=47 C. L. J. 452=32 C. W. N. 613 ; see also A. I. R. 1930 Cal. 131 ; 22 Bom. L. R. 157=22 Cr. L. J. 521.

Valid order under this section.—An order under s. 144 may be addressed to the public generally when frequenting or visiting a particular place. No order can be passed against the public without that limitation as to place. A. I. R. 1931 Mad. 242=60 M. L. J. 370. When a breach of peace is anticipated, action is to be taken against potential law-breakers and not against the peaceful citizens whom, it is expected that the law-breakers will molest. 28 Cr. L. J. 345=A. I. R. 1927 Lah. 430. Orders under section 144 are not intended to be used as a means of depriving citizens of lawful rights, which have been declared by competent Courts. 52 M. L. J. 651=28 Cr. L. J. 504. An order can be issued to public generally when frequenting or visiting a particular place. 26 Cr. L. J. 874=29 C. W. N. 411. The report of police as to likelihood of breach of peace gave Magistrate no material for proceeding against three petitioners. A. I. R. 1922 Pat. 239=A. I. R. 1929 Pat. 714. An action should be taken under s. 144 only in urgent cases of nuisance or apprehended danger 26 Cr. L. J. 560. Magistrate should inquire into relative rights of parties before making *ex parte* order under s. 144 absolute. 35 M. L. W. 366=A. I. R. 1932 Mad. 290. Injunction should be clear and definite. Ambiguous order should be set aside. 36 C. W. N. 248=33 Cr. L J. 518=A. I. R. 1932 Cal. 288. Section 144 does not empower Magistrate to pass positive orders requiring people to do particular things. 58 C. 1037=A. I. R. 1931 Cal. 263. Under exceptional circumstances, Court has power to pass order under this section. A. I. R. 1934 Cal. 513. Question of injury to property as distinguished from danger to or safety of human life occupying the property has got very little relevancy. *Ibid.* Section 144 should not be used for anything in the nature of a permanent expedient without the sanction of the Local Government. 3 P. L. J. 130=19 Cr. L. J. 365. Successive orders under section 144 are open to objection. 1 Pat. L. T. 44=24 Cr. L J. 829. An order prohibiting the holding of a rival *hat* on certain days near the old *hat* is not *ultra vires*. 23 C. W. N. 141=20 Cr. L. J. 113. If order under s. 144 specifies no time it is to be in force, the reasonable presumption is that it would operate for two months and not indefinitely. 20 Cr. L. J. 755=53 Ind. Cas. 483. Place includes "municipal ward" provided it is clearly defined. A. I. R. 1934 Bom. 375.

Revision.—High Court rarely interferes in revision till other remedies have been exhausted, in matters under s. 144, where the Magistrate is responsible for the

peace of the District. 19 Cr. L. J. 56. When an order under s. 144 has expired by efflux of time, High Court will not revise it nor will it adjudicate upon the merits thereof. 47 M. L. J. 439. If orders under s. 144 are illegal or *ultra vires* revision petition must be filed in High Court. 42 M. L. J. 179=68 Ind. Cas. 180 ; see also 23 Cr. L. J. 404=42 M. L. J 352. Section 435 (3) expressly excludes the exercise of revisional powers in cases under s. 144. 22 Bom. L. R. 157=22 Cr. L. J. 521. Successive orders under s. 144 are open to objection. An order passed under s. 144 without serving notice on the opposite party to show cause is liable to be set aside. 20 Cr. L. J. 829=1 Pat. L. T. 44. Order passed by Magistrate after he has passed a final order under s. 144, rescinding sale of property kept in custody is *ultra vires* and is liable to revision. 21 Cr. L. J. 657. Under clause (4), petitioner must go in the first instance before District Magistrate before coming up in revision to the High Court. 5 P. L. T. 90=24 Cr. L. J. 947. High Court can revise an order under s. 144 provided revisional jurisdiction is exercised within two months of the order. 58 M. L. J. 148=31 Cr. L. J. 324 ; see also 26 Cr. L. J. 1229=6 P. L. T. 746 ; 26 Cr. L. J. 874=29 C. W. N. 111. Proceedings under s. 144 are judicial and therefore subject to revision by High Court. A. I. R. 1931 Mad. 236 ; but see 55 M. L. J. 621=30 Cr. L. J. 629 ; 20 Cr. L. J. 755=1919 M. W. N. 872. High Court will interfere in revision where grounds for action under s. 144 by Magistrate are unfounded or insufficient. 60 M. L. J. 370=32 Cr. L. J. 763=A. I. R. 1931 Mad. 242. High Court can order stay of proceeding. 63 M. L. J. 594=33 Cr. L. J. 826. Proceedings under s. 144 are subject to revision by High Court. 60 M. L. J. 370=32 Cr. L. J. 763.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

145. (1) Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes, buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

Inquiry as to possession.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties [*receive all such evidence as may be] produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Provided that, if it appears to the magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

* These words were substituted for the words 'receive the evidence' by s. 28 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

Provided also, that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case, the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

Party in possession to retain possession until legally evicted.

(6) If the Magistrate decides that one of the parties was *[or should under the first proviso to sub-section (4) be treated as being] in such possession of the said subject he shall issue an order † declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction‡§ [and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed].

‖(7) When any party to any such proceedings dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto;

¶(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale proceeds thereof as he thinks fit.

*(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

*(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Scope.—Proceedings under this section cannot be instituted with respect to moveables. 11 O. L. J. 59=77 Ind. Cas. 721=25 Cr. L. J. 440. In proceedings under this section it is not competent to the Magistrate not only to award possession of the land in dispute but also to grant a right of way to one of the parties. 26 Bom. L. R. 436=48 B. 512. The object of this section is to bring to an end by a summary process disputes relating to land, etc., which are in their nature likely if not suppressed, to end in breaches of the peace. 25 Cr. L. J. 78=75 Ind. Cas. 990; see also 5 Pat. L. T. 458=25 Cr. L. J. 906=81 Ind. Cas. 442. The binding character of a order passed under s. 145 Cr. Pro. Code, is not under all circumstances to be confined to the persons who were actually made parties to the proceeding but may under certain circumstances extend to persons other than the parties themselves. 33 C. W. N. 1002.

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* These were inserted by Act XVIII of 1923.

† *See* Sch. V. Form XXIII, *infra*.

‡ For limitation of suits to recover possession of such property, *see* the Indian Limitation Act, 1908 (IX of 1908), Sch. I. art. 47.

§ These words were added by s. 28 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‖ Sub-section (7) was substituted for the original sub-section (7) by s. 28 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

¶ Sub-section (8) was added by *ibid.*

Where the subject matter of dispute is possession of a complete and existing *bund* and not a right to erect a bund, the case falls under s. 145. 33 C. W. N. 1004=31 Cr. L. J. 944. This section applies to cases of disputes between two parties having joint rights to lands in dispute each of whom was claiming exclusive possession and is not confined to disputes between two opposing parties having adverse rights to exclusive possession of land. 32 Bom. L. R 340. This section applies only to disputes about actual physical possession and not to disputes about joint possession. 29 Cr. L. J. 775=A. I. R. 1928 Lah. 818; 22 Cr. L. J. 625=24 O. C. 167. Where there is ample time for the obtaining of a civil remedy criminal action is not justified. 29 Cr. L. J. 227=76 Ind. Cas. 691. Section 145 is not limited in its scope to dispute relating to actual possession only, if by that expression is meant possession by squatting on the land, 44 Cr. L, J. 108=35 C. L. J. 83. Section 145 does not apply to a dispute about an easement in respect of which action has to be taken. 22 Cr. L. J. 768 (Nag) where possession is disputed, the effective and the proper section is s. 145. 2 P. L. T. 484=22 Cr. L. J. 685; 63 Ind. Cas. 264. Section 145 does not apply where one party is clearly in possession and the other party wants to take forcible possession of it. There is no dispute as to possession. 1 Pat. L. T. 681=22 Cr. L. J. 86. Section 145 of the Code applies where a dispute as to possession of land can be conclusively determined. 1 Pat. L. T. 377=21 Cr. L. J. 646; see 19 Cr. L. J. 113=3 P. L. W. 353; 27 M. L. T. 234=54 Ind. Cas. 473. Section 145 of the Code contemplates the existence of disputes regarding property likely to lead to a breach of the peace. If the chance of a breach of peace has disappeared there is no necesstiy to maintain orders passed under s. 145. 1 Lah. 451=22 Cr. L. J. 4=59 Ind. Cas. 36. Section 144 being of general application should not be resorted to when s. 145 is sufficient to meet the requirements of a particular ease. 23 Cr. L. J. 549=3 P. L. T. 573. Dispute as to lease of lac produce from trees is dispute with regard to land within s. 145. A. I. R. 1934 Nag. 112. Questions of title are of little importance except so far as they determine actual possession. A. I. R. 1934 Cal. 95. Action can be taken only when dispute is as to possession. A. I. R. 1933 Lah. 145; see also A. I. R. 1933 Lah. 409=34 P. L. R. 368; A. I. R. 1933 Pat. 584. Prohibition under s. 171, Companies Act, does not override s. 145. 37 C. W. N. 932=34 Cr. L. J. 640. Section 145 (1) is mandatory. A. I. R. 1932 All. 446=34 Cr. L. J. 156. Inquiry should relate to question of actual possession. 33 Cr. L. J. 536; see also 26 S. L. R. 353=34 Cr. L. J. 216. Under s. 147 right to fishery is apart from right to land while under s. 145 it relates to particular area. A. I. R. 1934 Pat. 86.

Foundation of the jurisdiction.—When there is no likelihood of breach of peace occurring proceedings under s. 145 are incompetent. 31 C. W. N. 242=28 Cr. L. J. 245; see also 25 Cr. L. J. 78; 38 C, L. J. 284=25 Cr. L. J, 291; 4 Pat. L. T. 308=24 Cr. L. J. 557; 21 Cr. L. J. 748=1 Pat. L. T. 387; 1 Pat. L. T. 738=22 Cr. L. J. 205; 22 Cr. L. J. 768=64 Ind. Cas. 288; 19 Cr. L. J. 444=44 Ind. Cas. 972; 2 P. L. T. 392=68 Ind. Cas. 39; A. I. R. 1932 Pat. 366; A. I. R. 1932 Pat. 185; 23 Cr. L. J. 424=67 Ind Cas. 584. The only two essential conditions which confer jurisdiction on the Magistrate, are, firstly that there should be a dispute over land or water, and secondly that such dispute is likely to cause a breach of peace. 26 Cr. L. J. 1292=A. I. R. 1926 Sind. 53. The jurisdiction of the Magistrate would depend on the nature of the information, on which he has acted. A. I. R. 1924 Cal. 539=24 Cr. L. J. 235. Proceedings under section 107 can be converted into one under s. 145. 19 Cr. L. J. 712=46 Ind. Cas. 296 where jurisdiction of Magistrate is proper and legal, subsequent action of Magistrate is a matter of procedure and not one of jurisdiction. 37 M. L. J. 589=10 L. W. 447. If during a proceeding under the section, circumstances arise which takes away the initial jurisdiction of the Magistrate, the jurisdiction moves and anything done after that is without jurisdiction. 24 O. C- 167=22 Cr. L. J. 625=63 Ind. Cas. 321.

Object of section.—Provisions of Chapter XII are intended to provide speedy remedy in cases of dispute with which that chapter deals. 53 A. 215=1930. A. L. J. 1437; see also 24 Cr. L. J. 595; 32 Cr. L. J. 309. The object of the section is limited strictly to the prevention of violent seif-help even by a true owner. 78 Cr. L, J. 858=41 Ind. Cas. 826. The object of section 145 is merely a determination of actual possession for preventing breach of the peace pending a decision on the merits by a Civil Suit. 18 Cr. L. J. 660; see also 5 P. L. T. 458=25 Cr. L. J. 906; 25 Cr. L. J. 1109=81 Ind. Cas. 933; 26 Cr. L. J. 870=6 P. L. T. 710. S. 145 is a short and summary manner of awarding possession until other cases connected with the subject matter, the proceedings under s. 145 are decided. 30 Cr. L. J. 344=A. I. R. 1928 Rang. 314;

see also A. I. R. 1229. Oudh. 526 ; 24 Cr. L. J. 100 ; The Magistrate is bound to act on Civil Court decree. 3 Pat. L. T. 433=23 Cr. L. J. 275.

Breach of peace.—Grounds as to existence of likelihood of breach of peace should appear in the first order and it must satisfy the Court of revision. 22 Cr. L. J. 768=64 Ind. Cas. 288. Where there is no evidence of likelihood of breach of peace between the parties, final order cannot be made under s. 145. 25 C. W. N. 214=22 Cr. L. J. 502=62 Ind. Cas. 326 ; see also 23 Cr. L. J. 303 ; 24 Cr. L. J 263=A. I R. 1922 Pat 340 ; 24 Cr. L. J. 631=A. I R. 1923 Lah. 253 ; 24 Cr. L.J. 783=74 Ind. Cas. 447 ; 34 C. W. N. 899=A. I. R. 1930 Cal. 715 ; 49 C. L. J. 394=30 Cr. L. J. 977 ; 30 Cr. L. J. 492=10 P. L. T. 639 ; 2. O. W. N. 704=26 Cr. L. J. 1581 ; 12 O. L. J. 256 =2. O. W. N. 220=26 Cr. L. J. 944 ; A. I. R. 1932 Nag. 134=28 N. L. R. 154 ; A. I. R. 1932 All. 683=1932 A. L. J. 819 ; 34 Cr. L. J. 449. Order under sub-section (1) stands until it is shown that there is no likelihood of a breach of the peace. 33 C. L. J. 69=25 C. W. N. 215=22 Cr. L. J. 4 ; see also 1 Lah. 451=22 Cr. L. J. 4. Breach of the peace is possible only if applicant acts illegally. Order in his favour should not be passed. A. I. R. 1932 Nag. 83=33 Cr. L. J. 556.

Duty of Magistrate.—Magistrate is bound to see who is in actual possession, when a person claims as owner. 1 Pat. L. T. 580=21 Cr. L. J. 785. On a proceeding under s. 145 a Magistrate can grant a right of way over land in dispute to one of the parties before him. 48 B. 512=26 Bom. L. R. 436=26 Cr. L. J. 772. Order of possession under s. 145 passed on the evidence of a person not called by either party is bad in law. 17 Cr. L. J. 129. A Magistrate can at any stage of an enquiry under s. 145 drop proceedings on being satisfied that there was no apprehension of the breach of peace. 17 Cr. L. J. 138. Where proceedings have once been started it is the duty of the Magistrate to complete the enquiry and to pass final orders under s. 145. 24 Cr. L. J. 64=A. I. R. 1923 Mad. 180. Magistrate must make enquiry whether parties have put in written statements or not and hear parties and take the evidence produced. 4 Pat. L. T. 308=24 Cr. L. J. 557. Magistrate has to first find out who are concerned in dispute and as to which of them are in possession. 26 Cr. L. J. 1289 =89 Ind. Cas. 153. Magistrate should carefully scrutinise evidence. 27 Cr. L. J. 68. The Magistrate must be alert, active and prompt. The Magistrate must himself be satisfied, and he must form his own judgment and not proceed automatically upon a a mere opinion of the police. 28 Cr. L. J. 929. A. I. R. 1928 Nag. 81 ; see also 26 Cr. L. J. 151=A. I. R. 1926 Pat. 51. The judgment in a case under s. 145 should form the bais for a discussion of the entire evidence in the case oral and documentary. Documents relating to possession cannot be ignored altogether. 2 Pat. L. T. 333=A. I. R. 1921 Pat. 483. There is a duty on the Court to summon such witness as may be mentioned to the Court by either party. 52 A. 91=1930 A. L. J. 489. Magistrate should confine himself to the question of actual possession even if the possession is that of a trespasser, provided it is peaceable. 29 Cr. L. J. 902=24 N. L R. 148. The Court is bound in the absence of one party to satisfy itself by examining the evidence tendered by the other that other party is entitled to an order. 31 M. L. W. 104=31 Cr. L. J. 190. There is nothing in s. 145 to absolve a Magistrate from his ordinary duty of giving reasons for his decision. 52 M. 241=30 Cr. L. J. 346. A failure to record an express finding as to possession in disregard of the express provisions of cl. (1) of s. 145 is bad. A. I. R. 1928 Nag. 325=29 Cr. L. J. 861. What the Magistrate has to determine is who is in actual physical possession and to declare him to be entitled to possession. It is not necessarily lawful possession. 55 C. 826=47 C. L. J. 233=32 C. W. N. 275. Order is not according to law where there is no discussion as to evidence and there is no reason as to the finding of possession. 29 Cr. L. J. 312=A. I. R. 1928 Nag. 255. The requirements of the section should be strictly followed. A Magistrate would have no jurisdiction unless he was satisfied that there existed a dispute concerning land,etc., and which dispute is likely to induce a breach of the peace. A formal order to this effect under sub-section (1) is absolutely necessary. 26 P. L. R. 712=28 Cr. L J. 973 ; see also 29 Cr. L. J. 613=A. I. R. 1928 Pat. 574 ; 6 P. L. T. 746=26 Cr. L. J. 1229 ; 2 Bur. L. J. 295=A. I. R. 1924 Rang. 178 ; 24 Cr. L. J. 751 =4 Lah. 66 ; 24 Cr. L. J. 740=2 Bur. L. J. 32 ; 24 C. W. N. 621=21 Cr. L. J. 593 ; 18 Cr. L. J. 156=37 Ind. Cas. 524. Magistrate must give reasons for his division. 41 C. L. J. 357=29 C. W. N. 475. Proceedings under s. 145 should be disposed of as quickly as possible. 24 Cr. L. J. 595=A. I. R. 1923 Pat. 53. On commencement the hearing should go on from day to day until all the evidence is taken and argument is heard ; then order should be passed as soon as possible. 26 Cr. L. J. 105. A proper judgment under the section should state the case of both parties and then leave alone the question of title. 29 Cr. L. J. 724=10 P. L. T. 47=29

Cr. L. J. 724. A Court should not place the disputed property in the actual possession of persons, who are parties to the proceedings and who are found not to have been in possession of the disputed property. 28 Cr. L. J. 776=9 P. L. T. 109. The provisions of this section are mandatory. The Magistrate who has to draw up the order under s. 145 (1) is the Magistrate who after drawing up the order proceeds to decide the case. 49 A. 325=25 A. L. J. 246=28 Cr. L. J. 231. Under s. 145 a Magistrate cannot order Police to deliver house to complainant or direct the opposite party not to interfere with such a complainant until he got a Civil Court decree. 14 A. L. J. 146=17 Cr. L. J. 145. There can be no delegation by a Magistrate of his duties of inquiry under the section to arbitrators even with the parties consent. 2 Pat. L. J 86=18 Cr. L. J. 145. Possession of one not a party and with reference to property not in dispute cannot be declared. 19 Cr L. J. 653=45 Ind. Cas. 845. Under s. 145 the Magistrate is bound to set forth the grounds of his satisfaction of the existence of danger to a breach of the peace and unless this is done he acquires no jurisdiction. 2 Pat. L. T. 267=22 Cr. L. J. 481. Magistrate must write a judgment giving his findings and not merely fill up form in Schedule to the Code. 45 M. L. J. 56=16 L. W. 701=23 Cr. L. J. 670. Findings as to breach of peace is not necessary in final order. After preliminary order, he has only to determine possession of the property. 67 Ind. Cas. 584=A. I. R. 1922 Lah. 454. Party in possession under Civil Court decree, till shortly before preliminary order can be maintained in possession by order under s. 145. 42 M. J. 147=23 Cr. L. J. 92 ; see also 3 Pat. L. T. 335=23 Cr. L. J. 321=A. I. R. 1922 Pat. 197. If the first party satisfies the Court as to his possession, then there is no necessity to proceed further. 24 Cr. L. J. 507=A. I. R. 1923 Pat. 31=72 Ind. Cas. 971. Magistrate has to give reasons for his decision sufficient to enable the High Court to determine whether he has complied with the terms of sub-section (4), and directed his mind to the consideration of the evidence adduced. 49 C. 187=346 Cr. L. J. 125=25 C.W.N. 887=22 Cr. L. J. 449. An order ought to declare the party in whose favour possession is found to continue to be in possession of the property until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction. 2 Pat. L. T. 267. The final order should accurately describe the land, by specifying the boundaries thereof in order to show clearly and exactly what land is covered by the order. 22 Cr. L. J. 385. A Magistrate should not without satisfaction of the allegation of non-service, reject an application to re-open proceedings under s. 145. 32 C. L. J. 14=24 C. W. N. 902=21 Cr. L. J. 848. Refusal of adjournment for production of documentary evidence regarding possession under s. 145 is arbitrary and liable to be set aside. 25 C. W. N. 602=33 C. L. J. 507=22 Cr. L. J. 335. Parties should not be encouraged to resort to the Criminal Court in cases in which the point at issue between them is one which can more appropriately be decided in a Civil Court. 3 L. L. J. 99=22 Cr. L. J. 142=59 Ind. Cas 654. Person already declared to be in possession and the property in respect of which it is so declared are both exempt from proceedings under s. 145. 1 Pat. L. J. 557=21 Cr. L. J. 753=58 Ind. Cas, 337. On application under s. 145 a Magistrate's order passed on the enquiry and report of Zaildar alone, is wholly bad in law. 21 Cr. L. J. 563=57 Ind. Cas. 83 : see also 39 Ind. Cas. 305=18 Cr. L. J. 565 Magistrate must state in writing grounds of his being satisfied that there is likelihood of breach of peace on account of dispute. A. I. R. 1932 Mad. 361=33 Cr. L. J. 536; A. I. R. 1934 Nag. 112. The reason why grounds should be stated by Magistrate is that higher Court should be able to see whether recourse to summary proceedings was justified. A. I. R. 1932 Sind. 145=26 S. L. R. 353. Where Magistrate arrives at certain conclusion of fact after due inquiry, trial *de novo* is not necessary. A. I. R. 1934. Oudh 158. Several methods are open to Magistrate. He can adopt any proper method to meet emergency. A. I. R. 1934 Pat. 308.

Attachment.—Power is given under s. 45 to the Magistrate to attach disputed property, only for the purpose of preserving the peace, where a breach of the peace is imminent. 7 Lah. 134=27 L. L. J. 761=8 Cr. L. J. 368 ; see also 26 Cr. L. J. 324=3 Bur. L. J. 256 ; 26 Cr. L. J. 1378=8 N. L. J. 69. Under s. 145 Cr. Pro. Code, a Magistrate has no jurisdiction to attach anything but land and its rents and profits. Hence an order for the attachment of a house and movables is *ultra vires*. 24 Cr. L. J. 85=20 A. L. J. 906. Attachment prior to drawing up of proceedings is without jurisdiction. 2 Pat. L. T. 724=23 Cr. L. J. 64=64 Ind. Cas 848. Under s. 145 the Sub-Divisional Magistrate has no jurisdiction whatsoever to attach movable properties. 24 O. C. 167=22 Cr. L. J. 625=63 Ind. Cas. 321. It is only likelihood of a breach of the peace that gives the jurisdiction to a Magistrate to take

proceedings and attach property. 3 Pat, L. W. 386=19 Cr. L. J. 105. If third parties and not the actual parties before the Magistrates are to be in possession the procedure is to attach the property. 20 Cr. L. J. 215 ; see also 18 Cr. L. J. 637=1 Pat. L. W. 373. The Magistrate has power to appoint a Receiver to remain in custody of property attached under s. 145. 11 L. W. 459=27 M. L. T. 234. But a Magistrate is not competent to dispossess a party in possession by appointing a Receiver. 3 Pat. L. J. 147=19 Cr. L. J. 249. In proceedings under Chapter XII of Criminal Procedure Code, the attachment should continue only until a competent Court has determined the rights of the parties to the property and does not extend till after the disposal of the appeal from such decision. 19 Cr. L. J. 261=44 Ind. Cas. 117. In case of dispute of public pathway, there is no jurisdiction to attach it. 22 Cr. L. J. 464=61 Ind. Cas. 848. Where there is dispute as to right to collect *lac* on plum trees, attachment of *lac* is without jurisdiction. 48 C. 522=32 C. L. J. 270=22 Cr. L. J. 213 (S. B.) When once the Magistrate raises the attachment and drops further proceedings in the case he has no jurisdiction to direct delivery of possession of the disputed property to any person. 1930 M. W. N. 771. Where Magistrate is unable to decide as to fact of possession, attachment previously made can be continued till Civil Courts decide as to rights of parties. 29 Cr. L. J. 861=A. I. R. 1929 Nag. 325. The possession of the Court during attachment in the course of proceedings under s. 145 should enure for the benefit of such party in whose favour a declaration as to right to retain possession is made. 30 C. W. N. 541=95 Ind. Cas. 117.

Receiver.—Attachment need not be only by prohibitory order. Court can take possession or appoint receiver. A. I. R. 1933 Lah. 409=34 P. L. R. 368. Receiver's possession is on behalf of successful party. A. I. R. 1932 Cal. 29=58 C. 1070=35 C. W. N. 483. Where *interim* Receivers are appointed to manage the suit properties in the proceedings under s. 145 the possession which these Receivers exercise may justly be regarded as possession on behalf of the party who actually succeeds. 35 C. W. N. 483. Where there is no likelihood of a breach of peace, Receiver should be directed to hand over the properties to persons from whom possession was taken. 29 Cr. L. J. 456=A. I. R. 1928 Mad. 859. The High Court has no power to appoint a Receiver pending disposal of a petition to revise an order passed under s. 145. 49 M. L. J. 593=27 Cr. L. J. 126. Persons appointed by Magistrate to manage properties which he has taken charge of have not got powers of a Receiver. A. I. R. 1925 Nag. 297=26 Cr. L. J. 1378. Section 146 (2) cannot be so read as to make its possessions apply to attachment under section 145 (4) and hence the appointment of Receiver under s. 145 (4) is illegal. 10 Lah. 800=30 P. L. R. 23=30 Cr. L. J. 411.

Title, relevancy of.—The question of title has been expressly excluded from Magistrate's consideration under this section. 29 Cr. L. J. 676=110 Ind. Cas. 228. Neither proof of title nor an adjudication on the question of title constitutes proof of actual possession. 24 W. L. R. 148=29 Cr. L. J. 902=A. I. R. 1928 Nag. 284. Even a trespasser is entitled to have his actual possession maintained if it is peaceful. *Ibid.* So in proceedings under s. 145 the Court is in no way concerned with the question of title. 21 Cr. L. J. 136 (pat.)=54 Ind. Cas. 616 ; see also 25 Cr. L. J. 78=75 Ind. Cas. 990 ; 25 Cr. L. J. 1081=81 Ind. Cas. 905 ; 3 Pat. 809=26 Cr. L. J. 268 ; 27 Cr. L. J. 44 ; 27 Cr. L. J. 784=95 Ind. Cas. 320. Under section 145 the enquiry is limited to the fact of actual possession without reference to the merits of the claims of any such parties to a right to possess the subject of dispute. The question as to which of the parties has a right to possess the subject of dispute is irrelevant. 28 Cr. L. J. 437=A. I. R. 1927 All. 476. A Magistrate in a proceeding under s. 145 is entitled to look into the question of title only to arrive at a satisfactory conclusion on the question of possession. 1 Pat L. T. 387=21 Cr. L. J. 748=58 Ind. Cas. 252 ; see also 22 Cr. L. J. 350 ; 38 M. L. J. 73=11 L. W. 285=21 Cr. L. J. 46 ; 26 C. W. N. 1000=24 Cr. L. J. 141. An agreement to get the case decreed on title and not to produce any evidence as to possession is not within the scope of s. 145. 3 Pat. L. T. 628=24 Cr. L. J. 279=A. I. R. 1929 Pat. 76=71 Ind. Cas. 999. The factum of possession is a vital question for determination under section 145. 4 pat. L. W. 120=19 Cr. L. J. 789.

Possession.—It is the actual possession of the subject of dispute that must be enquired into regardless of the delivery of symbolical possession. 16 Cr. L. J. 736. Possession under s. 145 must be absolute and continuous and not occasional. But continuity of possession should be understood with reference to the object over which it is exercised. 31 C. W. N. 334=28 Cr. L. J. 343=A. I. R. 1927 Cal. 313. The possession that can be pleaded in a proceeding under s. 145 must be possession

found on a claim of right to possession. An agent or servant has no such right. 27 Cr. L. J. 212=A. I. R. 1926 Nag. 286. Dispossession should be wrongful as well as forcible. 26 Cr. L J. 268=84 Ind. Cas. 332. This section is not meant to be used to protect the possession of a servant against the master. 43 M. L. J. 624= 24 Cr. L. J. 100. Stealing act of possession is not an act of possession. *De facto* possession means effective occupation or control. 3 Pat. L. T. 291=29 Cr. L. J. 125. A person in formal possession of a property in execution of a decree shall be deemed to be in possession of the property. 25 Cr. L. J. 917=A. I. R. 1925 Oudh. 183. Pujari having possession on behalf of trustee cannot set up that possession as his own. A. I. R. 1933 Mad. 245=34 Cr. L. J. 88.

Period of possession.—Complainant can get benefit of s. 145 if dispossession is two months prior to preliminary order. 32 Cr. L J. 476=26 N. L. R. 377. In the absence of order under sub-section (1) proviso to section 545 (4) does not apply. A. I. R. 1933 Lah. 143=34 P. L. R. 365. The material date for the computation of the period of two months is the date of the order by the Magistrate and not the date of the complaint. 26 N. L. R. 377=A. I. R. 1931 Nag. 38; see also A. I. R. 1929 Oudh. 526; see also 30 Cr. L. J. 1124=A. I. R. 1930 Sind. 52; 27 Cr. L. J. 68=A. I. R. 1926 Nag. 371; 49 C. 177=25 C. W. N. 743. But in case of *bona fide* delay on the part of Magistrate in passing the preliminary orders, of more than two months, complainant should not be deprived of the benefit of s. 145. 52 M. 66=56 M. L. J. 33; see also 28 Cr. L. J. 782=A. I. R. 1927 Mad. 816; 44 C. L. J. 593. A party who entered into possession and retained possession under s. 144, should be declared to be entitled to possession: the period during which the injunction was in force against his opponent cannot be included. 18 Cr. L. J. 301.

Symbolical possession.—Mere symbolical in execution of an *ex parte* Civil Court decree would not be binding on a Criminal Court as against a third party to the suit. 25 Cr. L. J. 1104=81 Ind. Cas. 928; see also 49 C. 177=25 C. W. N. 743; 22 C. W. N. 479=18 Cr. L J. 718; but see A. I. R. 1933 Cal. 424=34 Cr. L. J. 810.

Joint possession.—Section 145 of the Code does not apply to a case when the properties are jointly held by the parties and the dispute is duly about their shares. 22 Cr. L. J. 350=61 Ind. Cas. 174; see also 24. O. C. 167=22 Cr. L. J 625; 23 Cr. L. J. 379=67 Ind. Cas. 203; 24 Cr. L. J. 869=5 P. L. T. 45; but see 2 Lah. 372=23 Cr. L. J. 225. No proceedings under s. 145 ought to be drawn up in a case where the parties are in joint possession although they hold specific shares therein. 21 Cr. L. J. 224=5 Cr. L. J. 224=54 Ind. Cas. 1008; see also 27 M. L. T. 234=21 Cr. L. J. 73; 19 Cr. L. J. 977; 39 Ind. Cas. 984=18 Cr. L. J. 616; 17 Cr. L. J. 76=32 Ind. Cas. 668; A. I. R. 1932 All 682=1932 A. L. J. 819=33 Cr. L. J. 480. But section 145 Cr. P. Code applies though the land in dispute is held under joint title, if one of the joint owners is in actual and exclusive possession. 20 C. W. N. 518=17 Cr. L. J. 251.

Immoveable property.—The definition of land as given in Cr. Pro. Code is wide enough to cover mining rights and even prospecting or boring licence. 35 C. L. J. 456=24 Cr. L. J. 108; see also 263=A. I. R. 1922 Pat. 340. A right of collecting rent is a right concerning "tangible immoveable property or land" and a dispute as to such a right is within s. 145 of the Code. 18 Cr. L. J. 156. The dispute under this section must refer to land or water or the boundaries thereof lying within Magistrate's jurisdiction. 22 P. W. R. Cr. 1917=18 Cr. L. J. 461. *Lac* does not fall within the meaning of the expression "land". 24 C. W. N. 1039= 32 Cr. L. J. 255 on appeal. 48 C. 522=60 Ind. Cas. 325. The right to perform puja of idol or to have a share of the offerings made to the idol is not a right of user of any land as provided in s. 145. 52 C. 959=42 C. L. J. 127=27 Cr. L. J. 239. Standing crops are immoveable property within the meaning of clause (2). But a dispute relating to the crops which have had already been cut and stored is not covered by s. 145. 27 Cr. L. J. 1363=A. I. R. 1927 All. 99=98 Ind. Cas. 483. Dispute about right to weigh grain in market is not covered by the section. 20 A. L. J. 694=23 Cr. L. J. 694=23 Cr. L. J. 612=68 Ind. Cas. 836. A dispute as to possession of a temple and for its key is cognisable by a Magistrate under section 145 (2) Criminal Procedure Code as a temple is a "building" under s. 145. 17 Cr. L. J. 235. The right to make collection and appropriate the crops or produce of a village comes within the purview of s. 145 Cr. P. Code. 2 Pat. L. W. 67=18 Cr. L. J. 652. The right to tap a tree may be the subject of proceedings under s. 145. 3 Pat. L. J. 316=19 Cr. L. J. 656. A Magistrate is not competent to pass any order in regard to movable property though contained in immovable property. 42 A. 214=18 A. L. J. 171. A dispute with respect to the collections and offerings at a *Karbala* cannot be the subject-matter of

a proceedings under s. 145. 5 Pat. L. J. 246=21 Cr. L. J. 572. Where a dispute concerns the rights of the respective parties to bore for minerals over a specific area and does not concern land or involve any question of actual possession, s. 145 is not the appropriate section to apply. 32 C. L. J. 54=22 Cr. L. J. 99=59 Ind. Cas. 403.

Information.—A Magistrate is entitled to initiate proceedings if he receives information from any source whatever that there is likelihood of a breach of the peace relating to dispute regarding immoveable property. 6 P. L. T. 215=26 Cr. L. J. 965. The information must be of a character which properly satisfies him that at the date of the proceedings there was actual likelihood of breach of peace. 2 P. L. T. 650=23 Cr. L. J. 27. It may cover knowledge derived by Magistrate by reading petitions filed in another proceeding. It is not limited in any particular way. 1 Pat L. T. 369=21 Cr. L. J. 625. Omission to mention source of information in preliminary order though known does not oust jurisdiction. 25 Cr. L. J. 48=25 Ind. Cas. 736.

Police report.—A Magistrate as a general rule may refuse to take action at all under s. 145 except when a report from the police is sent to him on the matter. But it must be a definite statement of opinion by a responsible police officer to the effect, that he apprehends that there will be a disturbance of the peace, which is beyond his power to prevent. 25 Cr. L. J. 1109=A. I. R. 1925 Nag. 142 ; see also 22 Cr. L. J. 205=1 Pat. L. T. 738=60 Ind. Cas. 61. The police report and the evidence contained therein is inadmissible in evidence about the factum of possession. It is useful simply for initiating the proceedings. 1 P. L. T 501=21 Cr. L. J. 735. Proceedings under s. 145 cannot be started on the basis of a police report more than three months old there being no likelihood of a breach of the peace, when the Magistrate actually drew up the proceedings. 34 C. W. N. 899=A. I. R. 1930 Cal. 715. Where there is no police report, the statements of interested parties ought to be received with great caution. If believed it can be acted upon. 24 Cr. L. J. 304=72 Ind. Cas 32. Though it is the imminence of a breach of the peace which is the foundation of the Magistrate's jurisdiction, he is not confined to the police report or to rely the whole of it. 49 C. L. J. 428=33 C. W. N. 858=30 Cr. L. J. 1027 ; see also 83 Ind. Cas. 693=5 P. L T. 252=26 Cr. L. J. 133.

Arbitration.—A Magistrate acting under s. 145 of the Criminal Procedure Code has no jurisdiction to refer the dispute to arbitrators and accept their award 1 Pat. L. W. 748=18 Cr. L. J. 685=40 Ind. Cas. 333. In proceedings under s. 145 a reference to arbitration is not contemplated. But if parties had referred dispute to arbitration and the award had been accepted by both the parties, the Magistrate would have ground for proceeding under sub-section (5). 25 C. W. N. 719=22 Cr. L. J. 623 ; see also 7 P. L. T. 288=27 Cr. L. J. 220=A. I. R. 1924 Pat. 589=92 Ind. Cas. 172 ; 44 Ind. Cas 122=3 P. L. J. 249=19 Cr. L. J. 266.

Burden of proof.—Though there is nothing in s. 145 to suggest which party should begin the case, it is usual for the second party to begin his evidence. 21 Cr. L. J. 136=54 Ind. Cas. 616. Onus is on party denying dispute to prove its non-existence. 33 Cr. L J. 46=A. I. R. 1932 Oudh. 21. The onus lay heavily on the plaintiff, to show that the defendant was not in possession of the properties by virtue of the title he alleged in the previous proceedings. 21 A. L. J. 554=4 Pat. L. T. 447=28 C. W. N. 277 P. C.=50 I. A. 183=25 Bom. L. R. 1259=A. I. R. 1923 P. C. 128.

Decree of Civil Court.—Magistrate is not bound to acccpt evidence of delivery of possession by Civil Court. But if he finds delivery of possession has been given, such person must be presumed to continue in possession. A. I. R. 1933 Pat. 586 ; see also 29 Cr. L. J. 902=20 N. L. R. 148 ; A. I. R. 1921 Pat. 295=2 Pat. L. T. 266 ; 60 Ind. Cas. 430=20 Cr. L. J. 238 ; 5 P. L. T. 69. 23 Cr. L. J. 321=3 Pat. L. T. 335. But conclusive orders of Civil Courts as to possession are binding on Criminal Courts. 3 Pat. L. T. 826=24 Cr. L. J. 241 ; see also 5 Pat. L. J. 104=1 Pat. L. T. 9=21 Cr. L. J. 200 ; 4 P. L. T. 333=24 Cr. L. J. 939 ; 27 C. W. N. 267=24 Cr. L. J. 517. Presumption for purposes of s. 145 is that decree holder entered into possession on date of decree and continued until disturbed. 10 P. L. T. 869=A. I. R. 1930 Pat. 162; see also 4 P. L. T. 248=24 Cr. L. J. 465 ; 21 Cr. L J. 575=1 Pat. L. T. 81. 23 Cr. L. J. 92=42 M. L. J. 147=65 Ind. Cas. 44 ; 25 Cr. L. J. 541=10 P. L. T. 685. Person in possession but dispossessed by execution has to show that he has since regained no possession. 20 Cr. L. J. 445=51 Ind. Cas. 269 ; see also 25 C. W. N. 743=A. I. R. 1922 Cal. 364 =25 Ind. Cas. 75 ; 23 C. W. N. 982=30 C. L. J. 123=20 Cr. L. J. 840. Once a decree for possession has been passed in favour of a person a Magistrate

cannot again refer him to Civil Court. 27 Cr. L. J. 43=91 Ind. Cas. 75. Incidental decision in criminal or Civil Court does not *per se* cause a cessation of the dispute between the parties as to possession. 6 P. L. T. 710=26 Cr. L. J. 870.

Decision of Revenue Court.—A summary adjudication upon the question of possession by the Land Registration Officer under B. C. Act VII of 1876 is entitled to the same respect as the decree of a Civil Court. 1 Pat. L. T. 588=21 Cr. L J. 785. The mere fact that the Revenue Records show that the holding was joint is not sufficient to stop the enquiry under s. 145. 23 Cr. L. J. 225=2 Lah. 372=A. I. R. 1922 Lah. 348. Taking possession under s. 87. B. T. Act. is not possible and the person so taking possession cannot be ousted under Cl. (4). 31 C. W. N. 242=28 Cr. L. J. 245= A. I. R. 1927 Cal. 944. The order under s. 145 does not interfere with the subsequent order under s. 40 of the Land Revenue Act, by which possession has been made over to the party in whose favour mutation has been effected. 26 Cr. L. J. 1551=A. I. R. 1926 Oudh. 179.

Local enquiry.—There is no hard and fast rule that in every case under s. 145 a local investigation must be held. 20 Cr. L. J. 17 (Cal.)=48 Ind. Cas. 497. Where a final order under s. 145 of the Code is based on a local enquiry of which no note or memorandum is made, it was held that the order was based on no evidence and must be set aside. 25 C. W. N. 1007=34 C. L. J. 127=23 Cr. L. J. 199=65 Ind. Cas. 855. Enquiry as regards possession must be like that in summons case. 2 P. L. T. 267= 22 Cr. L. J. 481. Result of local inquiry become that of the record and parties are entitled to knowledge of it. 48 Ind. Cas. 987. In case of local inspection where order is based on Magistrate's opinion and on documentary evidence alone and oral evidence is disallowed it is without jurisdiction. 38 M. L. J. 73=21 Cr. L. J. 46 ; see also 46 C. 1056=26 C. W. N. 750=20 Cr. L. J. 688. Mere inspection and fact of number of people supporting a party's claim is not enough to find possession for that party. 28 Cr. L. J. 603=8 P. L. T. 755=A. I. R. 1927 Pat. 301. It cannot be held that the survey of the lands, after enquiring from all the parties as to what land was in dispute, amounted to a "local enquiry". It is a mere ministerial act. 3 Pat. L. T. 17=23 Cr. L. J. 152=65 Ind. Cas. 616. Local inspection would not be a legal substitute for evidence especially where the enquiry on the spot is *ex parte* and where the evidence in the case is practically ignored. 1 Pat L. T. 569=22 Cr. L. J. 424.

Forum.—It is illegal for the Sub-Divisional Magistrate to direct the parties to appear before another Magisirate. 2 P. L. T. 186=22 Cr. L. J. 483=62 Ind. Cas. 179.

Large area.—There is nothing to prevent a Magistrate from joining numerous claims where they are so inter-related as to form one transaction and in dealing with the matter at one hearing provided there is no question or prejudice. 26 Cr. L. J. 424=85 Ind. Cas. 40. Where a Magistrate had dealt with a large area of land than is included in the order drawn up in the case, the whole order may be set aside. 4 Pat. L. T. 372=24 Cr. L. J. 309=72 Ind. Cas. 69 ; see also 1 Pat. L. T. 557=21 Cr. L. J. 753=58 Ind. Cas. 337.

Party.—Order under s. 145 is binding not only on those who were parties to proceedings, but sometimes extends to others not parties. 33 C. W. N. 1002=A. I. R. 1930 Cal. 63. Where a person was not only aware of proceedings under s. 145 but has acted in collusion with one party in order to deprive the other party of the fruits of their success in s. 145 case, *held* that the order under s. 145 was binding on such person any resistance to execution of the order will justify conviction under s. 188. 33 C. W. N. 1002 ; see also 45 A. 306=21 A. L. J. 502=71 Ind. Cas. 402 ; 52 M. 787=A. I. R. 1930 Mad. 48. A party's son having no possession or title is not bound by order against his father. 4 Pat. 799=90 Ind. Cas. 513. The ordinary rule is that persons not parties to proceedings are not bound by order under s. 145 which is not against him. 26 Cr. L. J. 1035=87 Ind. Cas. 923=A. I. R. 1925 Nag. 448 ; see 8 O. L. J. 410=A. I. R. 1921 Oudh. 191=66 Ind. Cas. 678. The words "parties concerned in such a dispute" in s. 145 include persons interested in or claiming a right to the property in dispute. An order for possession against a servant engaged on monthly wages and custody of the disputed property does not bind his successor or master. 18 Cr. L. J. 44=36 Ind. Cas. 876. The omission to implead a tenant in possession of a portion of the disputed land does not make the proceedings defective. 3 Pat. L. T. 291=29 Cr. L. J. 125=65 Ind. Cas. 557. The question of misjoinder of parties does not ordinarily affect jurisdiction. It is question of procedure. 26 Cr. L. J. 1287=7 P. L. T. 156. Party may be added if he was concerned originally in the dispute. As if a party is added before the enquiry begins there is no irregularity.

20 C. W. N. 978=17 Cr. L. J. 449=36 Ind. Cas. 129. Liquidator as such is a party to proceedings under s. 145.

Movable property.—Order to police to take charge of building and movable property in building where the dispute is regarding both is proper. A. I. R. 1933 Lah. 409=34 P. L. R. 368.

Nature of the proceeding.—Proceedings under s. 145 are of quasi-civil nature and parties should be given time and opportunity to adduce evidence in support of their case. 25 Cr. L. J. 303=76 Ind. Cas. 975. The proceedings are between Crown on one side and all the other parties on the other ranged as the first party, second party and so forth. Processes should issue at Government expense. 25 Cr. L J. 1109=81 Ind. Cas. 933=A. I. R. 1925 Nag. 142. If the section is to be consistent, person aginst whom an order has been passed under s. 145 must be an 'accused' under s. 360 Criminal Procedure Code. 23 Cr. L. J. 125=65 Ind. Cas. 557.

Defects in procedure.—Non-compliance with strict letter of law in formulating order under s. 145 (1) does not prevent Magistrate from exercising jurisdiction to proceed with case. A. I. R. 1933 All. 264 (F. B.)=34 Cr. L. J. 414. Failure to state grounds of satisfaction does not vitiate trial if there is sufficient compliance with provisions of s. 145. A. I. R. 1932 Sind. 145=26 S. L. R. 353. Omission to record preliminary order is curable by s. 537. A. I. R. 1933 Pesh. 88=145 Ind. Cas. 868; see also A. I. R. 1932 All. 446=1932 A. L. J. 503=35 Cr. L. J. 156. Where no prejudice is caused whole proceedings should not be set aside. A. I. R. 1932 All. 446=1932 A. L. J. 503=34 Cr. L. J. 156. In a proceeding under s. 145, refusal by Court to grant adjournment does not amount to irregularity as to render order liable to be set aside. A. I. R. 1932 Sind. 145=34 Cr. L. J. 216. The Magistrate must hear the evidence supplied by the parties and must hear the arguments of their pleaders. 5 Pat. L. J. 246=1 Pat. L. T. 608=21 Cr. L. J. 572; see also 5 Pat. L. W. 103=19 Cr. L. J. 741=46 Ind. Cas. 517; 21 C. W. N. 928=27 C. L. J. 88=19 Cr. L. J. 108; 18 Cr. L. J. 36=36 Ind. Cas. 868; 16 Cr. L. J. 789=2 L. W. 1208=31 Ind. Cas. 645. It depends on the circumstances of each case whether the rejection or the omission from consideration of documents or evidence would be tantamount to refusal to exercise proper jurisdiction. 2 P. L. T. 333=A. I. R. 1921 Pat. 483. Evidence can be shut out only on the ground that justice will be delayed or defeated in proceedings under s. 145. 2 P. L. T. 330=22 Cr. L. J. 430=61 Ind. Cas. 718. A decision based simply upon consideration of only the oral or the documentary evidence is liable to be set aside. 1 P. L. T. 291=21 Cr. L. J. 601=57 Ind. Cas. 169; see also 38 M. L. J. 73=21 Cr. L. J. 46=54 Ind. Cas. 254. Where it appears that a party to the dispute has had no opportunity of appearing and putting in his written statement, the proceeding will be set aside in revision. 20 Cr. L. J. 725 (N.)=53 Ind. Cas. 615. The mere omission by a Magistrate to state that he was satisfied from the police report that there was a likelihood of a breach of the peace is not a fatal defect. 18 A. L. J. 1140=12 Cr. L. J. 97=59 Ind. Cas. 401; see also A. I. R. 1922 Pat. 449. Failure to add a party is not an error of jurisdiction. 47 C. 438=24 C W. N. 97 (per *New bould J.*) *contra* per *Huda J.* in *ibid*; see also 82 Ind. Cas 691=110 L. J. 757. The essential requisite is that the Magistrate must be satisfied as to existence of a dispute likely to cause a breach of the peace. 67 Ind. Cas. 584. Where Magistrate proceeds *ex parte* with the case it is not a mere technical irregularity. 28 Cr. L. J. 418=A. I. R. 1927 Nag. 234; see also 31 Cr. L. J. 190=A. I. R. 1929 Mad. 847=120 Ind Cas. 895. Errors and omissions relating to mere procedure and not to jurisdiction cannot direct a Magistrate of his jurisdiction in the absence of prejudice to any party. 26 Cr. L. J. 1292=A. I. R. 1926 Sind. 53=89 Ind. Cas. 156. Neither omission to publish notice under sub-section (3) nor omission to state grounds, and the land in dispute, will vitiate the proceedings. 25 Cr. L. J. 1139=A. I. R. 1925 Oudh. 152=81 Ind. Cas. 963. Where the parties concerned had full knowledge of the proceedings from start to finish an omission to serve notice on them and to affix a copy of the court's order as required by sub-section (3) is an irregularity curable by s. 537. 25 Cr. L. J. 159=A. I. R. 1924 Nag. 171=76 Ind. Cas. 303; see also 3 Bur. L. J. 256=26 Cr. L. J. 324=A. I. R. 1925 Rang. 111=84 Ind. Cas. 548; 27 Cr. L. J. 660=A. I. R. 1925 Rang. 270=3 Rang. 169; but see 4 Lah. 66=24 Cr. L. J. 751=74 Ind. Cas. 79. Finding as to possession based on evidence in another case is not a finding based on legal evidence. 10 O. L. J. 157=23 Cr. L. J. 684=25 O. C. 148=69 Ind. Cas. 268. Omission to read over the evidence to the witnesses does not vitiate the order under s. 145. 5 P. L. T. 237=25 Cr. L. J. 89=A. I. R. 1924 Pat. 786=76 Ind. Cas. 25.

Where a Magistrate did not record a decision under sub-section (4) nor issued an order containing an order on a supposed right to possession, it was held to constitute an obvious infringement of the provisions of Ss. 145 and 146. 24 Cr. L. J. 156=71 Ind. Cas. 508. The refusal to issue summons which is not obligatory on Court to issue does not mean a denial of fair trial. 3 Pat. L. T. 433=23 Cr. L. J. 275=66 Ind. Cas. 419. Omission to read over the evidence to the witness does not vitiate the order under s. 145. 5 P. L. T. 237=25 Cr. L. J. 89=76 Ind. Cas. 25. Refusal of adjournment for production of documents, without which oral evidence could not be appreciated is an arbitrary order constituting denial of justice. 33 C. L. J. 507=25 C. W. N. 602=22 Cr. L. J. 335. A decision arrived at in the absence of parties or either of them is illegal. 22 Cr. L. J. 90. A Magistrate who refuses to admit documents of title in a proceeding under s. 145 commits an error in the exercise of his jurisdiction. 19 Cr. L. J. 764; but see 22 C. W. N. 499=27 C. L. J. 465=19 Cr. L. J. 681. A Magistrate should not supplement an omission in the final order without giving the opposite party notice of it. 22 C. W. N. 552=19 Cr. L. J. 732. Want of service of notice under s. 145 (3) Cr. P. Code is grave irregularity which vitiates the proceedings and any order passed therein can be set aside by High Court. 4 Pat. L. W. 183=19 Cr. L. J. 71=43 Ind. Cas. 103. Jurisdiction of a Magistrate is not affected by his not recording in his preliminary order under s. 145. 3 O. L. J. 546=19 O. C. 136=18 Cr. L. J. 100; see also 18 Cr. L. J. 156 (Mad.)=37 Ind. Cas. 524. Where Magistrate had explained everything to parties the omission to frame an order as required by s. 145 (1) or omission to serve parties as required by s. 145 (3) will not invalidate order. 18 Cr. L. J. 633=39 Ind. Cas. 1001=26 P. W. R. Cr. 1917. An omission to serve or record the order under s. 145, cl. (4) is an irregularity which will render proceedings liable to be set aside; a Magistrate in case of forcible possession must find the date of dispossession for every item of property. 18 Cr. L. J. 650=40 P. R. Cr. 1917.

Effect of order.—An order under s. 145 is merely directory and lasts only until the party in whose favour it is made is evicted in due course of law. 35 C. W. N. 483; see also 10 P. L. T. 689=30 Cr. L. J. 840=A. I. R. 1929 Pat. 505. An order under s. 145 is, until superseded, final and binding as any order of Civil Court itself could be. 24 O. C. 21=25 Cr. L. J. 384=A. I. R. 1921 Oudh. 119=61 Ind. Cas. 240. But the decision in proceedings under this section is not of such a nature as to give rise to a presumption in the Civil Court in favour of the successful party in those proceedings. A. I. R. 1923 Pat. 401=71 Ind. Cas. 478. In every case where an order uuder s. 145 has been made, the actual dispossession of the unsuccessful party is not a necessary consequence. 11 O. L. J. 743=26 Cr. L. J. 398=84 Ind. Cas. 942. In case of denial of present possession under s. 145, failure to file a suit within three years does not bar a suit for redemption. 23 N. L. R. 164=A. I. R. 1928 Nag. 97. Magistrate can direct possession to party in peaceful possession until eviction by Court. 27 Bom. L. R. 1353=27 Cr. L. J. 661. An order under s. 145 does not mean that the successful party is thereby entitled as of right, to the property in defeasance of whatever legal title there may be existing in favour of the rightful owner. 18 L. W. 649=A. I. R. 1924 Mad. 224=76 Ind. Cas. 76. Declaration of possession in favour of party gives rise to a cause of action against him personally though he was in possession on behalf of another. 4 Pat. L. T. 487=A. I. R. 1923 Pat. 558. Where a Criminal Court makes an order under s. 145 which is found to be without jurisdiction a suit to recover possession is governed by Art. 142 of the Limitation Act. 60 Ind. Cas. 860. Order under s. 145 lasts only until party in whose favour it is made is lawfully evicted. A. I. R. 1932 Cal. 29=35 C. W. N. 483. Where an order is passed under s. 145 right to sue arise from moment to moment. 14 P. L. T. 113=72 Pat. 261=A. I. R. 1933 Pat. 224.

Evidentiary value of order.—The order under s. 145 is only a piece of evidence to be taken into consideration in determining who is in possession. But it is open to the other party to show in a subsequent proceeding that in spite of the order they were actually in possession. 31 C. W. N. 964=28 Cr. L. J. 827=A. I. R. 1927 Cal. 701. A Magistrate is concluded by a previous order of a criminal Court relating to the subject in dispute. 27 P. L. R. 630=27 Cr. L. J. 815=A. I. R. 1926 Lah. 479. The order of a Criminal Court under s. 145 Cr. P. Code can be used as evidence of possession in a subsequent civil suit. 21 C. W. N. 175=39 Ind. Cas. 356.

Fresh proceedings.—Proceedings once dropped cannot be revived. 23 Cr. L. J. 195=65 Ind. Cas. 851. When once an order under s. 145 (5) is passed, the Magistrate is not competent to revive the proceeding, but can only take action to

start a fresh proceeding upon fresh materials under clause (1) of the section. 2 P. L. T. 267=22 Cr. L. J. 481=62 Ind. Cas. 177 ; see also 18 Cr. L. J. 763=2 Pat. L. W. 25 ; 24 Cr. L. J. 160=A. I. R. 1923 Lah. 81=71 Ind. Cas. 512 ; 27 C. W. N. 171=24 Cr. L. J. 97.

Security for keeping peace.—An order under s. 107 cannot be made on the termination of proceedings under s. 145. 14 A. L. J. 794=17 Cr. L. J. 527=36 Ind. Cas. 495. There cannot be simultaneous proceedings on the same materials under s. 145 and 107. If there are, then the proceedings under s. 107 should be set aside. 1 Pat. L. W. 546=18 Cr. L. J. 628=39 Ind. Cas. 996. If it is probable that the parties to a land dispute will break the king's peace before the decision of the Civil Court can be given, that danger can be guarded against by an order under s. 107 in an appropriate case. 28 Bom. L. R. 488=27 Cr. L. J. 734=A. I. R. 1926 Bom. 313=95 Ind. Cas. 62. Where one party is clearly in possession the proper remedy is to take proceedings under s. 107 of the Code. 1 Pat. L. T. 681=22 Cr. L. J. 86=59 Ind. Cas. 374 ; see also 21 Cr. L. J. 134 (Cal.)=54 Ind. Cas. 614 ; A. I. R. 1931 Pat. 347=32 Cr. L. J. 1014 ; A. I. R. 1933 Cal. 424=34 Cr. L. J. 810 ; 59 Ind. Cas. 374=1 Pat. L. T. 681=22 Cr. L. J. 86 ; 26 Cr. L. J. 1562=6 P. L. T. 766=90 Ind. Cas. 442. It may sometimes be necessary to find parties under s. 107 in order to prevent a breach of the peace even though proceedings under s. 145 have been taken. 24 O. C. 21=21 Cr. L. J. 384=A. I. R. 1921 Oudh. 119=61 Ind. Cas. 240.

Power of Magistrate.—An order once passed is final and cannot be set aside reviewed or varied by the same Magistrate or his successor. 48 A. 258=24 A. L. J. 227=27 Cr. L. J. 466=93 Ind. Cas. 690. The Magistrate can pass a preliminary order under s. 146 (1) merely on an examination of the applicant before him and without any other materials. 1931 Cr. C. 153=A. I. R. 1931 Rang. 51=131 Ind. Cas. 63. The taking of, proceedings is essentially a matter in the Magistrate's discretion. It cannot be filtered by directions of the District Magistrate. 50 C. L. J. 287=34 C. W. N. 82=A. I. R. 1929 Cal. 805. An order in respect of a larger area of land that was included in the proceedings could not be passed. 28 Cr. L. J. 929=A. I. R. 1928 Nag. 81. Although the Sub-divisional Magistrate has refused to take action under s. 145. District Magistrate can take proceedings *suo-motu* under that section on the same materials. 43 C. L. J. 586=27 Cr. L. J. 1083=A. I. R. 1927 Oudh. 316=104 Ind. Cas. 717 ; see 43 C. L. J. 586=27 Cr. L. J. 1083. A Magistrate has no jurisdiction to pass order in respect of law which was not referred to the initiatory proceeding. 3 Pat. 288=7 P. L. 288=27 Cr. L. J. 220=92 Ind. Cas. 172. A Magistrate cannot in any stage cancel the order initiating proceedings if he is satisfied that there is no dispute likely to cause breach of peace. 33 C. W. N. 399=A. I. R. 1929 Cal. 328. Magistrate initiating proceedings can stay the same on receipt of information as to absence of likelihood of a breach of the peace. *Ibid.* No order can be passed as regards future possession with reference to the actual possession at the date of the preliminary order. An order regarding future possesion on the strength of an agreement is wrong. A. I. R. 1929 Nag. 285=121 Ind. Cas. 47. Where District Magistrate after setting aside proceedings under s. 144 (4) directs Sub-divisional Magistrate to draw up proceedings under s. 145, order so drawn up is without jurisdiction. 33 C. W. N. 723=A. I. R. 1929 Cal. 751. If the Magistrate is satisfied that the likelihood of the breach of the peace either did not exist or that it has ceased to exist, it is the proper duty of the Magistrate to drop the proceedings under s. 145. 27 Cr. L. J. 95=49 M. 232=22 M. L. W. 524. Proceedings under s. 107 can be dropped and proceedings under s. 145 can be started instead. 19 Cr. L. J. 712=46 Ind. Cas. 296. Section 145 is merely intended to prevent a breach of the peace and if the Magistrate thinks it sufficient to include a portion of the land, which is the subject of the Police report he can do so. 18 Cr. L. J. 692. Proceedings under s. 145 can be converted into one under s. 147. 26 Cr. L. J. 558=A. I. R. 1925 Cal. 1022=85 Ind. Cas. 654. A Magistrate can after final order under s. 144, draw up proceedings under s. 145. 1 Pat. L. T. 369=21 Cr. L. J. 625=57 Ind. Cas. 449. It is competent for a Divisional Magistrate to initiate proceedings under s. 145, Cr. P Code during the substance of an order passed by a Sub-Magistrate under s. 144. 11 L. W. 459=21 Cr. L. J. 478=54 Ind Cas. 473. Where proceedings under s. 145 have once been started, the Magistrate cannot strike them off. He must pass an order under s. 145 or under s. 146. 20 Cr. L. J. 464=15 Ind. Cas. 352. A Magistrate has no jurisdiction under s. 145 to attach movable properties in a house. 20 A. L. J. 906=24 Cr. L. J. 85. Single procedings under s. 145 is not without jurisdiction because some of the parties are concerned only with possession of a portion of land in dispute. 24 Cr. L. J. 235=

A. I. R. 1924 Cal. 539=71 Ind. Cas. 699. The Magistrate cannot make an order in favour of one of the parties where there is no evidence as to a likelihood of a breach of peace between the parties or either of them. 25 C. W. N. 214=22 Cr. L. J. 502=62 Ind. Cas. 326. A Magistrate has power to decide whether or not he has jurisdiction over the land in dispute and where he decides he has no jurisdiction, it is not a failure to exercise his jurisdiction. 22 Cr. L. J. 392=61 Ind Cas. 520. A Magistrate has no power to pass a temporary order pending his decision of the question of possession under s. 145. 14 P. L. R. 1921=22 Cr. L. J. 48=59 Ind. Cas. 160. A Magistrate may take further evidence if he thinks it necessary to do so. 5 P. L. T. 69=2 Pat. L. R. Cr. 104=75 Ind. Cas. 535. A Magistrate has no jurisdiction to make an order under this section without any evidence being adduced before him. 24 Cr. L. J. 702=73 Ind. Cas. 814. The Magistrate cannot deal in his order more land than that included in the proceedings. 4 Pat. L. T. 372=24 Cr. L. J. 309. If Magistrate comes to the conclusion that there is no danger of a breach of peace the proper course is to cancel his order under s. 145 (5) and he cannot pass an order under cl. (6). Magistrate can record his opinion as to possession. 26 Cr. L. J. 1398=A. I. R. 1926 Oudh. 182=89 Ind. Cas. 710. A Magistrate has no jurisdiction to order restoration of possession. All that the Magistrate is empowered to do is to declare that a particular party is entitled to possession. 24 Cr L. J. 461=A. I. R. 1924 Lah. 411=72 Ind. Cas. 621. After transfer although a Magistrate tried a case, he is incompetent to deliver judgment. 38 C. L. J. 201=25 Cr. L. J. 192.

Order without jurisdiction.—Section 145 (1) requires that a Magistrate has to satisfy himself "that a dispute likely to cause a breach of peace exists concerning any land" and has there to "make an order in writing, stating the grounds of his being so satisfied". Failure to comply with the provision makes the Magistrate's order without jurisdiction. 7 Lah. L. J. 173=26 Cr. L. J. 1177. Under s. 145 a Magistrate has jurisdiction to find possession but not the mode of possession or how the possession is to be exercised, and hence any order so determining the mode of possession is without jurisdiction, 30 C. W. N. 873=A. I. R. 1926 Cal. 1022. If the Magistrate in the course of the preliminary order directs that both the parties be restrained from entering the property and its compound until further orders, the order is *ultra vires*. A. I. R. 1931 Rang. 51=131 Ind. Cas. 63. An order based upon a written statement of one of the parties supported by his own evidence is not without jurisdiction. 5 P. L. T. 69=2 Pat. L. R. Cr. 104=A. I. R. 1924 Pat. 509=75 Ind. Cas. 535. Order bound on no enquiry, but on incidental findings in proceedings under s. 144 is without jurisdiction. 43 M. L. J 716=24 Cr. L. J. 429=72 Ind. Cas. 541. Order passed by Magistrate without taking any evidence himself and depending solely on report by subordinate Magistrate is one passed without jurisdiction. 33 Cr. L J. 536=35 M. L. W. 390=A. I. R. 1932 Mad. 368.

Order without notice.—*Ex parte* order without notice is illegal. A. I. R. 1933 Lah. 145=34 Cr. L. J. 616; see also A. I. R. 1930 Lah. 895=128 Ind. Cas. 313; 26 Cr. L. J. 1287=7 P. L. T. 156; 22 Cr. L. J. 90; 20 Cr. L. J. 816 (Nag.)=53 Ind. Cas. 720; 4 Pat. L. T. 723=24 Cr. L. J. 345. An order under s. 145 (6) of the Criminal Procedure Code made without any notice to the party affected is entirely without jurisdiction. 19 Cr. L. J. 112=5 Pat. L. W. 254=43 Ind. Cas. 336. Where no preliminary order, as required by s. 145, sub-section (1) is served on a party, he cannot be subjected to the final order. 2 O. W. N. 704=26 Cr. L. J. 1581=A. I. R. 1925 Oudh. 605=90 Ind. Cas. 541.

Revision.—An order under s. 145 and proceedings under Chapter XII of the Cr. Pro. Code. are not subject to revision. 19 Cr. L. J. 384=44 Ind. Cas. 741. 18 Cr. L. J. 828; 18 Cr. L. J. 418; 18 Cr. L. J. 160; 19 Cr. L. J. 381. In a dispute under s. 145 Cr. Pro. Code a High Court cannot interfere on the merits so long as the Magistrate is acting within his jurisdiction. 18 Cr. L. J. 557=15 A. L. J 270=39 Ind. Cas. 701; see also 18 Cr. L. J. 642=40 Ind. Cas. 692; 16 Cr. L. J. 767=31 Ind. Cas. 367; 17 Cr. L. J 217=34 Ind. Cas. 329; 17 Cr. L. J. 389=35 Ind. Cas. 821; 20 C. L. J. 445; 20 Cr. L. J. 176 (Nag.)=49 Ind. Cas. 496; 20 Cr. L. J. 124 (Nag)=49 Ind. Cas. 108; 19 Cr. L. J. 105=43 Ind. Cas. 329; 77 Ind. Cas. 728=11 O. L. J. 59=25 Cr. L. J. 440; 43 M. L. J. 624=24 Cr. L. J. 100; 23 Cr. L. J. 424=A. I. R. 1922 Lah. 454. Mere delay in drawing formal proceedings is no ground for interference in revision unless substantial injustice is caused. A. I. R. 1933 Pat. 601. Order of dismissal of complaint under s. 145 on ground of absence of likelihood of breach of peace cannot be set aside. 10 O. W. N. 310=34 Cr. L. J. 934=A. I. R. 1933 Oudh. 253. Practice as regards reference in cases under s. 145 is same as it is

in ordinary case. 35 C. W. N. 374. Magistrate's order should not be lightly interfered with in revision. 34 P. L. R. 368=A. I. R. 1933 Lah. 409. High Court would refuse to interfere where there is no question of law and on facts reasons given by Magistrate is not unsound. A. I. R. 1934 Pat. 33. Where there is no oral evidence and decision is based on record of rights, High Court will not interfere. 2 Pat L. T. 266=A. I. R. 1921 Pat. 295. Where the Magistrate dismissed an application without finding who was in possession his order is revisable. 23 Cr. L. J. 225=A. I. R. 1922 Lah. 348=66 Ind. Cas. 65. An order under s. 145 made for the purpose of keeping the peace pending the party's appeal to the civil tribunal and should not be lightly disturbed. 17 Cr. L. J. 143 (M)=33 Ind. Cas. 319. The High Court cannot interfere with the costs under s. 349, Cr. P. Code or s. 107 of the Government of India Act. 17 Cr. L. J. 348=35 Ind. Cas. 524. High Court can only interfere if the Magistrate's finding about possession is not based on any material before him. But he is the sole judge of its sufficiency. 3 P. L. W. 353=19 Cr. L. J. 113=43 Ind. Cas. 401. Making order declaring possession of property not claimed is not a defect of jurisdiction. 18 Cr. L. J. 995=42 Ind. Cas. 723. The rejection of material evidence offered by a party would amount to refusal to exercise jurisdiction and is a proper ground for revision. 19 Cr. L. J. 529=45 Ind. Cas. 337 ; see also 20 Cr. L. J. 234=49 Ind. Cas. 858. Where a Magistrate acts in disregard of an order of a Civil Court directing delivery of possession he acts with material irregularity justifying interference by the High Court in revision. 37 C. L. J. 256=24 Cr. L. J. 517=73 Ind. Cas. 53. Where there is no attempt to deal with question of possession and there is no finding thereon, order amounts to an infringement of s. 145 and can be set aside by High Court in revision. 16 L. W. 338=24 Cr. L. J. 156=71 Ind. Cas. 508 ; but see 29 Cr. L. J. 861=A. I. R. 1928 Nag. 325=111 Ind. Cas. 445. Unless the order putting a person in possession is illegal or irregular it cannot be interfered with in revision. 6 O. W. N. 17=30 Cr. L. J. 381=A. I. R. 1929 Oudh. 82. Absence of reasons and indications as to how a Magistrate arrived at the decision in question is a ground for revision. 25 Cr. L. J. 1115=39 C. L. J. 366=A. I. R. 1924 Cal. 848. A reference asking to confirm a part of the order under s. 145 and quash the rest is not in proper form. 44 C. L. J. 593=28 Cr. L. J. 20=99 Ind. Cas. 1010. It is not the duty of the High Court to examine the evidence to consider whether Magistrate might have come to a different finding. 9 P. L. T. 18=28 Cr. L. J. 901=A. I. R. 1928 Pat. 88. Where an order under section 145 is not plainly or palpably wrong, the mere absence of any evidence as to the breach of the peace on the record is not a sufficient reason for interfering in revision. 4 O. W. N. 834=28 Cr. L. J. 847=A. I. R. 1927 Oudh. 359. Omission to record grounds which had caused a Magistrate to act should not be a reason to set aside an order otherwise justified and valid. 5 Rang. 129=28 Cr. L. J. 628=A. I. R. 1927 Rang. 177=102 Ind. Cas. 911. Magistrate going into question of ownership and not explaining how a breach of the peace was apprehended, is liable to have the order set aside by the High Court in revision. 28 P. L. R. 107=28 Cr. L. J. 328=A. I. R. 1927 Lah. 822. The mere fact that the Magistrate had not made it clear in his order that there was a likelihood of the breach of the peace did not justify interference in revision. 26 Cr. L. J. 1035=A. I. R. 1925 Nag. 448. The High Court should not entertain the application where the Sessions Judge has, under ss. 435 to 438, concurrent jurisdiction. 27 Cr. L. J. 71=91 Ind. Cas. 245. The Court as a Court of revision cannot interfere with the decision of the trial Court on the factum of possession as long as there is evidence in support of that finding. 8 L. L. J. 47=27 P. L. R. 102=27 Cr. L. J. 471=93 Ind. Cas. 695. Omission to make the initial order as required by s. 145 (1) and a failure to make at any subsequent stage an order at least complying with the requirements of sub-section (1) to s. 145, make the proceedings entirely without jurisdiction. 4 Lah. 66=24 Cr. L. J. 751. The High Court will not ordinarily interfere with a preliminary order under s. 145, Cr. Pro. Code except where such order is manifestly illegal. 27 M. L. T. 234=11 L. W. 459=21 Cr. L. J. 73=54 Ind. Cas. 473. But in a proper case the High Court can call for the records of the proceedings of Magistrate under s. 145 Cr. P. Code and interfere in revision with the order. 42 A. 214=18 A. L. J. 171=55 Ind. Cas. 194. Declaration as to possession in spite of contrary civil decree is not revisable. 22 Cr. L. J. 238 (Pat.)=60 Ind. Cas. 430. The High Court can interfere in revision if there has been not a proceeding either in fact or in law as contemplated by s. 145. 18 A. L. J. 1140=22 Cr. L. J. 97. The mere absence of a finding that there is likelihood of a breach of the peace does not justify the interference by the High Court. 33 C. L. J. 69=25 C. W. N. 215=22 Cr. L. J. 484=62 Ind. Cas. 180. An arbitrary refusal to examine more than a certain number of witness in a proceeding under s. 145 affects the exercise of

jurisdiction and is revisable by the High Court. 2 P. L. T. 330=22 Cr. L. J. 430= A. I. R. 1921 Pat. 308 ; see also 25 O. C. 148=23 Cr. L. J. 684. On a difference of opinion in matters under s. 545, Cr. P Code, the Senior Judge's opinion prevails as the jurisdiction exercised by the High Court is under s. 1077 the Government of India Act and not under s. 435 and 439 Cr. Pro. Code. 32 C. L. J. 54=22 Cr. J. 99= 59 Ind. Cas. 403. The death of the petitioner for revisions of an order under s. 145 of the Code during the pendency of the application causes the application to abate. 23 P. R. Cr. 1919=20 Cr L. J. 720=52 Ind. Cas. 800. High Court does not interfere with discretion of Magistrate. A. I. R. 1934 Pat. 463.

Government of India Act, s. 107—The High Court can interfere with orders under s. 145 only under s. 107 of the Government of India Act. 27 M. L. T. 234= 21 Cr. L. J. 73=54 Ind. Cas. 473 ; see also 24 C. W. N. 97=47 C. 438=21 Cr. L. J. 25 ; 17 Cr. L. J, 369=1 Pat. L. J. 336=1 Pat. L. W. 95=1917 Pat. 1 (F. B.)=35 Ind. Cas. 801 ; 48 C. 522=32 C. L. J. 270=22 Cr. L. J. 213 (S. B.) ; 37 C. L. J. 39=27 C. W. N. 171=24 Cr. L. J. 97 ; 24 Cr. L. J. 100=71 Ind. Cas. 228.

Power to attach subject of dispute.

146. (1) If the Magistrate decides that none of the parties was then in such possession or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach* it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession there of :

† Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit, ‡[and if no receiver of the property, the subject matter in dispute, has been appointed by any Civil Court] appoint a receiver thereof who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.§

‖ Provided that, in the event of a receiver of the property, the subject matter in dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

Notes.—The expression "competent Court" in this section is wide enough to cover a Revenue Court. 22 A L. J 803=25 Cr. L. J. 1242. The property can be attached where the Magistrate fails to satisfy himself as to which of the parties is in possession. 4 C. W N. 655 ; 14 C. 361 ; 21 C. W. N. 1059 ; 23 C. W. N. 910 ; 6 Bom. L. R. 723 ; 7 Bom. L. R. 18 ; 2 Weir 110. For attachment order Magistrate is not liable. 22 C. L. J. 283=20 C. W. N. 481. An order regarding mesne profits during attachment is without jurisdiction. The proper course is to deposit the money in Court and allow the parties to litigate for their shares. 20 M. L. T. 247. Rights of parties in whose favour Court makes declaration cannot be affected by any act of receiver. A. I. R 1933 Pat. 224=14 P. L. T. 113 ; 33 Cr. L. J. 956. Where civil suit is pending proceedings under s 145 should be on appeal. A. I. R. 1932 Nag. 83=33 Cr. L.J. 556. Where Receiver holds sum in deposit he can make over it to the plaintiff in whose favour a declaration has been made. 14 P. L. T. 113=12 Pat. 261 ; see also, 34 P. L. R. 242=14 Lah. 414=A. I. R. 1933 Lah. 195. Magistrate can leave the disputed property in any person's possession. 26 Cr. L. J. 1626=A. I. R. 1926 Oudh. 146. Where possession as well as rights of parties have been determined by the Civil courts an attachment by a Magistrate is improper. 48 A. 397 =24 L. J. 399=27 Cr. L. J. 559=A. I. R. 1926 All. 685. Magistrate if unable to satisfy himself which of the parties is then in possession cannot attach the subject

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* *See* Sch. V. Form XVIII, *infra*.

† This proviso was added by s. 29 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words were inserted by *ibid.*

§ *See* now the Code of Civil Procedure, 1908 (V. of 1908).

‖ This proviso was added by s. 29 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

of dispute under s. 146. 1930 M. W. N. 771 ; see also ; 32 Bom. L. R. 340 ; Brevity of an order for attachment is not always a ground for interference by the High Court. 32 C. L. J. 127=24 Cr. L. J. 575=73 Ind. Cas. 271. Order for attachment without a final decision as to possession is unsound. 4 P. L. T. 441=24 Cr. L. J. 754. Where there is no evidence as to interference with possession or dispossession attachment order is not wrong. 20 N. L. R. 195=A. I. R. 1925 Nag. 236=85 Ind. Cas. 631. Where there is no evidence at all as to which party was in possession on the date of the order under s. 145 Magistrate should not attach. 30 Cr. L. J. 802= 32 C. W. N. 843. Where parties do not adduce evidence as to possession even after adequate opportunities, Magistrate may attach on information received. 30 Cr. L. J. 894=118 Ind. Cas. 326. Section 146 (2) cannot be so read as to make its provisions apply to attachment under s. 145 (4). 30 P. L. R. 23=30 Cr. L. J. 411. Where a Magistrate passes an order under s. 146, Cr. Pro. Code a person claiming the property need only sue for a declaration. A. I. R. 1927 Nag. 316. An order under s. 146 Cr. P. Code can be withdrawn only when there is no likelihood of breach of peace and when the rights of the parties to the proceedings or the person entitled to possession has been determined by a competent Court. 26 Cr. L. J. 1055=30 C. W. N. 646. An entry in the finally published Record of Rights cannot be regarded as constituting the final adjudication of a competent Court within the meaning of s. 146 (1). 26 Cr. L. J. 1055=30 C. W. N. 646. Subsequent decision though not *inter partes* could be legal basis for an order. 25 Cr. L. J. 937. There must be a proceeding under s. 145 before an order under s. 146 can be passed. 24 Cr. L. J. 880=75 Ind. Cas. 80. Order for attachment merely for allegations and without inquiry is wrong. 43 M. L. J. 776=24 Cr. L. J. 429 ; see also ; 23 Cr. L. J. 688= 35 C. L. J. 291.

Dispute concerning rights of use of immovable property, etc.

* [**147.** (1) Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section (2) (whether such right be claimed as an easement or otherwise), within the local limits of his jurisdiction, he may make an order † in writing stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right :

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry ; or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasion before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.]

Scope.—The provisions of s. 147 are of an emergency nature and are conducted summarily. The word "such right exists" must be understood to mean "such right as is claimed". 27 Cr. L. J. 841=A. I. R. 1926 Pat. 348=95 Ind. Cas. 761. Proof of specific instances of user is not necessary. General user is sufficient. 27 Cr. L. J. 841=95 Ind. Cas. 761. Section 145 has no application to a dispute about easement.

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* Section 147 was substituted by s. 30 of the Code of Criminal procedure (Amendment) Act, 1923 (XVIII of 1923).

† *See* Sch. V. form XXIV, *infra.*

Proper section is s. 147. 22 Cr. L. J. 768=A. I. R. 1921 Nag. 100=64 Ind. Cas. 288. A right of way limited by the execution of vehicular traffic can be declared under s. 147. 2 P. L. T. 681=22 Cr. L. J. 739=A. I. R. 1921 Pat. 227=64 Ind. Cas. 131. A finding as to which party is in possession though unnecessary does not naturally affect the proceedings. 2 Pat. L. T. 681=22 Cr. L. J. 739. Section 147 applies to dispute as regards entry into a temple or a mosque. A. I. R. 1930 All. 452=127 Ind. Cas. 422. The expression "land or water" as used in s. 147 does not necessarily refer only to private property. Section 147 applies where the question is the right to use a certain public street by a particular community. 53 M. L. J. 523=28 Cr. L. J. 948=39 M. L. T. 448. Under this section right of personal easement as well as public right of way can be claimed. 27 Cr. L. J. 841=A. I. R. 1926 Pat. 348=95 Ind. Cas. 761 ; 16 Cr. L. J. 767=31 Ind. Cas. 367 ; 28 Cr. L. J. 948. Right to take car in possession along public road is a right covered by sub-section (1). 27 Bom. L. R. 1058=26 Cr. L. J. 1422=89 Ind. Cas. 846. In case of dispute as to the right to worship in a temple, action should be taken under s. (4) and not under s. 145. 26 Cr. L. J. 1057=48 M. L. J. 528=A. I. R. 1925 Mad. 779=88 Ind. Cas. 2. Under s. 147 right of fishery is apart from right to land. A. I. R. 1934 Pat. 86. In the absence of a finding that the right has been exercised within the periods specified the final order cannot be maintained. 5 P. L. T. 457=25 Cr. L. J. 996=A. I. R. 1924 Pat. 784=81 Ind. Cas. 708. Magistrate has jurisdiction to pass a prohibitary order. 23 C. W. N. 956=20 Cr. L. J. 251=49 Ind. Cas. 923. Dispute as to right to collect tolas from a hut is within the section. 24 C. L. J. 437=2 C. W. N. 439=18 Cr. L. J. 113=37 Ind. Cas. 465. Order based on report of subordinate Magistrate on local enquiry and on the written statement of the parties are not *ultra vires*. 17 C. L. J. 478=36 Ind. Cas. 158. In case of dispute regarding water course, where breach of peace is apprehended, Magistrate should take security from both parties under section 107 and leave the parties to have their rights settled by Civil Court. 27 Cr. L. J. 801=A. I. R. 1926 Lah. 550=95 Ind. Cas. 465. In case of enquiry under s. 147, opportunity should be given to parties to establish their case. Order affecting persons not parties to the proceeding is *ultra vires*. 20 Cr. L. J. 110=48 Ind. Cas. 990. Order must be based on a clear finding that the right was exercised within three months or during the last season or occassion before the enquiry. 2 P. L. T. 364=22 Cr. L. J. 463=A. I. R. 1929 Pat. 486=61 Ind. Cas. 847 ; see also 20 Cr. L. J. 558=51 Ind. Cas. 846. Three months are not the three months prior to order, but three months next before the institution of the inquiry. A. I. R. 1930 All. 452=127 Ind. Cas. 422. Date of institution of enquiry is the date which the grievance of the complaint is brought to the notice of the Magistrate directly or indirectly. A. I. R. 1930 Pat. 349. The expression "institution of the inquiry" in s. 147 Cr. Pro. Code does not mean the date when the formal proceedings are drawn up under the section. 44 Cr. L. J. 214=99 Ind. Cas. 33. Proceedings under section 145 can be converted into proceedings under section 147 and not s. 145. 26 Cr. L. J. 1057=85 Ind. Cas. 654. The mere fact that the Magistrate cannot pass an order under sub-section (2) is no reason for passing an order in favour of the opponents under sub-section (3). 27 Bom. L. R. 1058=26 Cr. L. J. 1422=89 Ind. Cas. 846. Order against the *gomasta* of a proprietor under this section is not illegal, and the omission to add the proprietor as party to the proceeding is a mere irregularity. 6 P. L. T. 799=27 Cr. L. J. 142=A. I. R. 1926 Pat. 196=91 Ind. Cas. 814. Where the matter in dispute has already been decided by Civil Court, Magistrate has no jurisdiction. 29 Bom. L. R. 715=28 Cr. L. J. 578=A. I. R. 1927 Bom. 654=102 Ind. Cas. 546. The enquiry contempleted by the proviso to sub-section (2) is the enquiry referred to in sub-section (1) 31 Cr. L. J. 361=A. I. R. 1930 Pat. 291=122 Ind. Cas. 145. The enquiry that is contemplated is enquiry by the Magistrate and not enquiry by the police. 53 C. 851=30 C. W. N. 863=44 C. L. J. 307=27 Cr. L. J. 1089=A. I. R. 1926 Cal. 1051. Though there is no specific pleading in regard to the acquisition of the right by prescription, but there is allegation of enjoyment for user, evidence can be let in to prove such acquisition. A. I. R. 1922 Pat. 214. Police report to be used only for the purposes of s. 147 (1). Police officer need not be called to depose to correctness. 1930 A. L. J. 1437=A. I. R. 1931 All. 14. Magistrate need not find that the easement is established, but only the user. A. I. R. 1930 Mad. 865. (=129 Ind. Cas. 68.) Direction to appear before another Magistrate is illegal. 2 Pat. L. T. 186=22 Cr. L. J. 483. Where public are forbidden the use of wells being used by them by person claiming ownership, it can be enquired under this section. 25 Cr. L. J. 353=77 Ind. Cas. 289. Order cannot be passed without notice under this section. A. I. R. 1933 Lah. 145=34 Cr. L. J. 616. Where the dispute is as regards the possession and

right to perform the puja, Magistrate can deal with the latter claim as well. A. I. R. 1933 Mad. 245=34 Cr. L. J. 88=37 M. L. W. 143. Interlocutory order must not in substance amount to final orders. A. I. R. 1932 Nag. 83=33 Cr. L. J. 556. Final orders need not be in all cases exactly in terms of the section. 146 Ind. Cas. 223= A. I. R. 1933 Cal. 752.

Revision by High Court.—The High Court does not interfere with orders under s. 147 unless such orders are passed without jurisdiction. 33 M. L. J. 78=18 Cr. L. J. 715=40 Ind. Cas. 715. Finding of fact as to right to use land or water can not be interfered with in revision. A. I. R. 1922 Pat. 214 ; see also 22 M. L. W. 831=A. I. R. 1925 Mad. 154.

Local inquiry.

148. (1) Whenever a local inquiry is necessary for the purposes of this Chapter any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instruction as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

Order as to costs.

(3) When any costs have been incurred by any party to a proceeding under this Chapter,* the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding and whether in whole or in part or proportion. †[Such costs may include any expenses incurred in respect of witnesses, and of pleader's fees, which the Court may consider reasonable].

Notes.—This section does not lay down that local enquiry by a Magistrate is not proper. 15 C. L. J. 267 ; 5 C. W. N. 686 ; 24 Cr. L. J. 507 ; 4 Pat. L. T. 297. An order under s. 148 Cr. P. Code, although it may be made subsequent to the passing of the judgment must be made by the Magistrate who tried the original case. 9 Pat. L. T. 835=114 Ind. Cas. 193. Local enquiry does not mean mere inspection, but authorises examination of witnesses. 33 M. L. J. 78=18 Cr. L. J. 715=40 Ind. Cas. 715. Inquiry prior to taking evidence is not necessary. 1 Pat. L. T. 569=22 Cr. L. J. 424=61 Ind. Cas. 712. Local inspection is to elucidate evidence and can be made at any stage, Magistrate to place on record what he saw. 4 Pat. L. T. 297=24 Cr. L. J. 487. An order permitting the withdrawal of proceedings, and more so a final order staying proceedings, instituted under s. 145 is an order under s. 148. 22 S. L. R. 386=29 Cr. L. J. 857=A. I. R. 1928 Sind. 193=111 Ind. Cas. 441. Provisions of Ch. 12 are intended to provide speedy remedy in cases of dispute with which that Chapter deals. 32 Cr. L. J. 309=53 A. 215=1930 A. L. J. 1437=A. I. R. 1931 All. 14. Magistrate should not dispute Subordinate Magistrate for making entire investigation and thus avoid necessity of taking oral evidence. A. I. R. 1932 Mad. 368. Local inspection cannot take the place of legal evidence or be used as a basis for the decision. A. I. R. 1922 Pat. 249=77 Ind. Cas. 492 ; see also 72 Ind. Cas. 971= 24 Cr. L. J. 507. Direction to survey and report respecting land in dispute under s. 145 is not a local enquiry but a ministerial act. 3 Pat. L. T. 17=23 Cr. L. J. 152.

Sub-section (3).—Order as to costs passed subsequent to decision is legal. A. I. R. 1933 All. 264 (F. B.)=34 Cr. L. J. 414. Exact calculation is not necessary. Reasonable lump sum may be awarded. 33 Cr. L. J. 157=A. I. R. 1932 All. 325. Value of property cannot by itself be taken as a fair test of the costs which should be awarded in a case which has continued for unusually long time without any fault of parties. 53 A. 172=129 Ind. Cas. 269=A. I. R. 1931 All. 3=32 Cr. L. J. 372. Question of costs need not be trusted as separate issue on which separate judgment should be given. But such question must be determined judicially and upon proper materials. A. I. R. 1934 Cal. 95. Order as to cost can be passed simultaneously with final order in presence of aggrieved party. Fresh notice is not necessary. A. I. R. 1934 Cal. 80. Magistrate should not ordinarily pass order as to costs *ex parte*.

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* The words "for witnesses, or pleader's fees, or both" were omitted by s. 31 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "All costs so directed to be paid may be recovered as if they were fines" by *ibid*.

1933 A. L. J. 188=34 Cr. L. J. 414=55 A. 301=A. I. R. 1933 A. 264 (F. B.); see also 19 Cr. L. J. 764; 24 Cr. L. J. 80. Delay of ten days after declaring the possession under s. 145 does not affect order as to costs. 4 Pat. L. W. 234=19 Cr. L. J. 396=44 Ind. Cas. 748; see also 24 C. W. N. 672=32 C. L. J. 34=21 Cr. L. J. 751=47 C. 974. Order under s. 148 for costs applied for in a reasonable time must be made by the Magistrate who tried the case under s. 145. 9 P. L. T. 835=30 Cr. L. J. 252=A. I. R. 1929 Pat. 93. The Magistrate can award cost actually incurred. 9 P. L. T. 835=30 Cr. L. J. 252=A. I. R. 1929 Pat. 93. An order as to costs under s. 148 is a discretionary order to be ever used by the trial Court. 27 Cr. L. J. 21=91 Ind. Cas. 53. A person to be saddled with costs of proceedings under section 145 must be a party. 27 Cr. L. J. 21=A. I. R. 1926 Oudh. 269=92 Ind. Cas. 53. Order allowing cost must show how it is com uted. 3 Pat. L. T. 484=23 Cr. L. J. 508=68 Ind. Cas. 44. Costs must be allowed for witnesses and pleader's fees only and should be specified in the order. 2 P. L. T. 267=24 Cr. L. J. 480=A. I. R. 1921 Pat. 176=62 Ind. Cas. 177; see also 1 Pat. L. T. 369=21 Cr. L. J. 625. Applicant inducing Magistrate to assume jurisdiction when he has none should pay the other side's cost. 22 S. L. R. 386=29 Cr. L. J. 857=A. I. R. 1928 Sind. 193. Once ordered, recovery of costs cannot be refused subject to limitation. 3 Pat. L. T. 764=A. I. R. 1928 Pat. 57=24 Cr. L. J. 126.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

149. Every police-officer may interpose for the purpose of preventing, and shall to the best of his ability, prevent, the commision of any cognisable offence.

Notes.—Under this section a police-officer cannot pass any order. 47 A. 205. "Interpose" means actually intervene. *Ibid.* Police action under this section is not restricted to cognisable offences only. 17 Cr. L. J. 347=8 L. B. R. 329.

Information of design to commit such offences.

150. Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

151. A police-officer knowing of a design to commit any cognisable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Notes.—Arrest under s. 151 without any emergency is illegal. 31 Cr. L. J. 294=31 P. L. R. 285=121 Ind. Cas. 734. Chapters 13 and 14 are not mutually exclusive. 35 C. W. N. 623.

Prevention of injury to public property.

152. A police-officer may, of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

Inspection of weights and measures.

153. (1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures of instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

Notes.—Some standard weight must be used for comparison; and some reasonable allowance should be granted for wear and tear of the rough and ready methods of bazar shop-keepers. 20 P. R. 1913; 15 Cr. L. J. 11.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Information in cognizable cases.

154. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Notes.—Statements made in course of police investigation merely because they happen to be signed contrary to the provisions of section 162, Criminal Procedure Code, do not thereby become admissible under this section. 25 Cr. L. J. 401=77 Ind. Cas. 481=1925 Mad. 106. A casual statement to the police is not first information. 1 Pat. L. R. 192=23 Cr. L. J. 406=67 Ind. Cas. 502. A telegram informing police of an offence is not a document under s. 154. 28 M. L. W. 187=55 M. L. J. 231=29 Cr. L. J. 717; but see A. I. R. 1934 Lah 413. A telephone message not mentioning that an offence had been committed cannot be treated as a first information report. A. I. R. 1931 Sind. 13. Statement to police during investigation is not information under s. 154. 26 Cr. L. J. 1532=4 Bur. L. J. 261=3. Rang. 577; see also 23 A. L. J. 14=47 A. 280=26 Cr. L. J. 554. First information report need not contain every detail. 8 Lah. 605=28 P. L. R. 649=28 Cr. L. J. 983. Admission of guilt is not first information. A. I. R. 1924 All. 207=77 Ind. Cas. 890. Where information is vague, statement made to police during enquiry is not first information. 2 Pat. 517=4 P. L. T. 462=24 Cr. L. J. 641. An unsigned statement by a police-officer containing report of previous complaint together with some result of police investigation is not first information. 27 Cr. L. J. 121=A. I. R. 1926 Lah. 176=91 Ind. Cas. 697. Witness's name need not be given in the first information report. 29 Cr. L. J. 378=A. I. R. 1928 Lah. 657=108 Ind. Cas. 370. Statement made after police commenced investigation is not first information and is admissible only under s. 162. 29 O. L. J. 728=110 Ind. Cas. 584=A. I. R. 1928 Pat 634; see also 90 Ind. Cas. 316=26 Cr. L. J. 1532=4 Bur. L. J. 261; 3 Rang. 577=A. I. R. 1925 Rang. 364; 23 A. L. J. 14=47 A. 280=26 Cr. L. J. 554=A. I. R. 1925 All. 303. A first information under s. 154 is not a statement within s. 162, which is inadmissible in evidence. 30 Cr. L. J. 38=A. I. R. 1929 Nag. 43. Information is not restricted to first information recorded under s. 154. 11 P. L. T. 541=A. I. R. 1933 Pat. 555. By "relating" is meant that there need not be complete proof given. Indication that cognisable offence is committed is sufficient but it must be given 33 Cr. L. J. 138=35 C. W. N. 623=A. I. R. 1931 Cal. 745. Information must relate to commission of cognisable offence in order to be first information. 33 Cr. L. J. 138=A. I. R. 1931 Cal. 745. Conditions as to writing in s. 154 are merely procedural. *Ibid.* In some cases information under s. 154 may be recorded during investigation. Prior statements to police are not affected by s. 112 and can be admitted in evidence. 35 C. W. N. 623-33 Cr. L. J. 138. Investigation by officer is not sole criterion of first information. Where two persons make statements about some offence at same time, which is first information depends on discretion of police officer. 35 C. W. N. 623=A. I. R. 1931 Cal. 745. Complaint under s. 154 need not be used under s. 162. Simply because the accused's party has given first information. A. I. R. 1930 Cal. 130. Assistant Sub-Inspector on duty in mofussil is not officer in charge of the police station unless he comes within the strict terms of s. 4. 30 Cr. L. J. 803=A. I. R. 1928 Cal. 771. Counter informations against complainant by a member of the accused's party who is not himself an accused comes under s 154 and not under s. 162. 44 C. L. J. 253 =28 Cr. L. J. 99=54 C. 232=99 Ind. Cas. 227. Inclusion of names as suspects in first information report carries no weight. 27 Cr. L. J. 492=93 Ind. Cas. 892.

Omission to mention some names in the first information report made on third hand information by a non-eye-witness cannot throw distrust on a contrary deposition by an eye witness. 27 Cr. L. J. 545=A. I. R. 1926 Lah. 369. First information report is not substantive evidence and is to be used under s. 157 and 145 of Evidence Act to corroborate or contradict the maker only. 29 Cr. L. J. 343=A. I. R. 1928 Lah. 507 ; see also 11 L. L. J. 1=30 Cr. L. J. 571 ; 85 Ind. Cas. 650=23 A. L. J. 14=47 A. 280=28 Cr. L. J. 554, 27 Cr. L. J. 121=A. I. R. 1926 Lah. 179 ; 29 Cr. L. J. 734 ; 29 Cr. L. J. 734 ; 26 Cr. L. J. 579 ; 24 Cr. L. J. 812 ; A. I. R. 1933 Pesh. 94 ; A. I. R. 1934 Rang. 60.

Information in non-cognizable cases.

*155. (1) When information is given to an officer in charge of a police-station of the commission, within the limits of such station of non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

(2) No police-officer shall investigate a non-cognisable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognisable case.

Notes.—This section does not apply to the police in the towns of Calcutta and Bombay. 15 C. 595 ; 21 B. 495. Under this section a police-officer cannot investigate in non-cognisable cases without the order of a Magistrate. 29 Bom. L. R. 742=A. I. R. 1927 Bom. 440 ; 26 B. 150 ; 16 C. W. N. 1049 ; 45 Ind. Cas. 277 ; 16 P. R. 1918 ; 19 Cr L. J. 517 ; 17 Bom. L. R. 69.

Investigation under chapter 14 includes investigation held under s. 155 (3) under the order of a Magistrate. A. I. R. 1931 All. 263=130 Ind. Cas. 193. Application for Courts' sanction to investigate is not complaint. 32 Bom. L. R. 782=A. I. R. 1930 Bom. 372=127 Ind. Cas. 110. District Magistrate acting under s. 155 (2) can order investigation in to a case under s. 294 A. I. P. Code. 33 Cr. L. J. 678=A. I. R. 1932 Lah. 581. Irrregularities only affect the value of evidence but do not vitiate trial. A. I. R. 1933 Sind. 188=34 Cr. L. J. 256.

Investigation into cognizable cases.

156. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Notes.—Under this section only a Magistrate and not a Sessions Judge can direct investigation to be made. 11 P. R. 1910=184 P. L. R. 1910. A Magistrate cannot order a police investigation after taking cognizance of a case. 54 C. 303 ; see also 12 Cr. L. J. 463. A private complaint does not take away the rights of the police to conduct the prosecution. 30 Cr. L. J. 326=A. I. R. 1928 Mad. 1268. Police enquiry started under Magistrate's order under s. 156 (3) after he has issued process to accused is illegal. 30 Cr. L. J. 326=A. I. R. 1928 Mad. 1268. In case of order to investigate under s. 202, powers of police under s. 156 is not affected. 33 P. L. R. 840=14 Lah. 494=A. I. R. 1932 Lah. 579 ; see also A. I. R. 1933 Sind. 136=27 S. L. R. 67. Section 156 (3) is not restricted to cases of which Magistrate takes, cognizance on his knowledge. 27 S. L. R. 67=34 Cr. L. J. 763=A. I. R. 1933 Sind. 136.

* This section, so far as it applies to the police in the town of Bombay, is repealed by s. 2 (1) and Schedule A to the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report and shall proceed in person, or shall depute one of his subordinate officers *[not being below such rank as the Local Government may, by general or special order, prescribe in this behalf] to proceed to the spot, to investigate the facts and circumstances of the case, †[and, if necessary, to take measures] for the discovery and arrest of the offender :

Procedure where cognizable offence suspected.

Provided as follows :—

(*a*) When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;

Where local investigation dispensed with.

(*b*) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Where police-officer in charge sees no sufficient ground for investigation.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, ‡[and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Local Government, the fact that he will not investigate the case or cause it to be investigated.

Notes.—The words "from information received" mean information given under section 154. 14 C. W. N. 326 ; 15 Cr. L. J. 622. The Police of one jurisdiction can act in another jurisdiction. 12 P. R. 1915 Cr. A report under this section is necessary for taking proceedings under s. 159. 4 C. W. N. 351. Object of s. 157 in getting report from police is to enable Magistrate to have immediate notice of every serious crime. A. I. R. 1931 Pat. 150=131 Ind. Cas. 17. First class Magistrate can depute a S. D. Magistrate, under sections 157 and 159 for investigation or preliminary enquiry. Statements made before the latter in the course of police enquiry are admissible. 40 C. L. J. 313=26 Cr. L. J. 307=A. I. R. 1925 Cal. 161.

158. Every report sent to a Magistrate under section 157 shall if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Reports under section 157 now submitted.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

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* These words were inserted by s. 32 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "and to take such measures as may be necessary" by Act XVIII of 1923.

‡ These words were added by *ibid.*

Notes.—An enquiry is authorised under this section only on a police-report under s. 157. 4 C. W. N. 351. Where a complaint is made to a Magistrate, he is bound to proceed under s. 200. 30 C. 923. After full enquiry by police an enquiry under this section is not proper. 1899 A. W. N. 87. A first class Magistrate can depute a sub-deputy Magistrate, to hold a preliminary enquiry under this section. 40 C. L. J. 313=26 Cr. L. J. 307.

Police-officer's power to require attendance of witnesses.

160. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Notes—An order under this section must be in writing. Cr. Rep. 18 of 1896; 1 Weir 86; Rat. Un. Cr. 850. A police-officer cannot use force to compel a person to attend as a witness. 7 W. R. 3. An accused cannot be required to attend under this section. 7 M. 274; 2 Weir 120; 4 Bom. L. R. 644. A police-officer cannot summon or examine under s. 160 and 161 an accused person. 4 Rang. 72=5 Bur. L. J. 30=27 Cr. L. J. 881=96 Ind. Cas. 145. Meaning of "any person" explained. 24 N. L. R. 158=30 Cr. L. J. 258=A. I. R. 1929 Nag. 17=114 Ind. Cas. 273. Sections 160, 161 and 162 do not apply to an accused person and do not affect or override s. 27 of the Evidence Act. 4 Rang. 72=5 Bur. L. J. 30=27 Cr. L. J. 881=A. I. R. 1926 Rang. 116 (F. B.)=96 Ind. Cas. 145.

Examination of witnesses by police.

161. (1) Any police-officer making an investigation under this Chapter *[or any police-officer not below such rank as the Local Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer] may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Notes.—The statements of witnesses recorded under this section form no portion of the police diary referred to in s. 172. 16 C. 610; 9 C. P. L. R. 33; 20 C. 642; 1896 A. W. N. 93; but see 19 A. 390; 16 A. 207. Police asking driver without license his name is not holding investigation and the question is not under s. 161. 7 Pat. 715=10 P. L. T. 244=30 Cr. L. J. 171=113 Ind. Cas. 587. Where statements of witnesses during investigation are recorded under s. 161 and not under s. 172 it may be used to contradict or corroborate. 32 C. W. N. 280. Where the witness says that he knew nothing the applicability of s. 161 is doubtful. 58 C. 980=28 Cr. L. J. 273=A. I. R. 1927 Cal. 257. The expression "any person" in s. 161 refers to a witness and not to the accused. 19 S. L. R. 142=26 Cr. L. J. 778=A. I. R. 1926 Sind. 237=86 Ind. Cas. 410. Incriminating statement of accused person would be excluded under section 25 of the Evidence Act. *Ibid.* As regards statement at inquest, *vide.* 37 C. W. N. 732.

Statement to police not to be signed; use of such statements in evidence.

162. *(1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid

* These words were inserted by s. 33 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

the Court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872.* When any part of such statement is so used, any part thereof may also be used, in the re-examination of such witness, but for the purpose only of explaining any any matter referred to in his cross-examination :

Provided, further, that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Indian Evidence Act, 1872.†

Object and Scope.—Statement of any person refers to statements of witnesses only. 27 Cr. L. J. 456=A. I. R. 1926 Sind. 151. Under this section as substituted by the Amending Act of 1923 it is not now permissible for statements made to the police, whether oral or written, to be put in evidence in order to corroborate a prosecution witness or contradict a defence witness. 26 Bom. L. R. 965=A. I. R. 1924 Bom. 519. Provisions of s. 162 apply to a case of complaint. 9 N. L. J. 167=28 Cr. L. J. 14=A. I. R. 1927 Nag. 24. The words "any such statement" refers to both oral and written statements. 51 M. 967=55 M. L. J. 351=29 Cr. L. J. 1098. Prosecution cannot involve aid of s. 162. A. I. R. 1931 Cal. 622=35 C. W. N. 164. Statements made by complainant to police before commencement of investigation do not come under s. 162. 35 Bom. L. R. 474=34 Cr. L. J. 870=A. I. R. 1933 Bom. 266. Statement in police diary is not admissible in evidence. 34 Cr. L. J. 109. Section 162 does not prevent police-officer from making statement that at the time he did particular thing he had no particular information. 32 Cr. L. J. 682. This section does not authorize granting of copies after evidence of witness is closed. A. I. R. 1934 All 340. In case of discrepancy between approver and witness, reference to statement before police is not legal. A. I. R. 1934 Lah. 102. Provisions of this section must be informed when investigating policer-officer is allowed to be cross-examined by defence. A. I. R. 1934 Cal. 458. Statement in police diary under s. 162 can be used to contradict witness by only after strict compliance with provisions of Evidence Act, s. 145. A. I. R. 1934 All 956. To place before jury statements made to police by accused is illegal. A. I. R. 1934 Cal. 651. Excise-officer is not police-officer. A. I. R. 1934 Cal. 616. "I did not make any statement to the police" is not a statement under s. 162. 53 C. 980=28 Cr. L. J. 273=A. I. R. 1927 Cal. 257. Statement by the accused and first information report are not statements under s. 162 requires that the statement should be reduced to writing and can be used only by the defence. 54 C. 237=28 Cr. L. J. 99=44 C. L. J. 253=28 Cr. L. J. 99. The object of amending s. 162 is police should no longer claim any privilege. 45 C. L. J. 561=31 C. W. N, 940=28 Cr. L. J. 805=A. I. R. 1927 Cal. 644. This section does not apply to statement of accused after arrest. 29 Cr. L. J. 400=A. I. R. 1928 Nag. 1908=11 N. L. J. 9. Statements recorded by police officer during enquiry under s. 197 are not statements under s. 162. 29 Bom. L. R. 996=28 Cr. L. J. 1012=A. I. R. 1927 Bom, 501=106 Ind. Cas. 100. Trial is not vitiated by a breach of s. 162, where it is not prejudicial to the accused. 45 C. L. J. 199=A. I. R. 1927 Cal. 372=28 Cr. L. J. 446. Proviso to section 162 applies to prosecution witnesses only. 28 Cr. L. J. 828=A. I. R. 1927 Lah. 713. Section 162 applies to witnesses only. 33 C. W. N. 257=30 Cr. L. J. 916=118 Ind. Cas. 368. The object of this section is to exclude hearsay evidence of police-officer except for contradicting witness as provided by s. 145. Evidence Act. 14 P. L. T. 543=A. I. R. 1933 Pat. 589. Sections 162 and 172 are not applicable to Calcutta police. 33 C. W. N. 203=30 Cr. L. J. 577=A. I. R 1929 Cal. 257. Applicability of section 162 to the Bombay police is also excluded by Cr.

* This sub-section was substituted by s. 34. Act. XVIII of 1923.
† 1 of 1872.

Pro. Code. s. 1 (2). 32 Bom. L. R. 327=A. I. R. 1930 Bom. 158. As regards difference between statements under s. 27 and 167, vide 24 N. L. R. 158=30 Cr. L. J. 258=A. I. R. 1929 Nag. 17. Section 162 excludes statements made by witnesses during invesitgation except for certain purposes. 5 Pat. 63=7 P. L. T. 396=27 Cr. L. J. 484=93 Ind. Cas. 884. Judge is not entitled to use such statement to discredit the witness where such statements were not properly put in evidence and were not duly proved. 35 C. W. N. 317=A. I. R. 1931 Cal. 189. Section 162 does not apply to a list of articles lost in a dacoity case submitted after first information but before actual investigation. 31 Cr. L. J. 1017=A. I. R. 1931 Oudh. 74=126 Ind. Cas. 498. A Judge should not refer to in his judgment a Mashirnama containing statement of accused to the police relating to the place of murder. 32 Cr. L. J. 178=A. I. R. 1930 Sind. 305. "Any purpose" includes purpose of prosecution or defence. 62 M. L. J. 71=33 Cr. L. J. 132. "Any person" includes accused person. *Ibid*; see also A. I. R. 1932 Mad. 391. Enquiry under Chapter 8 is enquiry into offence and statement to police cannot be shut out by use of s. 162. A. I. R. 1933 Mad. 688.

Admissibility of such statement.—A statement to the police by a witness is inadmissible in evidence for any purpose against the accused, and is not substantive evidence by itself. A. I. R. 1923 All. 469=76 Ind. Cas. 572. Statement to police under s. 162 oral, or writen cannot be used to corroborate a prosecution witness or contradict a defence witness. 26 Bom. L. R. 965=26 Cr. L. J. 223=83 Ind. Cas. 1007. Under s. 162 no statement made to the police by "any person" during an investigation can be used in evidence execept as under s. 162. 27 Cr L. J. 731=A. I. R. 1926 Nag. 368; see also 42 C. L. J. 524=27 Cr. L. J. 263; 30 C. W. N. 142=27 Cr. L J. 222; 19 S. L. R. 71=26 Cr. L. J. 1063; 26 Cr. L J. 307=40 C. L. J. 313; 96 Ind. Cas. 145=A. I. R. 1926 Rang. 116 (F. B.)=27 Cr. L. J. 881=4 Rang. 72, Where police-officer during investigation obtains the signatures of witnesses to statements by them and reduced into writing, in contravention of s. 162, the evidence of such witnesses must be rejected. A. I. R. 1931 Oudh. 172=8, O. W. N. 503. Police diaries cannot be used to corroborate prosecution evidence. A. I. R, 1931 Pat. 96=11 P. L. T. 837=1931 Cr. C 192. Section 162 does not prevent police officer for explaining conduct. A. I. R. 1931 Lah. 177=1931 Cr. C. 297. List of stolen property made and handed over to police during investigation is not admissible. 34 P. L. R. 405=A. I. R. 1932 Lah. 488; see also 31 Cr. L. J. 127=A. I. R. 1929 Cal. 448=120 Ind. Cas. 458. But list of stolen property made by police-officer before investigation is admissible in evidence. A. I. R. 1931 Oudh. 83=8 O. W. N. evidence. A. I. R. 1931 Oudh. 83=8 O. W. N. 31. So also list of stolen things given to supplement first information report is admissible. A I. R. 1933 Lah. 987. Statement to excise-officer is not admissible. A. I. R. 1930 Cal. 710=129 Ind. Cas. 101. Evidence of police-officers with regard to the identification parade is not inadmissible in evidence under s. 162. 29 Cr. L. J 963=A. I. R. 1929 Nag. 36. Statement to police after investigation is commenced is not first information and is inadmissable. 29 Cr. L. J. 728=A. I. R. 1928 Pat. 634. Statement of a person who sent a telegram that an offence has been committed is not made during police investigation and is hence admissible. 55 M. L. J. 231=A. I. R. 1928 Mad. 791. Statement by accused before tender of pardon may be used to corroborate or contradict him. 9 Lah. 389=29 Cr. L. J. 348=A. I. R. 1928 Lah. 257.

Effect of this section on Evidence Act.—Amended section 162 does not affect s. 27 of the Evidence Act. 24 N. L. R. 158=30 Cr. L. J. 258=A. I. R. 1929 Nag. 17; See also 29 Cr. L. J. 400=A. I. R. 1928 Nag. 108; 27 Cr. L. J. 709=7 Lah. 84 but see 28 Cr. L. J. 340=A. I. R. 1927 Nag. 203; 27 Cr. L. R. 658=A. I. R. 1926 Rang. 112; 26 Cr. L. J. 321=3 Bur. L. J. 245=A. I. R. 1925 Rang 101=84 Ind. Cas 545. Section 162 (1) has effect of modifying Evidence Act s. 55. A. I. R. 1933 Pat. 589=14 P. L. T. 543. Section 162 being general does not in any way affect special provisons contained in s. 27 of the Evidence Act. A. I. R. 1932 Mad. 391 (F. B.)=62 M. L. J. 742=55 M. 903=33 Cr. L. J. 418. S. 162 Cr. Pro. Code is affected by s. 27 of Evidence Act. 51 M. 967=55 M. L. J. 351.

Extent of use.—The provision of s. 165 cannot be used in contravention of s. 162 of the Cr. Pro Code. 4 Rang 471=28 Cr. L. J. 219=A. I. R. 1927 Rang. 74=99 Ind. Cas. 1019 Believing a witness by reference to police diaries is improper use of such diaries. 27 Cr. L. J. 614=A. I. R. 1926 Lah. 363. This section excludes admission of police diaries and other records prepared from diaries of investigating officers. But this section does not exclude evidence of statement made by accused

to police. 26 Cr. L. J. 840=A. I. R. 1925 Mad. 574=86 Ind. Cas. 664. Magistrate can make use of general diary to corroborate case of complainant. 34 C W. N. 651=A. I. R. 1930 Cal. 802. Section 162 does not exclude oral evidence of statements made to police during investigation whether reduced to writing or not. 2 P. L. T. 565=6 P. L. J. 241=22 Cr. L. J. 433=61 Ind. Cas. 785. Statements embodied in police diaries can be used in favour of an accused person, but not against him. 25 Cr. L. J. 409=A. I. R. 1923 Lah. 516=77 Ind. Cas. 485; see also 22 Cr. L. J. 578=A. I. R. 1921 Lah. 93=62 Ind. Cas. 618; 26 Bom. L. R. 965=26 Cr. L. J. 223=A. I. R. 1924 Bom. 510=83 Ind. Cas. 1007; 6 P. L. T. 620=27 Cr. L. J. 362=A. I. R. 1926 Pat. 26; 26 Cr. L. J. 1308=A. I. R. 1926 Lah. 54=89 Ind. Cas. 252. A Magistrate is not justified in referring to the statements made in the police diaries unless and until the witnesses have been confronted by those statements. 27 Cr. L. J 607=A. I. R. 1926 Lah. 365=94 Ind. Cas. 271. Sub-inspector is to be compelled to refresh his memory by looking into the diary when he does not remember what a witness said at investigation. 2 Pat. L. R. Cr. 202=A. I. R. 1924 Pat. 829. Police proceedings are not substantive evidence and cannot be used in order to test the correctness of the statements made by witnesses on oath before the Court. 29 Cr. L. J. 493=A. I. R. 1928 Lah. 820=109 Ind. Cas 221. Statement made to police unless reduced to writing cannot be used under this section to contradict a witness for the benefit of accused. 7 Lah. 264=8 L. L. J. 174=27 P. L. R. 379=27 Cr. L. J. 803=A, I. R. 1926 Lah. 367. Infringement of provisions of s. 162 is no ground for new trial, if there is direct overwhelming evidence and accused has not been prejudiced. 7 P. L. T. 673=27 Cr. L. J. 753=A. I. R. 1926 Pat. 211. Where statement to police is inconsistent with statement in Court, jury to see if latter is made unreliable thereby. 7 Pat. 50=28 Cr. L. J. 843=9 P. L. T. 57=A. I. R. 1928 Pat. 31. Statement made to police by witness in course of investigation cannot be made use of by prosecution and should not be allowed by Court to be put. A. I. R. 1933 Pat. 488=34 Cr. L. J. 892; see also A. I. R. 1933 Pat. 589=14 P. L. T. 543; A. I. R. 1933 Nag. 384; A. I. R. 1933 Mad. 233=34 Cr. L. J. 481=56 M. 231=64 M. L. J. 88; A. I. R. 1933 Mad. 372=34 Cr. L. J. 582=64 M. L. J. 519. Statements to police during investigation of offence different from one under trial can be used by accused for cross-examination. 63 M. L. J. 794=34 Cr. L. J. 137=56 M. 154=A. I. R. 1933 Mad. 65. Statement by witness during investigation can be used only for purpose of contradicting him. The prosecution is not entitled to use such a statement for corroborating testimony of a witness, neither can the Court do so. 33 P. L. R. 208=33 Cr. L. J. 637; see also 33 Cr. L. J. 566=9 O. W. N. 437=138 Ind. Cas. 159=A. I. R. 1932 Oudh. 247. Omission in notes of statements taken down by investigating officer are of no use in proving that witness did not say to officer what was said in course of trial. 14 P. L. T. 543=A. I. R. 1933 Pat. 589.

Oral statement.—New section 162 applies only to written statements. The law regarding proof and use of oral statements is the same as before. 26 Cr. L. J. 721=48 M. 640=48 M. L. J. 195=A. I. R. 1925 Mad. 519 Statement made to police-officer during an investigation may be oral and oral evidence regarding the same is admissible. 18 S. L. R. 342=26 Cr. L. J. 1137=88 Ind. Cas. 449. Oral statement of any person during investigation cannot be used for any purpose except for contradicting a prosecution witness. 4 Luck. 726=6 O. W. N. 1056=A. I. R. 1930 Oudh. 60=124 Ind. Cas. 444; see also 35 Bom. L. R. 474=57 B. 400=34 Cr. L. J. 870=A. I. R. 1933 Bom. 266. Proviso does not apply if statement to police-officer is not reduced to writing. 14 P. L. T. 5433=A. I. R. 1933 Pat. 589.

Police diary.—Contents of police diary must be used strictly according to ss. 162 and 172. A. I. R. 1932 Lah. 103=33 Cr. L. J. 97. Police diaries cannot be used to corroborate prosecution evidence. A. I R. 1931 Pat. 96=32 Cr. L. J. 735=11 P. L. T. 837. Case diaries of police are not relevant except in cases of statemets of witnesses under s. 162. A. I. R. 1933 Lah. 498=34 Cr. L. J. 464.

Police proceedings.—Noting of gist of statements amounts to "reduced into writing". 14 P. L. T. 543=A. I. R. 1933 Pat. 589. It is doubtful whether entirely false record in police diary amounts to fabricating evidence. A. I. R. 1933 P. C. 124=35 Bom. L. R. 507=64 M. L. J. 466=37 C. W. N. 514 (P. C.). Whole statements and not relevant extracts should be recorded by police-officers during investigation. 6 Rang 672=30 Cr. L. J. 538=A. I. R. 1929 Rang. 87. Statement need not record the actual words of the witness. Memo of statement is enough. 45 C. L. J.

561=31 C. W. N. 940=28 Cr. L. J. 805=A. I. R. 1927 Cal. 644. Section 162 allows a police-officer to explain his conduct. 31 Cr. L. J. 442=31 P. L. R. 185=A. I. R. 1930 Lah. 484.

Procedure.—When prosecution witness contradicts himself accused can obtain copy and cross-examine on it. 6 Rang. 137=29 Cr. L. J. 701=A. I. R. 1928 Rang. 150. Police-officer's report of oral statements of accused should be placed on record if accused so desired. 7 O. W. N. 957. Magistrate's reference to the police or excise athorities regarding the grant of copies is proper. 30 Cr. L J. 760=A. I. R. 1929 Lah. 429=117 Ind. Cas. 377. When defence seeks to prove affirmatively before Sessions Court that prosecution witnesses are unreliable it must be proved through investigating officer from record of statements made to police by witnesses. 32 Cr. L. J. 1245=35 C. W. N. 164=A. I. R. 1931 Cal. 622.

Proof.—Due proof of genuineness as of statements of witnesses is essential. 6 Lah. 24=24 Cr. L.J. 1153=26 P.L.R. 139=88 Ind. Cas. 513. Statements of witnesses made during investigation need not be reduced to writing. 18 S. L. R. 342=A. I. R. 1921 Sind. 16=88 Ind Cas. 449. Admission of record of statement should after due examination of the police-officer recording it or after other means of proof, e. g. that it is in his handwriting. 26 Bom. L. R. 965=26 Cr. L. J. 223=A. I. R. 1924 Bom 510=83 Ind. Cas. 1007. Reference by a Magistrate to statements of witness not passed and copies of which were not given to the accused, for the purpose of contradicting prosecution witnesses, is erroneous. 29 Cr. L. J 14=A. I. R. 1928 Lah. 144=106 Ind. Cas. 350. Section 162 applies even where witness agrees with statement. A. I. R. 1933 All. 535. Record of statement must be proved before it can be made use of to contradict witness. 14 P. L. T. 543=A. I. R 1933 Pat. 589. Omission to prove record of statetment does not preclude Court from seeing statement under s. 172, but they can be used only according to law. 14 P. L. T. 543=A. I. R. 1933 Pat. 589. Facts found in diary cannot be used as evidence unless passed by witness. 14 P. L. T. 396=34 Cr. L. J. 948=A. I. R. 1933 Pat. 440. As regards method of proving previous statements, vide A. I. R. 1932 Lah. 103=33 Cr. L. J. 97. Where statements of witnesses before police are not properly put in Judge is not entitled to use them to discredit the witness. 35 C. W. N. 317=58 C. 1009=A. I. R. 1931 Cal. 189.

When copies are given.—Accused is entitled for copies as soon as prosecution witness is called in an enquiry or trial. 30 Cr. L. J. 728=A. I. R. 1929 Nag. 172. There is no harm if copies are given prior to the stage of cross-examination. 30 Cr. L. J. 760=A. I. R. 1929 Lah. 429 ; but see 31 Cr. L. J. 414=1929 M. W. N. 885=A. I. R. 1930 Mad. 185 ; 27 Cr. L. J. 100=A. I. R. 1926 Mad. 183 ; 54 C. 307=28 Cr. L. J. 582 ; 28 Cr. L. J. 709=6 Pat. 329=8 P. L. T. 780=A. I. R. 1927 Pat. 243. If the accused have not asked for copies during the committing Magistrate's enquiry they can ask for it only at the time of trial by the Judge. 30 Cr. L. J. 580. Application for copies before the cross-examination of prosecution witness is opportune. 29 Cr. L. J. 715=A. I. R. 1928 Pat. 593 ; see also 7 Pat. 205=9 P. L. T. 92=29 Cr. L. J. 297 ; 52 B. 195=29 Cr. L. J. 221 ; 9 N. L. J. 1672 ; 28 Cr. L. J. 14 ; 53 A. 94=32 Cr. L. J. 578.

Granting copies.—Section 162 is imperative. Magistrate has no discretion but must hand over copies of statement in police diary. 32 Cr. L. J. 370=A. I. R. 1931 All. 273 ; see also 1931 A. L. J. 157=32 Cr. L. J. 562=53 A. 458. Statement recorded by Circle-Inspector is to be placed on record if the accused desire it. A. I. R. 1930 Oudh. 505. Copies of statement which are irrelevant and not essential in interest of justice or public expediency can be refused. 31 Cr. L. J. 592=A. I. R. 1930 Sind. 153. Accused must be granted copies of statement of prosecution witnesses. Court's opinion as to contradiction is immaterial. 30 Cr. L. J. 728=A. I. R. 1929 Nag. 172 ; see also 49 C. L. J. 197=30 Cr. L. J. 580=56 C. 840 ; 6 Rang. 672=30 Cr. L. J. 538=A. I. R. 1929 Rang. 87 ; 9 Lah. 389=29 Cr. L. J. 348=A. I. R. 1928 Lah. 257 ; 7 Pat. 205=9 P. L. T. 92=29 Cr. L. J. 297=107 Ind. Cas. 817 ; 8 P. L. T. 613=28 Cr. L. J. 597=A. I. R. 1927 Pat. 325 ; 54 C. 309=28 Cr. L. J. 582=A. I. R. 1927 Cal. 514. Where accused is prejudiced by refusal of copies the trial is bad. 31 C. W. N. 940=28 Cr. L. J. 805. Copies may be refused of statements of prosecution witnesses not examined. 7 Pat. 153=10 P. L. T. 297=30 Cr. L. J. 273. This section does not apply to statement of accused after arrest. 29 Cr. L. J. 400=A. I. R. 1928 Nag. 108. Accused is entitled to have a copy of the statement of an unpardoned approver to police. 9 Lah. 389=25 C. L. J. 348=A. I. R. 1928 Lah. 257.

Accused is entitled to copy before witness is called. A. I. R. 1934 Nag. 138. Magistrate's opinion that there are no contradictions is immaterial. *Ibid*

Contradict.—Court should refer to the statement made to the police by the witness who is being examined when so requested by the accused. 22 Cr. L. J. 578=62 Ind. Cas. 818. The only way a witness can be contradicted by statements to the police is to prove his written statement and put it to the witness under s. 145, Indian Evidence Act, to permit him to explain the contradictions, if any. 8 Lah. 605=28 P. L. R. 649=28 Cr. L. J. 983=A. I. R. 1928 Lah. 17. Statements to investigating officers are useful only to contradict testimony of prosecution witnesses. 29 Cr. L. J. 282=10 Lah. L. J. 389=A. I. R. 1928 Lah. 380; see also A. I. R. 1930 Lah. 491; 30 C. W. N. 503; 27 Cr. L. J. 524. Statements made before Court but omitted before police are not necessarily contradictions. 9 Lah. 389=29 Cr. L. J. 348=A. I. R. 4928 Lah. 257. But police proceedings cannot be used to test correctness of statements, made on oath in Court. 29 Cr. L. J. 493=A. I. R. 1928 Lah. 820; see also A. I. R. 1931 Pat. 152=10 Pat. 107. Only those portions of statements to police as have been contradicted under s. 162 can be treated as evidence. 31 Cr. L. J. 199=A. I. R. 1930 Lah. 449. Only the police diary and not the evidence of the police-officer should be used to contradict the witness. 29 Cr. L. J. 343=A. I. R 1928 Lah. 507; see also 27 Cr. L. J. 277=42 C. L. J. 528. A statement which has been admitted in evidence under s. 32 may be contradicted by another statement of the same person made to police during examination. 26 Cr. L. J. 1425=A. I. R. 1926 Lah. 122. Statements attested by the Sub-Inspector although recorded in his diary, are recorded under s. 162. 2 Luck. 605=28 Cr L. J. 802. Omission of some details does not necessarily mean that it was not stated. A. I. R. 1933 Pat. 440=34 Cr. L. J 948; see also 32 Cr L. J. 794=12 P. L. T. 798.

Signed statement.—Where signatures of witnesses were obtained by police-officers to their statements reduced into writing, evidence of such witnesses must be rejected. 32 Cr. L. J. 860=A. I. R. 1931 Oudh. 172.

Statements of accused.—"Statement" in section 162 refers to statements of witnesses and not of accused. 19 S. L. R. 142=26 Cr. L. J. 778=86 Ind. Cas. 410; see also 19 S. L. R. 6=26 Cr. L. J. 897=86 Ind. Cas. 961; 128 Ind. Cas. 684; A. I. R. 1930 Sind 225; A.I.R. 1934 Lah. 695; 27 Cr. L J. 161=8 N.L.J. 217; A. I. R 1933 All. 440=55 A. 463=34 Cr. L. J. 825; 32 Cr. L. J. 1077=55 B. 435=33 Bom. L. R. 305. Statements by accused under arrest in police investigation are not excluded under s. 162. 34 Cr. L. J. 555=29 N. L. R. 251=A. I. R. 1933 Nag. 136; see also 33 Cr. L. J. 302=25 S. L. R. 391. Statement by accused to police during investigation cannot be brought into evidence although forming basis of defence. 33 Cr. L. J. 132=62 M. L. J. 71.

Use against accused.—Statement made by person accused of offences under ss. 192, 193 and 211 I. P. Code, though inadmisible as against complainant is admissible as against accused as evidence with regard to *res gestae* for which accused was prosecuted. 35 C. W. N. 838=33 Cr. L. J. 60. Use of police diaries against the accused is not proper. 26 Cr. L. J. 292=A. I. R. 1925 Lah. 295=84 Ind. Cas. 436; see also 75 Ind. Cas. 753=27 O. C. 40. Prosecution should not use statments under s. 162 for corroborating their witnesses. 8 Pat. 279=10 P. L. T. 460=30 Cr. L. J. 858; See also 6 Lah. 171=27 Cr. L. J. 488. Statement made to police is no evidence so as to base conviction on it. 25 Cr. L. J. 204=76 Ind. Cas. 572.

No inducement to be offered.

163. (1) No police-officer or other person in authority shall offer or make or cause to be offered or made any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872,* section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

Notes.—Hony. Magistrates, Magistrates or Sessions Judges are persons in authority. Vide 26 M 38; 10 C. 775; 2 A. 260. The mere retraction of a confession is not in itself sufficient to make it appear that it was unlawfully induced. 30 Cr.

* I of 1872.

L. J. 49=113 Ind. Cas. 65. Assurance of amnesty given by Government to witness does not affect his competency to testify but his credibility may be affected. 89 Ind. Cas. 1035..

Power to record statements and confessions.

164. (1) *[Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Local Government may, if he is not a police-officer] record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in s. 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) †[A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a cenfession and that if he does so it may be used as evidence against him and no Magistrate] shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect :—

‡'[I have explained to (*name*) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe] that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(*Signed*) A. B.
Magistrate,

Explanation :—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Scope.—This section is not applicable to confessions recorded by a Presidency Magistrate in the course of an investigation held by the Calcutta police. 29 C. W. N. 300; see also 30 C. W. N. 454; 96 Ind. Cas. 509. Statement of witness recorded by police on a confidential enquiry prior to sanction of Government under s. 197 and also before the Magistrate is not a statement under s. 164. 29 Bom. L. R. 996=28 Cr. L. J. 1012. A. I. R. 1927 Bom. 501. Approver accepting pardon can be examined under s. 164. A. I. R. 1933 Lah. 864. This section deals with persons accused and not witnesses. A. I. R. 1932 Mad. 748=33 Cr. L. J. 814. Section 164 does not exclude confessions otherwise admissible. 62 M. L. J. 680=55 M. 717=A. I. R. 1932 Mad. 500. An indiscriminate use of the provisions of s. 164, Cr. Pro. Code is not to be encouraged. 3 P. W. R. 1919 Cr. The change by amendment of 1923 is made to allow a Presidency Magistrate to record a confession in the course of police investigation. 5 Pat. 171=27 Cr. L. J. 957.

Confession and statement.—Confession can be recorded before trial. 4 Pat. L. T. 381=24 Cr. L. J. 723=73 Ind. Cas. 963. Warning to accused need not immediately precede confession. Reasonable time for recollection may be allowed.

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* These words were substituted for the words "Every Magistrate not being a police-officer may" by s. 35 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "No Magistrate" by *ibid.*

‡ These words were substituted for the words "I believe" by s. 35 of act 18 of 1923.

1930 Cr. C. 1142. Magistrate should satisfy himself by every reasonable means that confession is voluntary. He should record questions and answers by means of which he satisfies himself that it is voluntary. A. I. R. 1930 Oudh. 449=128 Ind. Cas. 215. A Sessions Court and High Court can look into the fact whether confession is voluntary. 7 O. W. N. 909=A. I. R. 1930 Oudh. 449=128 Ind. Cas. 215. Confession should be recorded in open Court. Recording of confession late at night after accused has been interrogated by police is improper. 30 C. L. J. 503=21 Cr. L. J. 266. =55 Ind. Cas. 282. Confession should not be encouraged on an inducement of lenient punishment. 10 Bur. L. T. 70=17 Cr. L. J. 402=35 Ind. Cas. 962. A confession by an accused made within sight and hearing of a police-officer and not taken in accordance with s. 164 is not admissible in evidence. 18 Cr. L. J. 623=39 Ind. Cas. 991=1 Pat. L. T. 388=(1917) Pat. 149. No confession should be recorded before Magistrate is satisfied that it is voluntarily made. 18 Cr. L. J. 721=40 Ind. Cas. 721. A Magistrate recording a confession need not be one having jurisdiction in the case. No form of question is prescribed by s. 164 (3) of the Cr. Pro. Code. 3 P. L. J. 291=4 Pat. L. W. 14=19 Cr. L. J. 135 (F.B). Where statement of accused was not recorded, Magistrate cannot give oral evidence thereof. 49 C. 167=25 C. W. N. 788=22 Cr. L. J. 562=62 Ind. Cas. 578; but see 20 A. L. J. 915= 45 A. 166=24 Cr. L. J. 5=71 Ind. Cas. 54. A confession in answer to a question "After due warning do you want to say any thing?" without any indication of what the due warning was, is not a confession recorded in accordance with law. 2 Pat. L. T. 129=22 Cr. L. J. 119=59 Ind. Cas. 551. Statement recorded in the presence of police and where the police is allowed to put questions is not properly recorded. 21 Cr. L. J. 418=56 Ind. Cas. 210. Confession not recorded in accordance with rules is not genuine confession. 21 Cr. L. J. 638=57 Ind. Cas. 462; see also 21 Cr. L.J. 5=21 Bom. L.R. 1065=54 Ind. Cas. 465. Note by Magistrate when accused points out places of incidents is not a confessional statement. 31 Cr. L. J. 269=A. I. R. 1929 Lah. 794=121 Ind. Cas. 497. Inculpatory statements made under s. 164 are admissible in evidence in a prosecution for perjury. 39 M. 977=17 Cr. L. J. 195=20 M. L. T. 21=34 Ind. Cas. 307. Confession by accused to Magistrate not improperly induced can be proved though made under hope of pardon and even though not recorded as required by s. 164. A.I.R. 1933 Lah. 987; 32 P.L.R. 792=32 Cr. L. J. 1036. Statement written and signed by accused while in control of police is inadmissible. 34 Cr. L. J. 574=55 A. 426=A. I. R. 1933 All. 355. Where an accused in his confession is not implicating himself as fully and substantially as his co-accused such confession cannot be used as evidence against co-accused. A. I. R. 1932 All. 228=1932 A. L. J. 162=33 Cr. L. J. 201. Unrecorded confession can be proved by oral testimony of Magistrate. A. I. R. 1934 All. 351; A. I. R. 1934 All. 31 (F.B). Defect in recording confession can be cured by examination of Magistrate who recorded confession. A. I. R. 1934 Lah. 18. Statement under s. 164 can be put in to corroborate statements put in under s. 288. A. I. R. 1934 Cal. 124.

Oral statement.—Where statement of accused is not recorded Magistrate cannot give oral evidence. 49 C. 167=A. I. R. 1922 Cal. 342. Confession made to Magistrate while in police custody but not reduced to writing can be proved by Magistrate. A. I. R. 1930 Lah. 534=109 Ind. Cas. 225. Statement made before trial or enquiry need not be reduced to writing and Magistrate can give oral evidence of it. 45 M. 230=42 M. L. J. 37=30 M. L. T. 107=23 Cr. L. J. 680=69 Ind. Cas. 264. Where Magistrate did not record admission under s. 164 but made written memorandum, oral evidence of Magistrate is admissible and written memorandum though inadmissible can be used to refresh memory. 14 Lah. 290=34 Cr. L. J. 1025=34 P. L. R. 612=A. I. R. 1933 Lah. 716 (F.B). Section 164 does not apply to oral confession such confession is admissible under s. 26 of the Evidence Act. A. I. R. 1930 Oudh. 432=10 O. W. N. 923=1933 Cr. L. J. 1317.

Procedure.—Magistrate must record what happened at time of making statements. A. I. R. 1933 All. 31=1932 A. L. J. 1125=55 A. 91=34 Cr. L. J. 489. Where confession has been duly recorded, the presumption is that it was freely made. Burden of proving that it is inadmissible lies on accused. 34 Cr. L. J. 147= 26 S. L. R. 302=A. I. R. 1932 Sind 201. Rules issued by Government for recording confession are meant only for guidance of Magistrates and cannot effect of law. A. I. R. 1933 Oudh. 299=34 Cr. L. J. 838=10 O. W. N. 642. Where provision of section 164 has not complied with but direction with regard to recording of confession not carried out, confession is not invalid. A. I. R. 1933 [Oudh. 313=

10 O. W. N. 461. Where Magistrate hands over confession to police-officer after recording it, provisions of s. 164 are contravened. 32 Cr. L. J. 818=A. I. R. 1931 Lah. 408. Defect due to non-compliance of provisions of s. 164 can be cured only if no injury is caused to accused by such defect. A. I. R. 1933 Oudh. 315=8 Luck. 518=10 O. W. N. 466. Confession not recorded in accordance with s. 164 must be excluded. 33 Cr. L. J. 377=33 P. L. R. 25=137 Ind. Cas. 57. It is not necessary to put series of questions to person making confession. He should be allowed to narrate his story without any unnecessary interference. 33 Cr. L. J. 414=33 P. L. R. 16=A. I. R. 1932 Lah. 180. Where provisions of s. 164 are not carefully complied with confession does not become inadmissible. A.I.R. 1933 Oudh. 404=10 O.W.N. 937=1933 Cr. C. 1277 ; see also A. I. R. 1932 Lah. 73=32 P. L. R. 792=32 Cr. L. J. 1036 ; A. I. R. 1931 Lah. 763=32 Cr. L. J. 985. Statement made during examination of the accused wich amounts to cross-examination cannot be used against him. 24 Cr. L. J. 91=1 Pat. 630=4 P. L. T. 76=A. I R. 1922 Pat. 582=71 Ind. Cas. 219. Recording confession after allowing time to accused for reflecting improper. It is not necessary to give warning to accused immediately before recording confession. 32 Cr. L. J. 178=A. I. R. 1930 Sind. 305=128 Ind. Cas. 684. The statement recorded by a Magistrate is admissible in evidence under s. 164 whether taken on solemn affirmative or not. 19 S. L. R. 71=26 Cr. L. J. 1063=88 Ind. Cas. 7=A. I. R. 1925 Sind. 289. Where provisions of s. 164 are disregarded, exculpatory statement by accused is not admissible. 7 L. L. J. 39=29 Cr. L. J. 731=A. I. R. 1925 Lah. 334=86 Ind. Cas. 219. Non-compliance with the formalities as to verification at the end of the confession is an irregularity cured by s. 533. 26 Cr. L. J. 609=16 S. L. R. 143=A. I. R. 1921 Sind 143. Omission to record confession in the language used by the accused may be overlooked if it has not injured the accused. 28 Cr. L. J. 341=A. I. R. 1927 Lah. 285=100 Ind. Cas. 821. Magistrate should explain to the accused that he is not bound to make a confession at all, and that if he does so it may be used as evidence against him and he should only record the confession if upon examination of the accused he has reason to believe that it will be made voluntarily. 6 Lah. 415=7 L. L. J. 482=27 Cr. L. J. 514=A. I. R. 1925 Lah. 605=93 Ind. Cas. 978. Where statement is not recorded in strict compliance of law, if error is not injurious to accused, it is cured by s. 533. 7 Rang. 759=31 Cr. L. J. 297=A. I. R. 1930 Rang. 53. Where confession is made to Magistrate and challan is returned to police, the procedure is illegal and confession is inadmissible. 31 Cr. L. J. 533=A. I. R. 1930 Lah. 454=123 Ind. Cas. 540. Where accused retracts confession in Sessions Court, and Judge examines statements under s. 164 even before examining a single witness, procedure is illegal. 20 A. L. J. 669=A. I. R. 1922 All. 266. It is not obligatory on Magistrate to record confession. A. I. R. 1934 All. 351.

Time and place.—Statement can be made before commencement of trial. 24 Cr. L. J. 723=4 Pat. L. T. 381=73 Ind. Cas. 963. Statements made by accused in the course of proceedings and recorded under s. 164 are admissible. 45 C. 557=22 C. W. N. 213=27 C. L. J. 148=19 Cr. L. J. 305. Confession can be recorded in any place and on a holiday. 11 Lah. L. J. 461=A. I. R. 1930 Lah. 171. The Code itself contains no provisions as to the confession being made in open Court. 5 Pat. 171=27 Cr. L. I. 957=A. I. R. 1926 Pat. 279=96 Ind. Cas. 509. As regards whether a confession under s. 164 can be recorded by a Magistrate after a case has been sent to him for inquiry. Vide 31 Cr. L. J. 533=A. I. R. 1930 Lah. 454=123 Ind. Cas. 540.

Certificate—Section 164 does not require memorandum to be recorded under confession in handwriting of Magistrate. A. I. R. 1933 Sind. 166=34 Cr. L. J. 808. Memorandum can be affixed to English version of confession. 35 Bom. L. R. 234=A. I. R. 1933 Bom. 145 (F. B)=34 Cr. L. J. 555. Where certificate explaining that confessions would be used in evidence against accused not appended to record by Magistrate, but only certificate on old form before amendment was given, held the irregularity could be cured by evidence by Magistrate certifying that necessary explanations were made as it did not injure the accused on merits. 32 Cr. L. J. 579=A. I. R. 1931 Lah. 196=130 Ind. Cas. 641 ; see also A. I. R. 1930 Lah. 534 ; 3 Pat. 872=26 Cr. L. J. 314. 6 Lah. 415=7 L. L. J. 482=27 Cr. L. J. 514=A. I. R. 1925 Lah. 605. Where confession is tendered with certificate formalities are presumed to have been observed. 6 Lah. 415=7 L. L. J. 482=27 Cr. L. J. 514=A. I. R. 1925 Lah. 605=93 Ind. Cas. 978 ; see also 28 Cr. L. J. 807=A. I. R. 1927 Lah. 682=104 Ind. Cas. 247. In the absence of certificate, confession is not admissible. 5 O. L. J.

70=19 Cr. L. J. 507 ; 2 P. L. T. 773=22 Cr. L. J. 200. The certificate recorded by a Magistrate at the foot of confession is not conclusive and it may be proved that the confession was not voluntary. 25 O. C. 229=24 Cr. L. J. 561=A. I. R. 1922 Oudh. 302=73 Ind. Cas. 257.

Inquiry and warning.—Real caution must be given. 10 O. L. J. 280=A. I. R. 1924 Oudh. 65. A Magistrate can ask questions to satisfy himself that the statement of the accused is voluntary or for purpose of making clear any particular passage of a statement made to him. But he cannot exact statements. 18 Cr. L. J. 742, =20 O. C. 136=40 Ind. Cas. 742. Specimen questions leading to suggestion of police torture is not desirable. 53 M. L. J. 739=28 Cr. L. J. 955=A. I. R. 1927 Mad. 974. Answer in the affirmative of accused as to the voluntary nature of confessions and subsequent warning is sufficient compliance with law. 5 Pat. 171=27 Cr. L. J. 957=96 Ind. Cas. 509. Magistrate should not ask questions to reconcile it with statements of co-accused. A. I. R. 1930 All. 746. Failure to warn that he is a Magistrate and omission to put questions to test voluntary nature vitiates confession. 27 Cr. L. J. 621=30 C. W. N. 454=A. I. R. 192 Cal. 742=94 Ind. Cas. 365 ; see also 22 Cr. L. J. 119=2 P. L. T. 129 ; 23 Cr. L. J. 149=2 Lah. 325=65 Ind. Cas. 613 ; 24 Cr. L. J. 564=73 Ind. Cas. 260. Confession is not admissible if accused was not informed that he was not bound to confess and that it would be used against him. 7 Lah. L. J. 170=26 Cr. L. J. 1175=26 P. L. R. 173=88 Ind. Cas. 599. Questions by Magistrate to clear ambiguity is permissible. 28 A. L. J. 719=26 Cr L. J. 1209=A. I. R. 1926 All. 22=88 Ind. Cas. 729 ; see also 6 Lah. 183=26 Cr. L. J. 1238=88 Ind. Cas. 854. Failure to question accused whether his confession was voluntary, vitiates it. 6 Lah. L. J. 166=25 Cr. L. J. 979=A. I. R. 1924 Lah. 481=81 Ind. Cas. 627 ; 25 Cr. L. J. 116=A. I. R. 1924 Lah. 624=76 Ind. Cas. 180 ; 4 P. L. T. 279=24 Cr. L. J. 649=A. I. R. 1923 Pat. 356=73 Ind. Cas. 569 ; 4 P. L. T. 186=24 Cr. L. J. 497=A. I. R. 1923 Pat. 13=73 Ind. Cas. 961. Section 533 cannot cure defect which is one of substance and by which accused is prejudiced. Failure to question accused as to whether he is making confession voluntarily is fatal defect. A. I. R. 1933 Oudh. 315=8 Luck. 518=10 O. W. N. 466. Memo need not be in handwriting of Magistrate. A. I. R. 1933 Bom. 145 (F. B.)=34 Cr. L. J. 555. Magistrate should afford all facilities to the accused even when he has discretion in that matter. A. I. R. 1932 All. 327=33 Cr. L. J. 752=139 Ind. Cas. 330. Magistrate recording confession must satisfy himself that it is voluntary. 33 Cr. L. J. 201=A. I. R. 1932 All. 228 ; see also 1931 A. L. J. 1000=32 Cr. L. J. 1052. 33 P. L. R 917 ; 33 Cr. L. J. 242=33 P. L. R. 241 ; A. I. R. 1932 Lah. 204. Magistrate need not question accused whether police illtreated him. A. I. R. 1933 Cal. 747 (S. B.)=57 C. L. J. 213. It is unnecessary to record questions and answers when the Magistrate is satisfied that the confession is voluntary. A. I. R. 1932 Lah. 204=33 P. L. R. 241=33 Cr. L. J. 242. Failure to enquire as to duration of custody of accused does not amount to irregularity. 32 Cr. L. J. 985=A. I. R. 1931 Lah. 763. If the Magistrate does not tell the accused that he is a Magistrate, before recording the confession, the confession is inadmissible. 33 P. L. R. 269=33 Cr. L. J. 567. But where the accused knows the Magistrate, there is no illegality. A. I. R. 1932 Lah. 103=33 Cr. L. J. 97=33 P. L. R. 891. Confession otherwise admissible does not become inadmissible because accused was not warned. A. I. R. 1932 Mad. 431=62 M. L. J. 559. Under the provisions of section 337 of the Cr. Pro. Code a tender of pardon can be made only during an enquiry into an offence under the Code. 46 B. 61=23 Bom. L. R. 884=22 Cr. L. J. 728=64 Ind. Cas. 40. Involuntary confession should not be recorded. 17 Bom. L. R. 898=16 Cr. L. J. 740=31 Ind. Cas. 340 ; see also 29 P. L. R. 388=10 L. L. J. 311=29 Cr. L. J. 697.

Jurisdiction.—It is very doubtful whether a Magistrate having jurisdiction in British India and taking down a confession outside British India is recording a confession within the meaning of s. 164. 19 A. L. J. 355=22 Cr. L. J. 567=A. I. R. 1921 All. 61=62 Ind. Cas. 583. In case of confession made outside British India, all that has to be seen is that there is nothing against substantive law or natural law to vitiate it. 33 Cr. L. J. 460=34 P. L. R. 449=A. I. R. 1932 Lah. 367 ; see also A. I. R. 1934 Lah. 873=15 Lah. 491. Confession recorded by Magistrate conducting inquiry and committing accused to Sessions is admissible. A. I. R. 1932 Lah. 103=33 Cr. L. J. 97=33 P. L. R. 891. The mere fact that confession is made before Third Class Magistrate of an Indian State does not make it inadmissible. A. I. R. 1933 All. 286=34 Cr. L. J. 704=144 Ind. Cas. 157, Oral confession before Honorary Magistrate is admissible under s. 26, Evidence Act. A. I. R. 1933 Lah.

956. Magistrate of Native State recording the explanation of an accused for the purpose of the Extradition Rules of that State is not recording the statement of an accused person in the course of an investigation under Chapter XIV of the Cr. Pro. Code. 27 Bom. L. R. 1034=49 B. 642=26 Cr. L. J. 1478=A. I. R. 1925 Bom. 529=89 Ind. Cas. 1046. Where the accused was arrested in District A and the offence was investigated there, again he was arrested in District B and confession was recorded it was held that arrest in District B was part of investigation in District A. 27 Cr. L. J. 621=30 C. W. N. 454=A. I. R. 1926 Cal. 742. Magistrate in Native State is not Magistrate for purpose of s. 164. Confession recorded without satisfying s. 164 is admissible as extra-judicial confession. A. I. R. 1934 Sind. 103.

Retraction—Confession not recorded according to s. 164 and retracted afterwards is not of any evidentiary value. 9 O. L. J. 500=A. I. R. 1928 Oudh. 39; see also 30 P. L. R. 646=30 Cr. L. J. 1046=11 Lah. 106=A. I. R. 1930 Lah. 257=119 Ind. Cas. 325. A confession made after a beating and retracted on first occasion is no t voluntary. 25 Cr. L. J. 58=A. I. R. 1923 Lah. 429=75 Ind. Cas. 762. Court must be cautious in relying on retracted confession. A. I. R. 1933 Bom. 230=34 Cr. L. J. 896=35 Bom. L. R. 371. Use and value of such confession depend on facts of each case. A. I. R. 1933 Lah. 388=34 Cr. L. J. 598=34 P. L. R. 704. Retracted confession unless corroborated by independent evidence to material extent and in material particular should not be acted upon. A. I. R. 1932 Bom. 553=34 Cr. L. J. 73=56 B. 542=34 Bom. L. R. 1240; see also 33 Cr. L. J. 251=33 P. L. R. 602=A. I. R. 1932 Lah. 298; 26 Cr. L. J. 314=A. I. R. 1925 Pat. 191=84 Ind. Cas. 458. But corroboration is not necessary in every retracted confession. 1929 M. W. N. 901=A. I. R. 1929 Mad. 837=57 M. L. J. 681; see also 18 Cr. L. J. 445=2 Pat. L. J. 80=38 Ind. Cas. 1005; 3 P. L. T. 98=22. Cr. L. J. 293=A. I. R. 1922 Pat. 492; A. I. R 1932 Oudh. 115=9 O. W. N. 96=33 Cr. L. J. 812; 9 O. W N. 321=33 Cr. L. J. 929; 1931 Cr. C. 996=33 Cr. L. J. 16=A. I. R. 1931 Oudh. 412; A. I. R. 1933 Sind. 313=1933 Cr. C. 1043; A. I. R. 1933 Oudh. 263=34 Cr. L. J. 395=10 O.W.N. 405. Retracted confession unless proved to have been duly made and voluntary is inadmissible. 10 O. W. N. 466=8 Luck. 518=A. I. R. 1933 Oudh. 315; see also A. I. R. 1933 Oudh. 192=10 O. W. N. 348=143 Ind. Cas. 846; 9 O. W. N. 327=33 Cr. L. J. 502.

Inspection and copies of statements.—Copies of statements recorded under s. 164 must be given whenever asked for. A. I. R. 1932 All. 327=33 Cr. L. J. 752=139 Ind. Cas. 330; see also A. I. R. 1932 All. 327=33 Cr. L. J. 752.

Evidentiary value.—Prosecution must prove affirmatively the voluntary nature of the confession. 10 O. W. N. 466=A. I. R. 1933 Oudh. 315=8 Luck. 518. Confession neither true nor voluntary is not sufficient for conviction. A. I. R. 1933 Oudh. 265=34 Cr. L. J. 1009. Section 164 is not part of law of evidence. To ascertain whether or not confession is admissible one must advert to Evidence Act, s. 29. A. I. R. 1933 Sind. 166=34 Cr. L. 808. Voluntary confession in serious offences is rare. A. I. R. 1933 All. 31=1932 A. L. J. 1125=34 Cr. L. J. 489. Court in examining confession produced before it must consider circumstances under which it comes to be made. 32 Cr. L. J. 1052=1931 A. L. J. 1000=A. I. R. 1931 All. 609. Where confession is voluntary and admissible it can be taken into consideration against co-accused. A. I. R. 1932 Lah. 73=32 P. L. R. 792=32 Cr. L. J. 1036. Court must accept or reject confession as a whole. 34 Cr. L. J. 318=34 P. L. R. 349=A. I. R. 1933 Lah. 232. Statements of witnesses recorded under s. 164 Cr. P. Code cannot be used for the purpose of contradicting the other witnesses. 26 Cr. L. J. 1925=A I. R. 1925 Lah. 122=89 Ind. Cas. 897. A statement made under s. 164 behind the back of the accused cannot be properly used as evidence against him. 7 O.W.N. 736=1930 Cr. C. 946. Examination of Magistrate to prove the statement could be made only after examining the witness. A. I. R. 1930 Sind. 308=128 Ind. Cas. 673. Previous statements used for discrediting the evidence of a witness cannot be used as substantive evidence. 25 A. L. J. 994=28 Cr. L. J. 958=A. I. R. 1927 All. 708. Where discovery of body in pursuance of confession is doubtful, reliance cannot be placed on confession. 9 Oudh. L. J. 190=23 Cr. L. J. 481=68 Ind. Cas. 17. Exculpatory statement of accused is admissible in evidence against him. 4 Pat. 327=6 P. L. T. 598=25 Cr. L. J. 878=A. I. R. 1925 Pat. 536; see also 41 C. L. J. 474=25 Cr. L. J. 1279=88 Ind. Cas. 1055.

False statement.—Statement under s. 164 is not evidence in stage of judicial proceedings within the meaning of Expl. 2, s. 193. 33 Cr. L. J 413=33 P. L. R. 179=A. I. R. 1932 Lah. 254 ; see also 45 B. 834=23 Bom. L. R. 1=22 Cr. L. J. 241=60 Ind. Cas. 593 ; but see A. I. R. 1933 Mad. 125=34. Cr. L. J. 92=A. I. R. 1933 Mad. 767=65 M. L. J. 534=38 M. L. W. 564. Where approver is examined on oath this statement can form subject of alternative charge under ss. 193 and 194 I P. Code. A. I. R. 1933 Lah. 321=14 Lah. 507=34 P. L. R. 421=34 Cr. L. J. 469.

Search by police-officer.

165.* (1) [Whenever an officer in charge of a police-station, or a police-officer making an investigation has reasonable grounds for believing that anything necesssary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limit of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.]

* (2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may † [after recording in writing his reasons for so doing] require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing ‡ [specifying the place to be searched and, so far as possible, the thing for which search is to be made ; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search warrants § ‖ [and the general provisions as to searches contained in section 102 and section 103] shall, so far as may be, apply to a search made under this section.

¶ (5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Notes.—This section does not authorize general search by police of stolen property in the house of an absconding offender. 38 C. 304 ; 38 A. 15 ; 16 C. W. N. 1078 ; 36 C. 433 ; 41 C. 26 ; 35 M. L. J. 127 ; 27 Cr. L. J. 1195. A general search means a search not in respect of specific documents or things but a roving enquiry for purpose of discovering documents or things which might involve persons in criminal liability. 27 Cr. L. J. 1195=A. I. R. 1927 Cal. 93=97 Ind. Cas. 955. The search by a police-officer for stolen articles for which a list is given is not illegal. *Ibid.* A police-officer is entitled to search even for specific documents or things in the house of a person accused of a crime. *Ibid.* Police-officer is permitted to

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* These sub-sections were substituted by s. 36 *ibid.*

† The words were inserted by *ibid.*

‡ These words were substituted for the words "specifying the documents or thing for which search is to be made and the place to be searched" by Act XVIII of 1923.

§ *See* ss. 96 to 99 *supra.*

‖ These words and figures were inserted by s. 36 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923).

¶ Sub-section (5) was added by *ibid.*

search for anything necessary for investigation purposes and not merely to search for stolen things. 23 A.L.J. 1037=27 Cr. L. J. 11=A.I.R. 1926 All. 147=91 Ind. Cas. 43. A warrant for search of the house is invalid if it does not conform to the provisions of section 165 and resistance to the officer is no offence. 38 A 14=16 Cr. L. J. 819=31 Ind. Cas. 995. Police-officer has no jurisdiction to search a house outside the limits of his police-station. Resistance to unauthorized search is no offence. 24 M. L. T. 96 C. (1918) M. W. N. 526=8 L. W. 225=20 Cr. L. J. 145; see also A. I. R. 1932 Pat. 16=10 Pat. 821. The new provisions of Cl. (5) of s. 165 is intended as an extra safeguard to protect individuals against general or roving searches. A police-officer conducting a search should send forthwith to the nearest Magistrate copies of the record. 43 C. L. J. 184=27 Cr. L. J. 542=A. I. R. 1926 Cal. 668; see also 26 A. L. J. 703=A. I. R. 1928 All. 402. Police can investigate and seize all books if suspicion is that association carries on lottery or swindling business. 33 Cr. L. J. 678=33 P. L. R. 824=A. I. R. 1932 Lah 581. Police-officer should before search give in writing grounds, of his belief as to necessity of searching house. 34 Cr. L. J. 568=10 O. W. N. 678=A. I. R. 1933 Oudh. 305; see also A. I. R. 1933 Sind. 240=1933 Cr. C. 800. Persons should not be allowed to enter the house in course of search without their persons being searched. 143 Ind. Cas. 467=34 Cr. L. J. 568=A. I. R. 1933 Oudh. 305.

When officer in charge of police-station may require another to issue search warrant.

166. (1) An officer in charge of a police-station * [or a police-officer not being below the rank of sub-inspector] making an investigation may require an officer in charge of another police-station, whether in the same or a different, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 166, and shall forward the thing found, if any, to the officer at whose request the search was made.

† (3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

† (4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).

‡ (5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Notes.—Sub-sections (3) and (4) are proposed to be added in order to give power in certain circumstances to an officer in charge of a police-station to search or cause to be searched places within the local limits of another police station.—*Statements of Objects and Reasons.*

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* These words were inserted by *ibid.*

†Sub-sections (3) and (4) were added by Act XVIII of 1923.

‡Sub-section (5) was added by s. 37 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

167. (1) Whenever *[any person is arrested and detained in custody, and it appears that the] investigation† cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station ‡[or the police-officer making the investigation if he is not below the rank of sub-inspector] shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused § to such Magistrate.

Procedure when investigation cannot be completed in twenty-four hours.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it, for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

‖ Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Local Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Notes.—The intention of the Legislature is that an accused should be brought before a Magistrate with as little delay as possible. 51 C. 403 ; 6 M. 69 ; 2 Weir 413 ; 13 C. W. N. 43 ; 11 M. 98 ; 38 C. 166. Section 167 applies to proceedings under Chapter XIV and not to those under s. 110. A second class Magistrate can not remand an accused to custody against whom proceedings under s. 110 are instituted. 39 M. 928=18 Cr. L. J. 403=38 Ind. Cas. 963. After fifteen day's detention accused must be released by police after furnishing security if required or Magistrate must take cognizance if a *prima facie* case is made out. 28 C. W. N. 490=29 Cr. L. J. 68=A. I. R. 1924 Cal. 614=83 Ind. Cas. 628. Obtaining remand from any Magistrate is objectionable. In the absence of special reasons the Magistrate in charge of the *ilaqua* should be approached for remand. 32 P. L. R. 1=A. I. R. 1931 Lah. 99. Section 167 requires a Magistrate remanding an accused person to police custody to state his reasons in writing. A remand to police custody ought not to be granted by Magistrate without satisfying himself as its necessity, and the period of remand ought also to be restricted to the necessities of the case. A. I. R. 1931 Lah. 99=32 P. L. R. 1 ; see also 31 P. L. R. 693=A. I. R. 1931 Lah. 200; A. I. R. 1935 Lah. 476. An accused should have access to legal advice which should not be refused even to prisoner remanded to custody. A. I. R. 1930 Lah. 945=129 Ind. Cas. 481; see also 32 P. L. R. 1=A. I. R. 1931 Lah. 99. Magistrate has not the powers of a police officer to investigate and keep an accused person in custody for the purposes of investigation. A. I. R. 1930 All. 259=126 Ind. Cas. 256. Detention in police custody, should be allowed only in special case and for limited period and on sufficient cause being shown. 8 O. W. N. 1240=A. I. R. 1932 Oudh. 11. Magistrate authorizing detention under s. 167(3) should record reasons. A. I. R. 1933 Oudh. 315=8 Luck. 518.

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* These words were substituted for the words "it appears that any" by s. 38, *ibid.*

† The words "under this Chapter" were omitted by *ibid.*

‡ These words were inserted by *ibid.*

§ The words and brackets "(if any)" were omitted by Act XVIII of 1923.

‖ This proviso was added by *ibid.*

Report of investigation by subordinate police-officer.

168. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Notes.—Such a report is not a public document. 20 M. 189.

Release of accused when evidence deficient.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station* [or to the police-officer making the investigation] that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer, shall if such person is in custody, release him on his executing a bond, † with or without sureties as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

Notes.—Withdrawal of complaint is not contemplated under this section. Rat. Un. Cr. C. 91. Section 169 is employed at stage of investigation by police and not where accused appear before Magistrate. A. I. R. 1933 All. 582=1933 Cr. C. 326; see also A. I. R. 1933 All. 399=34 Cr. L. J. 761=1933 A. L. J. 735; 31 P. L. R. 693=32 Cr. L. J. 464=A. I. R. 1931 Lah. 200. If after long investigation nothing is established beyond mere suspicion and if no evidence is available bail-bond may be reduced. A. I. R. 1931 Lah. 200=31 P. L. R. 693. The surety-bond in criminal cases must be strictly construed. He can only be required to forfeit the amount, if the terms are broken. 23 Cr. L. J. 68=44 B. R. (1921) 71.

Cases to be sent to Magistrate when evidence is sufficient.

170. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security † from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond, to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or person.‡

(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Notes.—Sub-section (4) of section 170 provides that the day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at

* These words were inserted by s. 39 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† *See* Sch. V. Forms XXV and XXVI respectively.

‡ Sub-section (4) has been repealed by Act II of 1916.

the Court of the Magistrate if he is to be forwarded in custody. This provision requires, for example, that all witnesses shall be bound down to appear before the Magistrate on the date when the accused is expected to arrive at the Court if he is forwarded in custody. It has been found to be inconvenient, and, it is understood, is not frequently followed in practice.—*Statement of Objects and Reasons.* Where accused is forwarded under s. 170, report under s. 123 need not be forwarded at the same time. 32 Cr. L. J. 1045=A. I. R. 1931 All. 697=53 A. 729. Private complaint will not deter police from enquiry on information received from persons other than the complainant. Charge-sheet framed by them is proper and they can prosecute the case. 30 Cr. L. J. 326=A. I. R. 1928 Mad. 1268.

Complainants and witnesses not to be required to accompany police-officer.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police officer,

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Provided that if any complainant or witness refuses to attend or to excute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate who may detain him in custody, until he executes such bond, or until the hearing of the case is completed.

Recusant complainant or witness may be forwarded in custody.

Notes.—The evidence of a witness who is kept under police surveillance cannot be called voluntary evidence. 4 C. W. N. 49.

172. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act. 1872,* section 161 or section 145, as the case may be, shall apply.

Notes.—This section is not exhaustive. It includes a statement by a police-officer that he examined certain witnesses and the statement of circumstances ascertained from the examination of the witnesses ; but it does not include the actual statement of the witnesses. 20 C. 642. Police diaries cannot be placed before the jury ; as provided by s. 172, they are useful, not as evidence, but to aid a Court in the trial so as to enable it to make a thorough enquiry on all material points, and to elicit, in the examination of the witnesses, the real facts of the case. 27 C. 295=4 C. W. N. 129. Facts and statements written in the police diaries cannot be used as material to help the Court in a criminal trial to come to a finding on the evidence in the case. 10 C. W. N. 600=3 Cr. L. J. 408. The power under this section, to look into case diaries should be sparingly exercised. 1929 M. W. N. 587. Police diary recording proceedings of investigation office cannot be used as evidence but may be used to assist the Court for clearing up or elucidating points. None but the officer who made the entry can be confronted with it. 44 C. 876=21 C. W. N. 818=33 M. L. J. 555 (P. C.) ; see also 28 Cr. L. J. 251. Entries made in a personal diary do not fall within the purview of s. 172 and are not therefore inadmissible. 26 Cr. L. J. 579=A. I. R. 1925 Cal. 959=85 Ind. Cas. 727. The accused is entitled to the benefit of

* I of 1872.

refusal to refer to the diary and to be disclosed the source of their information. 26 Cr. L. J. 738=86 Ind. Cas. 274. It is contrary to law to make use of the police diary for the purpose of corroborating the evidence of prosecution witness. 11 Pat. L. T. 837. Judge could refer to Police diaries both before and after verdict of jury. 32 C. W. N. 945=56 C. 150=30 Cr. L. J. 435=A. I. R. 1929 Cal. 57. The police proceedings are not substantive evidence and cannot be used to test the correctness of the statements made by witnesses on oath before the Court. Reference to police proceedings cannot be justified. 29. Cr. L. J. 493=A. I. R. 1928 Lah. 820=109 Ind. Cas. 221. Section 172 does not apply to the statements of persons and does not override the provisions of the Evidence Act. 9 Lah. 389=29 Cr. L. J. 348=A. I. R. 1928 Lah. 257. Entries in police diary cannot be used to discredit prosecution evidence or to aid it in enquiry or trial. The aid is confined to utilising information as foundation for examining witnesses. Court should employ great caution in using them. 28 Cr. L. J. 134=A. I. R. 1927 Oudh. 64=99 Ind. Cas. 842 ; see also 27 Cr. L. J. 572=A. I. R. 1926 Lah. 485. The Court may use the diaries for the purpose of clearing up obscurities in the evidence or bringing out relevant facts. Objects of sub-section (2) is to enable the Court to direct the police-officer to refresh his memory from the notes or to question him as to contradiction between statement and his evidence. 26 Cr. L. J. 1308=A. I. R. 1926 Lah. 54=89 Ind. Cas. 252. Defence is not entitled to inspection of anything more than that portion of the diary from which he refreshed his memory. 3 Pat. L. T. 562=23 Cr. L. J. 591=A. I. R. 1922 Pat. 562=68 Ind. Cas. 623 ; see also 26 Cr. L. J. 297=84 Ind. Cas. 441 ; A. I. R. 1933 Pat. 440. When a diary is prepared under s. 47 (a) of the Calcutta Suburban Police Act no privilege attaches to it and the accused would be entitled to use those statements to contradict those witnesses under s. 145 of the Evidence Act. 24 Cr. L. J. 757=74 Ind. Cas. 261. Right to inspect police diaries is given only to Court and Court cannot delegate its duties to counsel for defence. A. I. R. 1933 Lah. 498=34 Cr. L. J. 464. Police diary is to be used not as evidence in the case. A. I. R. 1933 Pat. 440=34 Cr. L. J. 948. Omission to prove record of statement does not preclude Court from seeing statement under s. 172 but they can be used only according to law. 14 P. L. T. 543=A. I. R. 1933 Pat. 589. Use of diary for refreshing memory is at discretion of witness or Judge. 33 Cr. L. J. 97=33 P. L. R. 891=A. I. R. 1932 Lah. 103.

Report of police-officer.

173. *[(1) Every investigation under this Chapter shall be completed without unnecessary delay, and as soon as it is completed, the officer in charge of the police-station shall—

(*a*) forward, to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, and,

(*b*) communicate, in such manner as may be prescribed by the Local Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.]

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

* This sub-section was substituted by s. 40 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

*[(4) A copy of any report fowarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial:

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

Notes.—A second investigation after submission of the report of the first investigation, on further information is competent. 35 M. L. J. 127; 19 Cr. L. J. 901. A police report should contain the names of the parties and the nature of the information as well as names of the persons acquainted with the case. 37 C. 49; 14 C. W. N. 304: 17 S. L. R. 150. The contention that this section requires that an abstract of the evidence to be given by each of the witnesses mentioned should be entered in the report for charge-sheet is unsound. 1929 M. W. N. 504. When the Court makes an order for investigation under s. 155 (2) and a charge-sheet is filed after making the investigation that charge-sheet can be regarded as report. 32 Bom. L. R. 782=A. I. R. 1930 Bom. 372=127 Ind. Cas. 110. No Magistrate trying a case is supposed to draw material for a conviction from the report of a Sub-Inspector when not examined in Court. 27 Cr. L. J. 1112=A. I. R. 1927 Pat. 37=97 Ind. Cas. 424. The District Magistrate has no power to call for a charge-sheet after the final report is disposed of by Magistrate empowered to take cognizance. 7 Pat. 561 =10 P. L. T. 14=29 Cr. L. J. 942. As soon as investigation is completed investigating officer must send his final report. A. I. R. 1933 All. 582=1933 Cr. C. 926. Remand under s. 344 can be ordered without report under s. 173. 53 A. 729=32 Cr. L. J. 1045=1931 A. L. J. 617. Section 173 applies to referred charge-sheet. 33 Cr. L. J. 785=63 M. L. J. 679. Magistrate ordering case reported under s. 173 to be struck off can re-open case by calling for charge-sheet under s. 190 (1) (c). A. I. R. 1933 Pat. 242=12 Pat. 234=14 P. L. T. 162. As regards what is charge-sheet, *vide* A. I. R. 1932 Pat. 72=33 Cr. L. J. 349=12 P. L. T. 937. If after investigation against 3 persons police sent a report describing one alone as concerned in theft and requesting to issue process Court may issue warrants even against the other two if there is evidence against them. The report is a police report as regards the other two. 17 S. L. R. 150=26 Cr. L. J. 181=83 Ind. Cas. 885.

Police to inquire and report on suicide, etc.

† **174.** (1) The officer in charge of a police-station or some other police-officer specially empowered by the Local Government in that behalf, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

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* Sub-section (4) was inserted by s. 40 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† For form in which ss. 174 to 176 should be read in their application to area comprised within the local limits of the ordinary original civil jurisdiction of the High Court at Madras, *see* s. 4 (2) of the Coroners (Madras) Act, 1889 (V of 1889,) as amended by the Repealing and Amending Act, 1903 (I of 1903).

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

(5) The following Magistrates are empowered to hold inquests namely, any District Magistrate, * [Sub-divisional Magistrate or Magistrate of the first class], and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Notes.—The accused is not entitled to copies of statements made at investigations under this section. 28 Cr. L. J. 634=101 Ind. Cas. 495. Statements taken by police-officer under s. 174 though in the presence of witnesses are statements made to police-officer. *Ibid.* The proceedings under s. 174 should be kept distinct from proceedings on complaint regarding the same death. 8 L. L. J. 524=27 P. L. R. 779=28 Cr. L. J. 26=99 Ind. Cas. 58. A Magistrate of the first class has now been empowered to hold inquests. 23 Cr. L. J. 82=65 Ind. Cas. 434. In a police enquiry under s. 174, a person who is not summoned is not bound to speak the truth. 65 Ind. Cas. 434.

Power to summon persons.

175. (1) A police-officer proceeding under section 174 may by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

Notes.—A person who is not summoned cannot be convicted of perjury for makeing false statements. 23 Cr. L. J. 82=6 P. W. R. 1922.

Inquiry by Magistrate into cause of death.

176. (1) When any person dies while in the custody of the police the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*) of sub-section (1), any Magistrate so empowered may, hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

* These words were substituted for the words "or Sub-divisional Magistrate" by s. 41 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.*

Power to disinter corpses.

Notes.—Section 25 of the Coroners Act does not oust the Presidency Magistrate of his jurisdiction under this section. 16 B. 159 ; 31 C. I ; Rat. Un. Cr. C. 540. Proceedings under s. 176 of the Criminal Procedure are judicial proceedings and are subject to the revisional power of the High Court under s. 435 and 439 of the Code. Such proceedings can also be scrutinised by the High Court in the exercise of its inherent powers under s. 561A in order to secure the ends of justice. 30 Bom. L. R. 1050=A. R. 1928 Bom. 390=29 Cr. L. J. 1063. The object of s. 176 is to have check on police-officer enquiring into the case of suspicious death by enabling a local Magistrate to hold an independent enquiry. *Ibid.*

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Notes.—Under this section, every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. 34A. 451=9 A. L. J. 696=15 Ind. Cas. 991. The word 'ordinarily' in s. 177 Cr. Pro. Code, must be taken to mean "except in the cases provided hereinafter to the contrary". 30 Bom. L. R. 387=109 Ind. Cas. 357=29 Cr. L. J. 533. Offence committed by foreigner outside British India cannot be tried in British India. Criminal Procedure cannot be applied in such case. A. I. R. 1933 Sind. 333 ; see also 23 P. R. 1918. Cr.=19 Cr. L. J. 931. Place of crime governs nature of offence. *Ibid.* Offence committed within jurisdiction of Howrah Sessions should be committed to Howrah Sessions and not High Court. 36 C. W. N. 164=59 C. 856=33 Cr. L. J. 645=A. I R. 1932 Cal. 487. Offence of bigamy and abetment of bigamy is triable only where second marriage or abetment took place and not where the woman was enticed. 26 Cr. L. J. 525=85 Ind. Cas. 365. Where Railway receipts were sent from Horda and Rs. 40,000 were obtained on their credit at Bombay held both Bombay and Horda Courts have jurisdiction. 23 Cr. L. J. 210=5 N. L. J. 16. Printing for sale at Lahore of book without permission of another is an infringement of copy right and should be tried in Lahore Court only. 18 Cr. L. J. 352=38 Ind. Cas. 737. Under s. 403 Penal Code, offence is complete the moment the accused receives or returns money with dishonest motive or appropriation. When accused receives money at one place to be handed over at another, the offence is committed at the former place. The failure to hand over money is not a necessary ingredient. The words "consequence which has ensued" in s. 179 do not apply to criminal misappropriation or criminal breach of trust. A. I. R. 1921 Pat. 85. General policy is to uphold orders passed by a Criminal Court lacking in local jurisdiction unless justice has failed. 37 M. L. J. 60=42 M. 791=26 Cr. L. J. 484=51 Ind. Cas. 468. Where accused is charged with two offences, each one of which is triable at different places, Court having jurisdiction to try one only shall try that alone. A. I. R. 1928 Bom. 475=113 Ind. Cas. 617. Where offence is inquired and tried by a Court contrary, to the provisions of s. 177, High Court can transfer the case to the Court having jurisdiction. 26 Cr. L. J. 577=85 Ind. Cas. 721=A. I. R. 1925 Oudh. 440. Where wrong measure was used at Meerut and discovery of fraud was at Agra, held that the Magistrate at Agra had no jurisdiction. 16 Cr. L. J. 825=31 Ind. Cas. 1001. For purpose of trial

* A similar power is entrusted to the Coroners of Calcutta and Bombay. *See* the Coroners Act, 1871 (IV of 1871), s. 11.

under s. 5 of Child Marriage Restraint Act, the place of marriage determines the forum. A. I. R. 1934 All. 829. Jurisdiction of Court is determined by place where contempt is committed and not place where offender resides. A. I. R. 1934 Mad. 423.

Power to order cases to be tried in different sessions divisions.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division :

Provided that such direction is not repugnant to any direction previously issued by the High Court under section 15 of the Indian High Courts Act, 1861,*† [or section 107 of the Government of India Act, 1915,] or under this Code, section 526.

Notes.—The Local Government of Burma has no power to transfer a case committed to the Court of the Recorder of Rangoon for trial, to the Court of the Commissioner. But it can transfer a case from the District of Rangoon to the Sessions Judge of Pegu. 10 C. 643.

Accused triable in district where act is done or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a*) A is wounded within the local limits of the jurisdiction of Court X and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(*b*) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(*d*) A is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.

Notes.—The consequence referred to in this section must be one of the facts to be proved to establish the offence. It must form an integral part of the offence, but must not be a consequence arising from it. 5 L. B. R 57=2. Ind. Cas 546. The word "consequence" means a consequence which forms a part and parcel of the offence. 10 A. L. J. 45=34A. 487. The word "consequence" in this section is to be understood in its ordinary grammatical meaning and need not be restricted to mean a consequence which is a necessary ingredient of the offence. 114 Ind. Cas. 99 ; A. I. R. 1928 Sind. 166 ; see also A. I. R. 1930 Bom. 358=127 Ind. Cas. 177 ; 32 Bom. L.R. 1195 (F. B.)=A.I.R. 1930 Bom. 490=129 Ind. Cas. 385 ; 24 Cr. L.J. 579=73 Ind. Cas. 323 ; 81 Ind. Cas. 538=25 Cr. L.J. 922. This section can be applied only to cases in which the consequence necessary to constitute the offence ensues in some place other than that in which the accused's act is done. 1915 M. W. N. 418=18 M. L. T. 25. S. 179 does not apply in so far as the words "and of any consequence which has ensued" are covered where the offence alleged is complete. 10 P. L. T. 161=30 Cr. L. J. 765=A. I. R. 1929 Pat. 640=117 Ind. Cas. 309. S. 179 does not govern jurisdiction of Court to try offence of misappropriation or breach of trust. Special provisions to be found in section 181 (2). 25 Cr. L. J. 410=77 Ind. Cas. 490.

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* 24 & 25 Vict., c. 104, 5 & 6 Geo. 5, c. 61. *See* now the Government of India Act. 1915 (5 & 6 Geo. 5c. 61).

† These words and figures were inserted by s. 2 and Schedule of the Amending Act, 1916 (XIII of 1916.)

For s. 179 person must be accused of commission of offence by reason of act done and consequence which has ensued. A. I. R. 1930 Bom. 490=129 Ind. Cas. 385. Where cheating is committed by posting V. P. parcels, the Court in whose local area the posting was made had jurisdiction to try the offence. 32 Bom. L. R. 785=A. I. R. 1930 Bom. 358=127 Ind. Cas. 177. Failure in rendering accounts or rendering false accounts at another place does not confer jurisdiction upon Magistrate at latter place. A. I. R. 1930 Bom. 490=129 Ind. Cas. 385. When offence is committed partly in C. P. and partly in U. P. the U. P. Court has jurisdiction. L. R. 2 A. (Cr.) 28. Section 188 overrides s. 179. 59 C. 1065=33 Cr. L. J. 267=A. I. R. 1932 Cal. 465. Consequences need not be part and parcel of act committed 34 Cr. L. J. 1038=A. I. R. 1933 Nag. 33. Loss to one person owing to misappropriation by another is not essential ingredient of criminal misappropriation. 32 Cr. L. J. 1120=9 Rang. 338=A. I. R. 1931 Rang. 164. Section 179 has no application to offences committed under Penal Code s. 408. *Ibid.* Where P cheats by sending a letter to N at S insured for Rs. 400 intending to use N's receipt given to the post-office as proof of discharge of his debt due to N. Court at S has jurisdiction under s. 179. 32 Cr. L. J. 996=32 P. L. R. 26. In all cases of breach of trust s. 181 (2) is preferred to s. 179. 9 Rang. 338=A. I. R. 1931 Rang. 164; see also 29 C. W. N. 432=41 C. L. J. 80; but see A. I. R. 1930 All. 449. Section 181 (2) does not in any way modify the provision of s. 179. 27 Cr. L. J. 992=A. I. R. 1926 All. 466=96 Ind. Cas. 656. Sections 179 to 184 are controlled by s. 188 and the alternative jurisdiction can be exercised on production of certificate of Political Agent. 32 Bom. L. R. 98=54 s. 171=A. I. R. 1930 Bom. 155. Ss. 179 and 181 are not mutually exclusive. A. I. R. 1934 All. 499 (F. B.). In cases of breach of trust residence of complainant does not determine jurisdiction. A. I. R. 1934 All. 127. For application of s. 179 act done and consequence ensued must together constitute offence. A. I. R. 1934 All. 499 (F.D.) see also A. I. R. 1933 Sind 333. Where mortgage was executed in Bombay and creditors were defrauded at Yeotmal, Yeotmal Court is competent to try offences. A I. R. 1933 Nag. 33. Where letter giving false information under s. 182 I. P. Code is posted at *Kumba Kanam* and reaches D. S. P. at Tanjore, an offence under s. 182 is committed at Tanjore. 33 Cr. L. J. 452. Where bogus cheque is drawn and handed over at M, but loss occured at F where the cheque was dishonoured, Court at F has jurisdiction. A. I. R. 1933 Oudh. 215.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the firstmentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping took place.

Notes.—The British Court has no jurisdiction to try the accused for retention of stolen property outside British India, even when the theft is committed within British India. 18 C. W. N. 1178=15 Cr. L. J. 527. Abduction is a continuing offence; an accused can be tried in any of the Courts within whose jurisdiction offence takes place. A. I. R. 1931. All. 55. A non-British subject retaining stolen property in Native state is not amenable to British Courts. 90 P. L. R. 1922=68 Ind. Cas. 160. Where a conspiracy to murder is entered into one District and an attempt is made in another, Courts in both Districts can enquire and try the case under s. 180. Cr. Pro. Code. 74 P. L. R. 1917=18 Cr. L. J. 514.

181. (1) The offence of being a thug of being a thing and committing murder, of dacoity of decoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, etc.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is subject of the offence was received or retained by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

*[(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose juridiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.]

Theft.

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Kidnapping and abduction.

Sub-section (2)—Section 181 (2) and not s. 179 applies to a case of criminal breach of trust or criminal misappropriation. 29 C.W.N. 432 ; 21 C.W.N. 573. In case of failure to account owing to breach of trust, place of offence is the place of accounting. 41 C. L. J. 80=20 C. W. N. 432=26 Cr. L. J. 725=86 Ind. Cas. 213 ; 96 Ind. Cas. 212=27 Cr. L. J. 900 ; 26 C. W. N. 125=71 Ind. Cas. 241. Section 181 (2) does not in any way modify the provision of s. 179. 27 Cr. L. J. 992=96 Ind. Cas. 656. In case of criminal breach of trust, offence is triable where conversion takes place. 2 Bur. L. J. 40=24 Cr. L. J. 746=74 Ind. Cas. 74. In all cases of criminal breach of trust s. 181 (2) is preferred to section 179. 9 Rang. 338=32 Cr. L. J. 1120. Agent can be tried at place to which he is bound to make remittance. A. I. R. 1932 All. 367=33 Cr. L. J. 711. Failure to account in place where person entrusted ought to have accounted does not give Court at that place jurisdiction to try person for criminal breach of trust. 32 Cr. L. J. 1042=35 C. W. N. 320=A. I. R. 1931 Cal. 521. Where criminal breach of trust is committed at B and where only non-accounting takes place at C, C Court is not in the right venue for trial. A. I. R. 1931 Cal. 532=32 Cr. L. J. 1259. Where in a case of breach of trust, several items are consolidated accused can be tried in any Court within whose jurisdiction any part of property is received. A. I. R. 1932 All. 26=33 Cr. L. J. 127 ; see also 35 C. W. N. 809=59 C. 92=A. I. R. 1931 Cal. 528. Section 181 overrides and is not qualified by s. 179. A. I. R. 1933 Lah. 559=34 Cr. L. J. 902 ; A. I. R 1934 All 127 ; but see A. I. R. 1934 All. 499 (F. B.). Non-accounting itself is offence and as such place of accounting is the place of offence. A. I. R. 1934 Cal. 392 ; see also A. I. R. 1934 All. 148 but see A. I. R. 1934 Cal. 127. Where money is payable in A but is misappropriated in B, offence is triable in B. 6 Lah L. J. 471=26 Cr. L. J. 136=83 Ind. Cas. 696 ; see also 51 B. 101=28 Bom. L. R. 1292=28 Cr. L. J. 44. In case of breach of trust by cashier, place of delivery is the place of offence. 52 M. 61=30 Cr. L. J. 245. Where a partner being bound by the articles of partnership to manage the business at Rangoon and forward accounts to Bombay, misappropriated the firm's money, at Rangoon and sent false accounts to Bombay, the Rangoon Court alone had jurisdiction. 32 Bom. L. R. 1195 (F. B.). Offence of criminal misappropriation should be tried where it is committed. 25 Cr. L. J. 377=77 Ind. Cas. 425.

Sub-section (3)—Person found in possession of stolen property can be tried by Court within whose jurisdiction theft is committed or it was possessed by any person. A. I. R. 1934 Cal. 455.

Sub-section (4)—Abduction is continuing offence. Accused can be tried in any Courts within whose jurisdiction offence takes place. 53A. 140=324. Cr. L. J. 690.

* This sub-section was substituted by s. 42 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

t is doubtful if the words "offence of kidnapping or abduction" include an offence of wrongfully detaining or keeping in confinement a kidnapped person. 21 A. L. J. 912=81 Ind. Cas. 40 ; see also A. I. R. 1931 All. 55.

Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or,

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Notes.—If a defamatory letter is posted in Madras with a view to its being used in Tinnevelly, the offence of defamation is triable either in Madras or in Tinnevelly under s. 179 or 182. 44 M. L. J. 648. The offence of adultery is not a continuing offence where a person has once been convicted or acquitted of the offence and subsequently he is again guilty of such a conduct he may be prosecuted once again in relation to such act. *In re Shanker Tulsi Ram*, 30 Bom. L. R. 1435= A. I. R. 1928 Bom. 530. This section applies in cases of uncertainty. 1934 All. 499. An offence under 366 A. I. P. Code is a continuing offence. 1930 A. L. J. 1485= A.I.R. 1931 All. 55 ; 1933 Oudh 45. But offence of kidnapping from lawful guardianship is not continuing offence. *Ibid.* In a case when Railway receipts were sent form Harda and Rs. 40,000 were obtained on their credit at Bombay both Bombay and Harda Courts have jurisdiction to try a case of cheating against the sender of the railway receipt as the sending of the railway receipt is one of the series of acts constituting the cheating. 23 Cr. L. J. 210=65 Ind. Cas. 994. Where mortgage is executed in Bombay and creditors were defrauded at Yeotmal, Yeotmal Court is competent to try offence. A. I. R. 1933 Nag. 33=34 Cr. L. J. 1038.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offence committed on a journey.

Notes.—*Vide* 1 C. L. J. 334, 24 Cr. L. J. 579 ; 24 Cr. L. J. 253 ; 25 Cr. L. J. 439 ; 30 Cr. L. J. 245=52 M. 61.

184. All offences against the provisions of any law for the time being in force relating to Railways,* Telegraphs†, the Post Office ‡ or Arms and Ammunition § may be inquired into or tried in a presidency-town whether the offence is stated to have been committed within such town or not :

Offences against Railway, Telegraph, Post Office and Arms Acts.

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

‖ [**185.** (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

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* *See* the Indian Railways Act, 1890 (IX of 1890).

† *See* the Indian Telegraphs Act, 1885 (III of 1885).

‡ *See* the Indian Post Office Act, 1898 (VI of 1898).

§ *See* the Indian Arms Act, 1878 (XI of 1878).

‖ Section 185 was substituted by s. 43 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice, does not so decide, any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending, may give a like direction and upon its so doing all other such proceedings shall be discontinued.]

Notes—"In view of the conflicting decisions in the Indian Law Reports, 41 C. 595, and the Indian Law Reports, 40 M. 435, it is proposed to make it clear that one High Court has no power, whether by implication or otherwise, to transfer a case to itself from another High Court or *vice versa*, or to decide which or two other High Courts should try a particular case"—*Statement of Objects and Reasons.* Section 185 gives the High Court no jurisdiction to transfer a case from a Court situate out of its jurisdiction and subordinate to another High Court. 40 M. 835=18 Cr. L. J. 148=37 Ind. Cas. 516; see also A. I. R. 1933 Oudh. 45=9 O. W. N. 1181=34 Cr. L. J. 220. Section 185 includes all cases of doubt not only as to jurisdiction of one or another Court but also as to comparative suitability of this or that Court from the practical stand point of convenience or expediency for purpose of trial. "Doubt" in section 185 is only about jurisdiction order. "Doubt" in section 185 does not mean "doubt" as to acts constituting the offence and the place of their commission. The object of the above section is to determine cases where the facts said to constitute jurisdiction are doubtful and not to cut down jurisdiction which admittedly exist. 44 C. 595=21 C. W. N. 320=25 C. L. J. 165.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

186. (1) When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

Notes.—The High Court has jurisdiction under s. 29, Letters Patent to make an order directing a Magistrate to hold a preliminary investigation and in the event of a *prima facie* case being made out to commit for trial to the sessions a case which falls within this section. 2 Weir 146=1 Weir 789. This section relates to offences which the Magistrate knows at the outset to have been committed if at all, outside the limits of his jurisdiction. 25 Cr. L. J. 184=A. I. R. 1923 Cal. 401=76 Ind. Cas. 424.

Procedure where warrant issued by subordinate Magistrate.

187. (1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or

try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India, or

when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that *[notwithstanding anything in any of the preceding sections of this Chapter] no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India ; and, where there is no Political Agent, the sanction of the Local Government shall be required :

Political Agents to certify fitness of inquiry into charge.

Provided, also, that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India, shall be a bar to further proceedings against him under the Indian Extradition Act, 1903"† in respect of the same offence in any territory beyond the limits of British India.

Notes.—The obtaining of the certificate of the Political Agent, as provided for by this section is a preliminary requisite to the holding of an enquiry in British India of an offence committed outside British India. 24 A. 256=A. W. N. 1902, 45 ; see also 19 A. 109 ; L. B. R. (1872-1892) 334 ; Rat. Un. Cr. C. 253. If there is no Political Agent in place outside British India no preliminary sanction as required by this section is necessary. 14 B. 227. British Vice-consul in foreign territory is not Political Agent within the meaning of s. 188. A. I. R. 1934 Sind. 96. Section 188 refers to crimes committed beyond limits of British India and not to offence committed in British India. A. I. R. 1933 All. 498. The omission to obtain a sanction vitiates the trial and the conviction of the accused. 11 Pat. L. T. 433=A. I. R. 1930 Pat. 501=122 Ind. Cas. 155 ; see also 97 Ind. Cas. 752=27 Cr. L. J. 1168=7 Lah. 396=27 P. L. R. 447 ; 5 Lah. 416=27 Cr. L. J. 28=92 Ind. Cas. 170 ; 41 A. 452=17 A. L. J. 450=20 Cr. L. J. 276 ; 96 Ind. Cas. 398=7 Lah. 468=27 Cr. L. J. 942 ; 32 Bom. L. R. 98. Certificate by Under-Secretary to Political Agent is not sufficient. 27 Cr. L. J. 942=27 P. L. R. 708=A. I. R. 1926 Lah. 609=96 Ind. Cas. 398. Certificate may be obtained subsequent to the complaint. 47 B. 907=25 Bom. L. R. 772=77 Ind. Cas. 189 ; see also 19 S. L. R. 122=25 Cr. L. J. 620=A. I. R. 1925 Sind. 88=81 Ind. Cas. 108 ; 7 Lah. 468=27 Cr. L. J. 942=27 P. L. R. 708=96 Ind. Cas. 398. An agreement between a Native State and the authorities of the British Indian District, conceding to the British Indian Courts the right to try subjects arrested in British India cannot take the place of the certificate or sanction under s. 188. 42 A. 89=17 A. L. J. 1055=20 Cr. L. J. 700=52 Ind. Cas. 668. The first proviso refers only to offences committed on any territory and not

* These words were inserted by s. 44 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Substituted by Act X of 1927.

to offences committed on high seas. The word "place" in the first paragraph of the section includes high seas in its ambit. 41 B. 667=19 Bom. L. R. 537=18 Cr. L. J. 782=41 Ind. Cas. 158. Where dacoity is committed in British India but murder committed soon after in Native State, offenders can be tried under s. 396 I. P. Code in British India without a certificate under s. 188. A. I. R. 1933 Lah. 977. Offence of importing opium is constituted by bringing it into territory in question. Where it was before is immaterial. 36 C. W. N. 456=33 Cr. L. J. 267. Trial is invalid where certificate is obtained after order of discharge. A. I. R. 1933 Lah. 659=34 Cr. L. J. 578. Certificate of Local Government is sufficient where there is no official representative of Britisn Indian Government. A.I.R. 1934 Sind. 96. As regards the object of the certificate of the Political Agent or Local Government, vide *Ibid.* It is not necessary that the Political Agent should himself sign the certificate. All that is required that the Political Agent should be of opinion that the case should be tried in British India. A. I. R. 1934 Bom. 1. Certificate of Political Agent is necessary for trial of offence of mere detention of stolen property in foreign territory. A. I. R. 1933 Mad. 461=34 Cr. L. J. 545. His Britanic Majesty's Minister at Kabul is not Political Agent within General Clauses Act, 1897 A. I. R. 1934 Lah. 827. Absence of certificate under s. 188 can be issued under s. 537. *Ibid.*

Power to direct copies of depositions and exhibits to be received in evidence.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B.—Condition requisite for Initiation of Proceedings.

Cognizance of offences by Magistrates.

190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate especially empowered in this behalf, may take cognizance of any offence :—

(*a*) upon receiving a complaint of facts which constitute such offence :

*[(*b*) upon a report in writing of such facts made by any police-officer ;]

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or sepecial orders of the Local Government may empower any Magistrate to take cognizance under sub-section (1), clause (*a*) or clause (*b*), of offences for which he may try or commit for trial :

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (*c*), of offences for which he may try or commit for trial.

Scope.—Under section 190, a Magistrate takes cognizance of an offence and not of the offender. 17 S. L. R. 150=26 Cr.L.J. 181=83 Ind. Cas. 885 ; see also A. I. R. 1934 P. 467. While considering s. 190 it cannot be warranted that the three alternatives upon which a Magistrate may take proceedings are mutually exclusive. It is not correct that a Magistrate while taking cognizance of an offence should have done it under some one of the alternatives to the exclusion of the others. 10 Pat. L. T. 779=30 Cr. L. J. 1056. Good faith will cure an erroneous assumption of jurisdiction in a non-cognizable case. 29 Cr. L. J. 65=106 Ind. Cas. 577.

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* This clause was substituted by s. 45 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Take cognizance.—Power to try includes power to take cognizance. 33 Bom. L. R. 1192=33 Cr. L. J. 68=A. I. R. 1931 Bom. 517. Cognizance can be taken under one or all clauses. A. I. R. 1933 Rang. 271. Magistrate moved to act under s. 436 can take cognizance of complaint. 32 Cr. L. J. 548=12 P. L. T. 729=A. I. R. 1931. Pat. 50. Magistrate taking cognizance otherwise than upon complaint or on police report must inform the accused of his right under s. 191. 27 Cr. L. J. 325=A. I. R. 1926 All. 325. Magistrate initiating the proceeding is competent to try. 50 C. 135= 26 C. W. N. 878. Addition of new accused should be regarded as taking cognizance as against them. 1 Bur L. J. 183=24 Cr L. J. 519; but see 26 Cr. L. J. 1619. Under s. 190 (1), District Registrar who is also District Magistrate can take cognisance under s. 191 (1) of a case coming before him as District Registrar. 2 Pat. 459 =4 P. L. T. 727=24 Cr. L. J. 792.

Complaint.—The definition of "complaint" does not require any statement of facts beyond an allegation that some person has committed an offence, but if that definition is read into section 190 (1) (a) it is clear that before the Magistrate takes cognizance he must have before him an allegation of facts constituting the offence. 25 C. W. N. 357=22 Cr. L. J. 405=61 Ind. Cas. 839. Order to take some persons in custody is not a complaint. 15 S. L. R. 119=23 Cr. L. J. 97=A. I. R. 1922 Sind. 9. Under s. 190 (1) (a) a Magistrate takes cognizance of a case when the complaint is filed and even before the examination of the accused. 25 Cr. L. J. 730=81 Ind. Cas. 218. When a trial Magistrate reports to the District Magistrate that an accused before him was a perjurer and altered a document filed in Court, he can take cognizance of the offence under s. 190 (a). 21 A. L. J. 82=A. I. R. 1924 All. 190=81 Ind. Cas. 595. A police officer is not prohibited under Cr. Pro. Code from presenting a complaint to the Magistrate in a non-cognizable case. 25 Cr. L. J. 1361=6 L. L. J. 606=A I. R. 1925 Lah. 237=82 Ind. Cas. 753; see also 51 B. 498=29 Bom. L. R. 742=28 Cr. L. J. 939=105 Ind. Cas. 459; 31 Cr. L. J. 55; A. I. R. 1933 Sind. 188; 29 Cr. L. J. 938. Proceedings on a written complaint by the Magistrate would come under s. 190 (1) (a). 27. Cr. L. J. 1406=A. I. R. 1927 All. 108=98 Ind. Cas. 718. Where the complainant and the Judge is the same the trial is improper. 30 Cr. L. J. 134=4 Luck. 353=5 O. W. N. 1136. Proceedings of enquiry into unauthorised horse races can be treated as a complaint. 8 Rang. 246=125 Ind. Cas. 360. A District Magistrate acting under s. 436 can take cognizance of complaint under this section. A. I. R. 1931 Pat. 50. An allegation in writing that certain persons have committed an offence and a request to try them under I. P. Code is a complaint. A. I. R. 1930 All. 820. It is wrong that any Court should accept a complaint which charges two people in the alternative. A. I. R. 1930 Rang. 51=126 Ind. Cas. 535. Cognizance of offence beyond jurisdiction is invalid but the complainant on whose complaint it was taken cannot be prosecuted for false complaint. 5 pat. 447= 7P. L. T. 335=27 Cr. L. J. 704=94 Ind. Cas. 896. The power under clause (a) of sub-section (1) is personal and is independent of local area. 33 Cr. L. J. 68= 33 Bom L. R. 1192=A. I. R. 1931 Bom. 517. Charge-sheet can be treated as a complaint to take cognizance in good faith. 34 Bom. L. R. 901=33 Cr. L. J. 733= A. I. R 1932 Bom. 610; 32 Bom. L. R. 782=A. I. R. 1930 Bom. 372. Anonymous letter can be the basis for cognizance. 51 A. 377; see also 20 Cr. L. J. 742=53 Ind. Cas. 150; 46 C. 807=23 C. W. N. 484=20 Cr. L. J. 794; 23 C. W. N. 481=29 C. L. J. 383; 18 Cr. L. J. 277.

Police report.—"Police report" in s. 190 Cr. P. Code means a report within s. 170. When a Magistrate takes cognizance of an offence uuder s. 190, a judicial act is performed by him. 38 C. L. J. 388. Taking cognizance occurs as soon as the Magistrate as such applies his mind to the suspected commission of an offence. 10 P. L. T. 618=30 Cr. L. J. 554=A. I. R. 1930 Pat. 30. Where cognizance is properly taken subsequent events or anything in s. 195 (1) (b) cannot deprive Magistrate of jurisdiction. 10 P.L.T. 618=30 Cr. L.J. 554=A.I.R. 1930 Pat. 30. Magistrates are entitled to take cognizance of non-cognizable offences upon a report made in writing by a police-officer without examining the officer on oath. 28 Cr. L.J. 821=104 Ind. Cas. 437. The report of a Sub-Inspector of Excise to a Magistrate is a police report only for the purpose of s. 190. Cr. P. Code. 54 C. 371=28 Cr. L. J. 316=A. I. R. 1927 Cal. 405. The report of police-officer mentioned in s. 190 (1) (b) includes the police report even in non-cognizable case. 49 M. 525=27 Cr. L. J. 1031=52 M. L. J. 210=A. I. R. 1926. Mad. 865. Police report is s. 191 (b) is not restricted to reports under s. 173 only. 17 S. L. R. 150=26 Cr. L. J. 181=83 Ind. Cas. 885. When a Magistrate takes cognizance of a complaint under s. 190, clause

(*b*) and directs process to issue against other persons whose names transpired in the prosecution evidence during the trial, he is quite justified in doing so and he is deemed to have taken action against them under clause (*a*) and not under clause (*c*). 17 S. L. R. 150=26 Cr. L. J. 181=83 Ind. Cas. 885 ; but see 4 Bur. L. J. 213=27 Cr. L. J. 669=94 Ind. Cas. 717. Magistrate can take cognizance both in cognizable and non-cognizable offences upon a report mentioned in s. 190 (1) (*b*), since s. 190 extends to all offences. 28 C. W. N. 490=26 Cr. L. J. 68=83 Ind. Cas. 628. The written allegation of a non-cognizable offence made by a police officer who is also a public prosecutor is not the report of a police-officer. The words "report of a police-officer" refer to the report of a police-officer in cases in which he is authorized to investigate by the Code. 25 Cr. L. J. 1361=6 L. L. J. 606=A. I. R. 1925 Lah. 237=82 Ind. Cas. 753. A report to a Magistrate, by a police-officer to have his subordinate, prosecuted would not be a police report under s. 190 (*b*). 9 O. L. J. 342=23 Cr. L. J. 641=26 O. C. 44=69 Ind. Cas. 81. Where a charge-sheet alleges that a certain offence will be established by the evidence of certain witnesses this is sufficient to enable the Magistrate to take cognizance. 23 Cr. L. J. 69=A. I. R. 1922 Pat. 294=65 Ind. Cas. 421; see also 23 Bom. L. R. 842=22 Cr. L. J. 603=A. I. R. 1921 Bom. 365=62 Ind. Cas. 875. No preliminary inquiry can be made when cognizance is taken under clause (*b*) and (*c*) of s. 190. It can be only made when there is complaint under s. 190. (1) (*a*). 2 Pat. L. T. 220=22 Cr. L. J. 735=64 Ind. Cas. 47. Police report is not restricted merely to reports under Chapter XIV of the Code but embraces all reports submitted under s. 24 of the Police Act. 1 Pat. L. T. 446=22 Cr. L. J. 9=59 Ind. Cas. 41 ; but see 1 Pat. L. T. 73=21 Cr. L. J. 269. A duly empowered Magistrate taking cognizance of a non-cognizable offence on a Police report under s. 190 (*b*) of the Criminal Pro. Code must immediately summon the accused. 20 Cr. L. J. 413=51 Ind. Cas. 173 ; see also 21 C. W. N. 950=18 Cr. L. J. 901. Application of prosecuting Inspector to put prosecution witnesses on trial as accused is report within meaning of s. 190. A. I. R. 1933 All. 399=34 Cr. L. J. 761=1933 A. L. J. 735.

Information—It is desirable that a Magistrate taking cognizance under s. 190 (1) (*c*) should record the information upon which he has acted. 4 Bur. L. J. 211=27 Cr. L. J. 413=A. I. R. 1926 Rang. 46=93 Ind. Cas. 77. A letter conveying an information and asking for action to be taken can be treated as information under section 190 (*c*) for taking action. 25 Cr. L. J. 1147=28 O. C. 33=81 Ind. Cas. 971. Counter petition under s. 144 is not information. 1 Pat. L. R. Cr. 97=24 Cr. L. J. 482=72 Ind. Cas. 945. Section 190 (1) (c) Cr. Pro. Code empowers a District Magistrate to take cognizance of an offence upon information received by him in a different capacity. 38 M. L. J. 219=27 M. L. T. 123=21 Cr. L. J. 348=55 Ind. Cas. 684. A proceeding can be taken cognizance of under s. 190 (c) of the Code only when it is instituted upon information received from a person other than a police-officer or upon the Magistrate's own knowledge or suspicion. 1 Pat. L. T. 446=22 Cr. L. J. 9=59 Ind. Cas. 41.

Own knowledge.—Section 190(c) gives very wide powers to the Magistrate. What is intended thereby is that the Magistrate should be able to bring his experience to bear upon any statement of facts made to him by an aggrieved person who might not know what his legal remedy was in the given circumstances. A. I. R. 1930 Oudh 500=128 Ind. Cas. 279. "Upon his own knowledge" does not include knowledge gained from a police report. 10 P. L. T. 601=31 Cr. L. J. 55=A. I. R. 1929 Pat. 514. A Magistrate can try a case of which he has taken cognizance uuder s. 190 (c) provided he has complied with the provisions of s. 191. 3 Bur. L. J. 121=26 Cr. L. J. 249=84 Ind. Cas. 249. After cognizance Magistrate can for reasons order police to bring charge-sheet against certain persons. 6 P. L. T. 323=26 Cr. L. J. 211=84 Ind. Cas. 241.

Clause (c).—Non-compliance with s. 191 is illegal and hence incurable. 16 P. L. R. 1921=22 Cr. L. J. 93=59 Ind. Cas. 384. Section 190 of the Criminal Procedure Code must be read with s. 200 of the Code. 20 Cr. L. J. 481=51 C. 465. The Magistrate's taking cognizance of an offence under s. 190 (1) (c) is no bar to his holding an inquiry preliminary to commitment. 20 Cr. L. J. 47=48 Ind. Cas. 687. Although s. 190 (1) (c) applies only to offences, the principle must apply to cases of miscellaneous character, *e. g.*, proceedings under s. 110 Cr. Pro. Code. 4 Pat. L. J. 7=19 Cr. L. J. 899 ; but see 20 S. L. R. 291=27 Cr. L. J. 1280=A. I. R. 1927 Sind 77=98 Ind. Cas. 128. Failure of Magistrate to tell the accused that he can

get his case transferred renders the proceedings void. 19 A. L. J. 138=22 Cr. L. J. 319=60 Ind. Cas. 1007. Where Magistrate is taking cognizance under 190 (1) (c) the accused should be given option to be tried by some other Magistrate. 14 P. L. T. 162=12 Pat. 234=A. I. R. 1933 Pat. 242.

Transfer or commitment on application of accused.

191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate.

Notes.—Where a Magistrate takes cognizance of an offence under s. 190 (c), he is bound to take further proceedings under s. 191. 6 C. W. N. 202. Non-conpliance with the provisions of section 191 is not a mere irregularity, but it is an absolute illegality and vitiates the whole trial. 22 Cr. L. J. 96=16 P. L. R. 1921=59 Ind. Cas. 384 ; see also 19 A.L.J. 138=22 Cr. L.J. 319 ; 21 A. L. J. 89=24 Cr. L. J. 656=73 Ind. Cas. 576=A. I. R. 1923 All. 383 ; 25 Cr. L. J. 1224=28 O. C. 1 ; 27 Cr. L. J. 325=A. I. R. 1926 All. 325 ; 27 Cr. L. J. 1037=A. I. R. 1927 Lah. 627, 84 Ind. Cas. 249=3 Bur. L. J. 121. Magistrate must inform accused that they are entitled to have trial by other Magistrate. A. I. R. 1934 Lah. 210 ; see also A. I. R. 1934 All. 693.

Transfer of cases by Magistrates.

192. (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial ; and such Magistrate may dispose of the case accordingly.

Notes.—A Magistrate can, under this section, transfer to his subordinate Magistrate only such cases as he has taken cognizance of and not others. 5 O. C. 164. Where a District Magistrate has referred a case for trial to a Sub-Divisional Magistrate, the latter has no power to transfer it to any other Magistrate subordinate to him and any order to this effect is *ultra vires*. 12 A. L. J. 225=36 A. 166=15 Cr. L. J. 406=23 Ind. Cas. 1006. Where whole case is transferred to subordinate Magistrate Sub-divisional Magistrate cannot pass any order as regards that case unless he acts under Cr. Pro. Code, s. 528. 14 P. L. T. 176=12 Pat. 341=A. I. R. 1933 Pat. 244. Where Magistrate has examined petitioner on oath and has ordered police enquiry, he can transfer the case after police report as he has already taken cognizance of the case. 34 Cr. L. J. 414=1933 A. L. J. 188=A. I. R. 1933 All. 264 (F. B.) District Magistrate taking cognizance of case on a report of his subordinate, has power to transfer the case to another Magistrate. 21 A. L. J. 825=902 A. L. R. 1049=81 Ind. Cas. 595. Under s. 192, a transferring Magistrate cannot intermeddle with a case transferred unless and until, having power to do so, he recalls it to his own file. 46 C. 854=23 C. W. N. 623=29 C. L. J. 322=20 Cr. L. J. 508=51 Ind. Cas. 668. Proceedings under s. 145 can be transferred. 20 A. L. J. 215 33 Cr. L. J. 205=A. I. R. 1922 All. 99=65 Ind. Cas. 861 ; 4 Pat L. T. 279=24 Cr. L. J. 487. Section 192 applies to a proceeding under section 110 the proceeding being a case. 1 Pat. 621=24 Cr. L. J. 31=4 P. L. T. 44=A. I. R. 1921 Pat 586=71 Ind. Cas. 79. A Magistrate who transfers a case for trial under s. 192 has no power to transfer it again. 23 Cr. L. J. 89=65 Ind. Cas. 441. By transfer after recall of warrants against some, the whole case is transferred and the original Court is *fructus officio* A. I R. 1921 Pat. 474. Transfer after discharging accused and asking complainant to prove his case is not proper. 2 P. L. T. 142=A. I. R. 1921 Pat. 205. The new Magistrate can deal with the case as if he had taken cognizance of it. 55 C. 1274=30 Cr. L. J. 352=A. I. R. 1929 Cal. 192. Transferee Magistrate has the power to do everything that is necessary to decide the case. 7 P. L. T. 420=27 Cr. L. J. 855=95 Ind. Cas. 935. Transfer must be to a Court which has territorial jurisdiction. 55 M. L. J. 693=52 M. 241=30 Cr. L. J. 340=A. I. R. 1928 Mad.

1230. In cases of transfer, the District Magistrate should give an opportunity to the accused to show cause against transfer. 51 M. 610=55 M. L. J. 217=29 Cr. L. J. 734. Where after recall of the first transfer a case is transferred to a second Magistrate, the entire proceedings after first transfer is bad. 7 P. L. T. 530=26 Cr. L. J. 1585=90 Ind. Cas. 657. The transfer by a Sub-divisional Magistrate of a case under s. 192 Cr. P. Code when the case has already been transferred to him by the District Magistrate is a mere irregularity. 21 Cr. L. J. 96=54 Ind. Cas. 496. Section 192 (1) does not empower a Magistrate to transfer a case simply for the purpose of considering the report of an investigation under s. 202, Cr. Pro. Code. 29 C. W. N. 508=26 Cr. L. J. 990=87 Ind. Cas. 526. Magistrate can transfer even at a later stage. A. I. R. 1934 M. 435 ; see also A. I. R. 1934 Pat. 467.

Cognizance of offences by Courts of Session.

193. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government by general or special order may direct them to try, or *as the Sessions Judge of the division, by general or special order, may make over to them for trial.

Notes.—By this section, a Sessions Judge can only take cognizance, as a Court of original jurisdiction, of an offence, when the accused has been duly committed. 6 P. W. R, 1913=260 P. L. R. 1913. The object of s. 193 Cr. Pro Code is to secure to the accused person a preliminary enquiry which would afford him the opportunity of being acquainted with the circumstances of the offence, and to enable him to make his defence. This would be frustrated if fresh charge is added in the Sessions Court. 21 S. L. R. 55=27 Cr. L. J. 1217=A. I. R. 1927 Sind. 28=97 Ind. Cas. 1041. As regards the meaning of the word "only" *vide* 55 B. 576=32 Cr. L. J. 1147=33 Bom. L. R. 675. Section 193 (2) contemplates general directions for convenience of people. *Ibid.* Special Government order as to at what place Court of Session should hold its sittings is not *ultra vires*. *Ibid.*

Cognizance of offences by High Court.

194. (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the † Indian High Courts Act, 1861, ‡ [or the Government of India Act, 1915], or any other provisions of this Code.

Information by Advocate general.

(2) (a) Notwithstanding anything in this Code contained, the Advocate General may, with the previous sanction of the Governor; General in Council or the Local Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney General may exihibit informations on behalf of the Crown in the High Court of Justice in England.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

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* These words "in the case of Assistant Sessions Judges" were omitted by s. 46 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII 1923).

† *See* now the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61).

‡ These words were inserted by s. 2 and Schedule of Amending Act, 1916 (XIII of 1916).

(d) The High Court may make rules for carrying into effect the provisions of this section.

Notes.—Procedure of *ex-officio* information should not be adopted where ordinary procedure can be adopted. 57 C. L. J. 177=64 M. L. J. 466=34 Cr. L. J. 322. Allegations as to opinion of execution are quite out of place and should never be included in it. *Ibid.*

195. [*(1) No Court shall take cognizance—

(*a*) of any offence punishable under sections 172 to 188 of the Indian Penal Code, † except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate ;

Prosecution for contempt of lawful authority of public servants.

(*b*) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate ; or

Prosecution for certain offences against public justice.

(*c*) of any offence described in section 463 or punishable under 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.]

Prosecution for certain offences relating to documents given in evidence.

(2) In clauses (*b*) and (*c*) of sub-section (1) the term "Court" [includes]‡ a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.§

‖ [(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that—

(*a*) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate : and

(*b*) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court, according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed].

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* This sub-section was substituted by s. 47 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† XLV of 1860.

‡ This word was substituted for the word "means" by s. 47 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ *See* now the Indian Registration Act, 1908 (XVI of 1908).

‖ This sub-section was substituted for the original sub-section (7) after it was renumbered as sub-section (3), by s. 47 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

*[(4)] The provisions of sub-section (1), with reference to the offence named therein, apply also to † [criminal conspiracies to commit such offences and to] the abetment of such offences and attempts to commit them.‡

§[(5)] Where a complaint has been made under sub-section (1), clause (*a*), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.]‡

Amendment.—Act XVIII of 1923 came into force on the 1st. September 1923 and since then the practice of obtaining sanction has been abolished. It is now substituted by a complaint in writing by the Court itself. 81 Ind. Cas. 190=46 M. L. J. 274=47 M. 384. Now the Court is given full discretion in deciding whether any prosecution is necessary or not. 27 Cr. L. J. 669=4 Bur. L. J. 213. A sanction granted after 1st. September is illegal. 26 Bom. L. R 1235 ; 51 C. 652. Where the offence of which the Magistrate has taken cognizance is one under s. 195 Cr. Pro. Code it does not require a complaint under s. 195 Cr. Pro. Code. 31 Bom. L. R. 1151=A. I. R. 1929 Bom. 433. This section is a limiting section providing an exception to the general rule that any one could make complaint of a criminal offence. 110 Ind. Cas. 108=29 Cr. L. J. 652=A. I. R. 1928 Lah. 510. Where sanction has been obtained and case has been instituted under old section, fresh complaint under amended section is not necessary. 7 Lah. 99=8 L. L. J. 87=27 Cr. L. J. 725 =27 P. L. R. 181=95 Ind. Cas. 52 ; see also 27 Cr. L. J. 560=A. I. R. 1926 All. 421 ; 27 Cr. L. J. 181=A. I. R. 1927 Nag. 71=91 Ind. Cas. 997. Sanction granted for amendment can be revoked after the new Code came into force. 27 Cr. L. J. 91= 49 M. L. J. 223=48 M. 620=91 Ind. Cas. 395. Complaint made after amendment on sanction obtained before amendment is bad. 6 Lah. 41=26 Cr. L. J. 1163=26 P. L. R. 152=A. I. R. 1925 Lah. 332=88 Ind. Cas. 523. Where sanction granted before amendment lapses owing to the amendment, the complainant must move the subordinate Court and not the superior Court to make a complaint. 26 Cr. L. J. 1125 =A. I. R. 1925 Mad. 1181=88 Ind. Cas. 357 ; see also 23 A. L. J 35=26 Cr. L. J. 751=A. I. R. 1925 All. 306=86 Ind. Cas. 287. Sanction granted under the old becomes invalid after the new Act comes in force. 26 Cr. L. J. 90=A. I. R. 1924 All. 563=83 Ind. Cas. 650. But sanction granted and acted upon by filing a complaint prior to the new Criminal Procedure Code is not infructuous. 26 Cr. L. J. 142= A. I. R. 1924 Mad. 615=83 Ind. Cas. 702.

Scope.—Section 195 provides exception to the general rule that any one could make a complaint of a criminal offence. 9 Lah. 678=29 Cr. L. J. 652=A. I. R. 1928 Lah. 510. Where sanction is given prior to the passing of the amendment Act but no prosecution was launched before September, 1923, old order is useless and new order should be required. 2 Bur. L. J. 289. The right hitherto vested in private individuals has been taken away by abolishing sanction altogether. All the cases bearing on sanction are therefore of little use hereafter. A. I. R. 1929 Cal. 539. Section 195 (1) (c) applies only to forgery when committed or alleged to have committed by a party to civil proceedings. A. I. R. 1929 Cal. 539. Section 195 (c) applies to parties only and does not cover the case of witnesses. 29 Cr. L. J. 1061=A. I. R. 1929 Lah. 125 ; 23 Cr. L. J. 480=A. I. R. 1922 Lah. 401 ; see also 35 C. W. N. 98 ; but see 27 Bom. L. R. 607=49 B. 608=27 Cr. L. J. 69. The words "has been committed by a party" in s. 195 (1) (c) can only mean "is alleged to have been committed by a party". 1 Pat. L. T. 129=21 Cr. L. J. 272=55 Ind. Cas. 288. Ordinance No 5 of 1930 and the notification thereunder making the offence under s. 188, Penal Code, cognizable and non-bailable does not get rid of the requirements imposed by s. 195, Criminal Procedure Code. 35 C. W. N. 257= A. I. R. 1931 Cal. 122 ; see also 33 Bom. L. R. 59=A. I. R. 1931 Bom. 35. Section 476 is corollary of s. 195. Powers conferred by s. 476 are not limited by s. 195. 55 B. 461=33 Bom. L. R. 296=32 Cr. L. J. 1017=A. I. R. 1931 Bom. 305. Section

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* The original sub-section (3) was re-numbered (4) by s. 47 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by s. 4 of the Criminal Law Amendment Act, 1913 (VIII of 1913).

‡ Omitted by Act 18 of 1923.

§ This sub-section was inserted by *ibid.*

195 applies only to party committing offence. 134 Ind. Cas. 225=1931 A. L. J. 697=32 Cr. L. J. 1105=53A. 804=A. I. R. 1931 All. 443 (S. B.). If cognizance has been taken of offence under s. 211 I. P. Code, s. 195 (1) (*b*) is not applicable. A. I. R. 1934 Pat, 573. Where there is one complaint against party witness and writer of receipt the order can be set aside in revision because the Court has no jurisdiction so far as witnesses and writer are concerned. A. I. R. 1934 Pesh. 81.

Applicability.—Not section 477 A. but s. 463, Penal Code is governed by s. 195 (1) (*c*). A. I. R. 1932 Sind. 53=33 Cr. L. J. 328=25 S. L. R. 471. Sections 195 (1) (*b*) and 476 apply to offences committed not only during proceedings in Court of law but also in relation to such proceedings. 34 Cr. L. J. 686=A. I. R. 1933 All. 318. An offence under s. 188, Penal Code is made cognisable and non-bailable, requirements of s. 195, Cr. Pro. Code must be fulfilled. 35 C. W. N. 257=32 Cr. L. J. 511=53 C. L. J. 461=58 C. 971. As regards application of s. 195, vide A. I. R. 1932 Bom. 185=33 Cr. L. J. 386.

Complaint.—Complaint must be made by the Court before which an offence was alleged to have been committed. Private complaint is illegal. 48 A. 60=26 Cr. L. J. 1485. Where Magistrate has no jurisdiction to take cognizance of offence under s. 211 for want of proper complaint he can investigate the complaint as regards s. 182. 5 Pat. 33=6 P. L. T. 515=1926 P. H. C. C. 106=26 Cr. L. J. 1269=88 Ind. Cas. 1045. Court cannot try an offence under s. 182 I. P. Code without the complaint of the public servant concerned. 87 Ind. Cas. 418=1925 M. W. N. 108=A. I. R. 1925 Mad. 400. The want of a complaint under s. 195 will vitiate the whole trial and the defect cannot be cured. 12 O. L. J. 194=2 O. W. N. 174=26 Cr. L. J. 929=29 O. C. 1=86 Ind. Cas. 993 ; but see 25 Cr. L. J. 972=5 P. L. T. 505=81 Ind. Cas. 620. Order passed by Court on complaint made by police to summon the accused is not complaint by Court. 4 Pat. 323.=6 P. L. T. 457=26 Cr. L. J. 889=A. I. R. 1925 Pat. 483=86 Ind. Cas. 825. Conviction under s. 173 of the Penal Code without complaint by public servant concerned is illegal though the convicting Magistrate purported to take cognizance of the offence under s. 225 (b) of the Penal Code to convict the accused for a minor offence under s. 173. 47 A. 114=26 Cr. L. J. 446. Since amendment, if a Court entertains a case covered by s. 195 without a complaint its proceedings are void. A. I. R. 1926 All. 700=96 Ind. Cas. 213 ; 28 Cr. L. J. 388=A. I. R. 1927 Nag. 184=100 Ind. Cas. 1044 ; 21 S. L. R. 1=27 Cr. L. J. 1105=A. I. R. 1927 Sind. 10. The absence of sanction or complaint under s. 195 vitiates the whole proceedings and the defect is not cured by s. 537. 1 Luck. 523=3 O. W. N. 614=27 Cr. L. J. 969=A. I. R. 1926 Oudh. 485. Magistrate dismissing a false complaint cannot proceed under s. 211 Penal Code, but should make a complaint under s. 195. 6 Pat. 450=7 P. L. T. 716=26 Cr. L. J. 987=A. I. R. 1926 Pat. 368 ; see also 53 C. 824=28 Cr. L. J. 86=A. I. R. 1927 Cal. 95=99 Ind. Cas. 118. If the accused was party in the suit, he cannot be tried without a complaint. The Judge appearing as a witness is not sufficient, A. I. R. 1929 Lah. 785. Where no proceedings take place in Court in furtherance of the false information given by the accused the complaint by a Magistrate is not necessary under s. 195 (1) (b) A. I. R. 1930 All. 818 ; see also A. I. R. 1928 Nag. 17=23 N. L. R. 133=10 N. L. J. 191=28 Cr. L. J. 934=105 Ind. Cas. 454. In case of use of forged document as genuine prior to proceedings before Court complaint of Court before whom the document was filed is necessary. A. I. R. 1930 Mad. 869=1930 M. W. N. 689=32 M. L. W. 273. Only the Court in which the documents had been produced can file complaint and not the prosecuting Inspector. A. I. R. 1930 Lah. 225 ; see also A. I. R. 1930 Pat. 31=31 Cr. L. J. 499=123 Ind. Cas. 399 ; 56 M. L. J. 208=A. I. R. 1929 Mad. 21 ; 112 Ind. Cas. 565 =A. I. R. 1929 Lah. 125=29 Cr. L. J. 1061. In the Central Provinces a complaint in respect of an offence under s. 186 I. P. Code in respect of a process server can be made by a Nazir, or a District Judge, or the Judicial Commissioner, but not a Sub-Judge nor an Additional Judicial Commissioner. 27 Cr. L. J. 1010 =A. I. R. 1926 Nag. 285=96 Ind. Cas. 866. Where original complaint discloses offence of conspiracy only and evidence disclosed another offence covered by s. 195 (1) (c) committed in pursuance of that conspiracy, no fresh complaint is necessary in respect of latter offence. 4 Bur. L. J. 213=27 Cr. L. J. 669=A. I. R. 1926 Rang. 63 In case of fraudulently obtaining decree for sums which had been disallowed in the former suit, Court in which second suit was filed but not the first Court can take action under s. 210 I. P. Code. 26 Cr. L. J. 1588=A. I. R. 1925 Lah. 574=90 Ind. Cas. 660. The finding of a competent Court as to forgery or perjury is sufficient ground for an order under s. 195 or s. 476. 24 A. L. J.

122=26 Cr. L. J. 1506=90 Ind. Cas. 290. The Court and not the particular public servant has to file the complaint. 8 P. L. T. 674=28 Cr. L. J. 643=A. I. R. 1927 Pat. 327 ; see 10 P. L. T. 77=30 Cr. L. J. 545=A. I. R. 1929 Pat. 92. Report to the police is not complaint. A. I. R. 1928 Lah. 827=29 Cr. L. J. 645. Petition asking the Court to direct a prosecution having been rejected, a subsequent complaint by the same person of an offence under s. 474 cannot be entertained as the terms of s. 195 would thereby be evaded. 29 Cr. L. J. 849=111 Ind. Cas. 433. Where offence is not committed by parties to any proceeding while it is pending in respect of document produced s. 195 does not operate as bar to cognizance of offence. A. I. R. 1930 Cal. 278=51 C. L. J. 51 =127 Ind. Cas. 267; see also 32 Bom. L. R. 589=A. I. R. 1930 Bom. 337. Criminal Courts are, in absence of complaint by Court, barred from taking cognizance of forgery committed in relation to proceedings in Court, by party to proceedings. A. I. R. 1932 Rang. 139=33 Cr. L. J. 919 ; see also A. I. R. 1933 Mad. 413=34 Cr. L. J. 800=37 M. L. W. 547 ; 34 Cr. L. J. 526=A. I. R. 1933 Cal. 481 ; but see 34 Bom. L. R. 1090=56 B. 488=34 Cr. L. J. 357. Allegation substantially amounting to complaint can form basis for prosecution, although defective in form. 33 Cr. L. J. 948=1932 A. L. J. 155=A. I. R. 1932 All. 190 ; see also 10 O. W. N. 553=34 Cr. L. J. 614=A. I. R. 1933 Oudh. 281. Complaint by private person under s. 193, Penal Code, is not cognizable and conviction based on such complaint is not protected by ss. 537 and 532, Criminal Procedure Code. A. I. R. 1932 Mad. 253=33 Cr. L. J. 361=62 M. L. J. 735. In matters assigned to him Additional Judge has got some power as there of Judge and complaint by him is good. A. I. R. 1930 Lah. 530=13 Lah. 16=33 P. L. R. 401=32 Cr. L. J. 964. Where the offence is not one under s. 195 (1) complaint by Court is not necessary. 35 C. W. N. 98=58 C. 727=32 Cr. L. J. 833. In prosecution under s. 182 comlaint should be made by officer to whom information is given. 59 C. 334=33 Cr. L. J. 631=A. I. R. 1932 Cal. 511. Absence of complaint under s. 195 is fatal to prosecution. A. I. R. 1934 Oudh. 186. Private complaint can be filed against abettor. A. I. R. 1934 Sind. 78. Injured party can file complaint under s. 211, Penal Code, when the offence is complete. A. I. R. 1934 Rang. 21.

Court, meaning of.—Governor in council is not Court. 36 C. W. N. 505=55 C. L. J. 349=59 C. 1233. Officer following judicial procedure in investigation does not become Court thereby. *Ibid.* Commissioners appointed under Act 37 of 1850 are Court and complaint by them is necessary. 32 P. L. R. 939= 12 Lah. 391=32 Cr. L. J. 125 ; 2=A. I. R. 1931 Lah. 662. The word "includes" as substituted for "means" has evidenced the scope of "court". 47 A. 934=23 A. L. J. 845=89 Ind. Cas. 630. Section 195 contemplates only "civil", "criminal" and "revenue" Courts. Land Acquisition Officer is not a Court. 31 C. W. N. 825=28 Cr. L. J. 809=A. I. R. 1927 Cal. 621. The Assitant Registrar of Co-operative Society deciding a dispute touching a debt due to a Secretary is a Court. 59 M. L. J. 229=1930 M. W. N. 689=32 M. L. W. 273=A. I. R. 1930 Mad. 869. The expression "Court" in s. 195 is of a wider scope than expression "Civil, Revenue or Criminal Court" in s. 476. 48 A. 60=23 A. L. J. 956=26 Cr. L. J. 1485. The word "court" in cl. (c) of s. 195 (1) does not include a Court in a Native State. 49 B. 860=27 Bom. L. R. 1063=26 Cr. L. J. 1456=A. I. R. 1925 Bom. 535. Election Commissioners are Court within the meaning of this section. 47 A. 934=23 A. L. J. 845. So also the tribunal constituted under the Calcutta Improvement Act. 45 C. 585=27 C. L. J. 463=19 Cr. L. J. 315=44 Ind. Cas. 331. An officer in the Collectorate directing refund of the surplus sale proceeds is not a Court. 2 Pat. 257 24 Cr. L. J. 809=74 Ind. Cas. 713. A successor in office can make the complaint for an offence committed before his predecessor. 7 Lah. 198 =27 Cr. L. J. 776=27 P. L. R. 314=A. I. R. 1926 Lah. 108. The Court appointing the guardian under the Gurdians and Wards Act when it receives the report of the gurdian, acts as a Court within the meaning of this section. 28 Cr. L. J. 388 =A. I. R. 1927 Nag. 184. It is this Court before whom the offence was committed and not the particular Judge or presiding officer that has to make the complaint. A. I. R. 1928 Lah. 759. In case of false charge against a pound-keeper in a letter to Collector, sanction by Sub-divisional officer is not legal. L. R. 1 A. Cr. 20. Collector holding investigation under s. 14 Patni Regulation (VIII of 1815) is Court. A. I. R. 1934 Cal. 457.

Duty of Court.—Court making complaints should frame proper charge and name witnesses supporting the case. 30 Cr. L. J. 1158=A. I. R. 1929 All. 905. Where witness corrects himself before leaving witness-box, criminal proceedings should not be taken against him for perjury. A. I. R. 1933 Sind. 412.

High Court.—High Court can make the necessary complaint in respect of offence committed in Courts subordinate to it. 3 Bur. L. J. 141=26 Cr. L. J. 262=84 Ind. Cas. 326. The High Courts can transfer a case to another Court. 86 Ind. Cas. 428. Section 195 (b) does not take away High Court's power to order prosecution for perjury in lower Court. 33 Cr. L. J. 225=1931 P. L. J. 829.

Powers of Court.—The Lower Court can not take cognizance of an offence other than the one for which there is a complaint by a superior court. 1 Luck. 523 =27 Cr. L. J. 969, Court can file complaint only against parties. 3 Bom. L. J. 344=26 Cr. L. J. 500=3 Rang. 48=85 Ind. Cas. 244; see also 84 Ind. Cas. 439=2 Rang. 374=26 Cr. L. J. 295; but see 90 Ind. Cas. 290=A. I. R. 1926 All. 21. 28 Cr. L. J. 305=A. I. R. 1927 Nag. 14. Magistrate has no jurisdiction to take cognizance merely on police report of an offence under s. 211 I. P. Code, especially when the complaint alleged to be false filed, by the person charged, has not been disposed of by him. 9 P. L. T. 236=29 Cr. L. J. 660.

Interpretation.—The words "in" and "in relation to" mean that the offenders need not be party to the proceeding or the offence may not have committed by him in a judicial proceeding. A. I. R. 1930 Cal. 671. Section requires the complaint of the Court not only in respect of certain offences committed in but also in relation to any proceedings in court. 23 S. L. R. 285=30 Cr. L. J. 732=A. I. R. 1929 Sind. 132=117 Ind. Cas.. 147. The words "produced or given in evidence" in section 195 (*c*) Cr. Pro. Code do not limit the procedure under that section to a limited. class of user within the wider class contempleted by s. 471 I. P. Code. 9 P. L. T. 800=30 Cr. L. J. 236=113 Ind. Cas. 712. The word "offence" in s. 195 (1) refers to share taken in transaction by party. 30 Cr. L. J. 469=28 M. L. W. 769=A. I. R. 1929 Mad. 115; but see 56 M. L. J. 208=30 Cr. L. J. 322. Document tendered but returned by presiding Judge is "produced in evidence." 49B. 799=27 Bom. L. R. 1039=27 Cr. L. J. 251=92 Ind. Cas. 427. The District Magistrate is an "authority" to which the police of his district is subordinate. 30 Cr. L. J. 710=1 P. L. T. 88 =A. I. R. 1930 Pat. 98. The Court may make a complaint against a person under s. 475 even though he was not a party to the proceeding, if it is of opinion that the proceeding was caused to be started by that person. 52 C. L. J. 149=A. I. R. 1930 Cal. 671. The section should be interpreted widely. 88 Ind. Cas. 1045=6 P.L.T. 515= 26 Cr. L. J. 1269. The words "any offence discribed in s. 463" mean all forms of forgery under whatever section of the Penal Code they fall. 26 Cr. L. J. 1115=A. I. R. 1925 Nag. 337=88 Ind. Cas. 283. The words "produced or given in evidence" only refer to the production of the original and not the copy. 29 O. C. 1=12 O. L. J. 194. Section 463 I. P. Code is used in s. 195 (1) (c) in a comprehensive sense so as to embrace all species of forgery and thus includes a case falling under s. 467. 5 Lah. 550=26 Cr. L. J. 537=A. I. R. 1925 Lah. 266=85 Ind. Cas. 377. It is not necessary that the proceeding must be judicial proceeding. 2 Bur. L. J. 48=24 Cr. L. J. 874=75 Ind. Cas. 74. Offences of perjury committed in trial court is offence committed in relation to appeal from trial Court's decree. 53 A. 799=33 Cr. L. J. 285=A. I. R. 1931 All. 706. Ss. 195 and 476 must be read together. 32 Cr. L. J. 1105=1931 P. L. J. 697.

Notice.—Accused is not entitled to show cause why complaint should not be made. A. I. R. 1932 Pat. 152=33 Cr. L. J. 153.

Party.—For meaning of, vide A. I. R. 1931 All. 443=1931 A. L. J. 804.

Procedure.—In case of complaint by Income-tax Officer examination on oath is unnecessary. 8 Rang. 25=A. I. R. 1930 Rang. 201=125 Ind. Cas. 266. Where statement is found to be false, it should be set out in the order. 2 Pat. L. T. 311; but see 26 Cr. L. J. 90=A. I. R. 1924 All. 563=83 Ind. Cas. 650. Occasion of the offence should be stated. A. I. R. 1932 Pat. 243=13 P. L. T. 370=33 Cr. L. J. 860. Where complaint state facts disclosing minor and graver offence prosecution should be for graver offence. 54 M. 1018=34 M. L. W. 329=61 M. L. J. 770.

Subordinate Court.—Village panchayat acting in Civil Cases is subordinate to District Judge. 1930 A. L. J. 1520=32 Cr. L. J. 558=A. I. R. 1931 All. 141. Under S. 195 (3) Munsif's Court is subordinate to District Judge. A. I. R. 1933 Pat. 179 (2)=34 Cr. L. J. 162=14 P. L. T. 31. For purposes of prosecution under s. 195, Court of Subordinate Judge is subordinate to District Judge even when appeal for the decision in original litigation lies to High Court. A. I. R. 1931 Sind. 163=25 S. L. R. 196=32 Cr. L. J. 1012. Principal Civil Court of a District is the District Judge. A. I. R. 1931 All. 141=1930 A. L. J. 1520=130 Ind. Cas. 488. Court of the Subordinate

Judge is for the purpose of s. 195. subordinate only to the Court to District Judge. 20 O. C. 189=53 Ind. Cas 494=20 Cr. L. J. 766. Subordinate Judge or Munsif exercising powers of Small Cause Court is subordinate for the purpose of this section to District Judge. 44 P. L. R. (Lah) 89=23 Cr. L. J. 480=A. I. R. 1922 Lah. 401=67 Ind. Cas. 832. Munsif is subordinate to Sub-Judge if appeals are performed directly to the court of the latter from that of the former and if the appeals ordinarily lie to the Sub-Judge's Court. 40 A. 21=15 A. L. J. 844=19 Cr. L. J. 4=42 Ind. Cas. 915. Presidency Small Cause Court is no part or bench of the High Court but is an inferior subordinate court. 25 C. L. J. 401=21 C. W. N. 654=18 Cr. L. J. 793=41 Ind. Cas. 313. Court of Subordinate Judge exercising power of Judge of Small Cause Court is subordinate to District Judge. 31 Cr. L. J. 205=A. I. R. 1929 Oudh. 515=121 Ind. Cas. 90. Subdivisional officer is subordinate to the District Magistrate and not the Sessions Judge for purpose of sub-section (5). 6 Pat. 39=28 Cr. L. J. 353=8 P. L. T. 488=A. I. R. 1927 Pat. 111. Subordinate Judge or Munsif exercising powers of Small Cause Court is subordinate for the purpose of section 195 Cr. Pro. Code to the District Judge. 23 Cr. L. J. 480=67 Ind. Cas. 832. Second class District Magistrate is subordinate to the District Magistrate and First Class Magistrate is subordinate to the District Judge. 3 Lah. L. J. 589=67 Ind. Cas, 817 ; see also 24 Cr. L. J. 913=75 Ind. Cas. 289. Election Commissioners are not subordinate to the principal court of ordinary original civil jurisdiction under sub-clause (3). 47 A. 934=23 A. L. J. 845=89 Ind. Cas. 630. Panchayat Court is subordinate to District Judge for the purpose of this section. A. I. R. 1934 All. 216.

Prosecution for offences against the State.

196. No Court shall take cognizance of any offence punishable under Chapter VI* [or IX A] of the Indian Penal Code (except section 127), or punishable under section 108A, or sec 153A, or sec 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

Notes.—This section requires that no case under section 124 A of Penal Code shall be taken cognizance of except upon complaint made with the authority of the Local Government. 35 C. 141=C. L. J. 49=7 Cr. L. J. 13=2 M. L. T. 500. A complaint of an offence under Chapter IX A of the I. P. Code requires a sanction under this section. 42 M. L. J. 139=23 Cr. L. J. 148. The object of this section is to prevent prosecutions by unauthorised persons for offences mentioned in this section. 22 B. 112. Order must state sufficient grounds for granting sanction. 1 Pat. L. T. 521=21 Cr. L. J. 255=55 Ind. Cas. 207. Sanction must be of the whole government and given not after initiation of proceedings. 42 M. 885=37 M. L. J. 81=20 Cr. L. J. 455. Sanction may be given even by telegram to a public prosecutor and need not be further supplemented. 42 M. 180=20 Cr. L. J. 186=49 Ind Cas. 602. Name of the accused appearing on back of paper not in the order sanctioning prosecution is covered by presumption that all official acts are done in a regular manner. A. I. R. 1930 Lah. 81=124 Ind. Cas. 347. Court cannot resort to an offence not referred to in the order giving sanction. 3 Bur. L. J. 178=26 Cr. L. J. 245. The sanction need only refer to the parties and the sections. 25 Cr, L. J. 279=76 Ind. Cas. 871=A. I. R. 1923 Lah. 333. Sanction need not be addressed to any particular person or Court. 44 M. L. J. 166=24 Cr. L. J. 539=73 Ind. Cas. 155. The sanction must specify the sections after deliberation. 42 M. L. J. 108=23 Cr. L. J. 203. Order granting sanction need not set out exactly the matter of complaint, for legislature intended a mere sanction only. 2 Bur. L. J. 196=25 Cr. L. J. 193. Magistrate initiating the proceeding is competent to try. 50 C. 135=26 C. W. N. 878=36 C. L. J. 180. Complaint must set out the seditious speech. 30 Cr. L. J. 1129=A. I. R. 1929 Lah. 284. Objection to defect in sanction must be taken earliest. 25 Cr. L. J. 401=27 Ind. Cas. 481. Even when facts fall within s. 121A, still Government is not bound to proceed under s. 121 A, but may proceed under s. 120B. A. I. R. 1934 Nag. 71.

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* These words, figures and letter were inserted by s. 3 of the Indian Elections Offences and Inquiries Act, 1920 (XXXIX of 1920).

Prosecution for certain classes of criminal conspiracy.

*[196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code,

(1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the Local Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government, has by order in writing, consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of sub-section †[(4)] of section 195 apply, no such consent shall be necessary.]

Notes.—This section is applicable to a prosecution for conspiracy under section 120B I. P. Code. 49 C. 573. The object of this section is to guard against vexatious proceedings by securing a well-considered opinion before hand 31 Bom. L. R. 78=A. I. R. 1929 Bom. 375. If an offence includes both conspiracy and thereby cheating, conviction of latter alone for want of sanction for the other is legal. 2 O.W. N. 760=26 Cr. L. J. 1012=90 Ind. Cas. 706 ; see also 69 Ind. Cas. 145 ; 33 C. W. N. 834. Sanction of Local Government is necessary in the case of persons who are not parties to proceedings but are charged with them. A. I. R. 1929 Lah. 783=119 Ind. Cas. 419. Mere consent to initiation of proceedings is alone required. 55 C. 155=28 Cr. L. J. 466=A. I. R. 1927 Cal. 296. Sanction of Government is not necessary where the complaint does not really disclose a conspiracy proper, nor where offence comes under a different Act. 52 M. 695=57 M. L. J. 331=30 Cr. L. J. 191=A. I. R. 1928 Mad. 1158=11 A. I. Cr. R. 556. Where trial requiring sanction had commenced addition of charges not requiring sanction connot validate proceedings. 26 Cr. L. J. 1329=3 Rang 95=A. I. R. 1925 Rang. 293=89 Ind. Cas. 305. Prosecution for abetment of conspiracy requires no sanction and trial may proceed though charge is conspiracy. 49 C. 573=25 C. W. N. 680=23 Cr. L. J. 657=35 C. L. J. 279 ; see also 69 Ind. Cas. 145 ; 90 Ind. Cas. 706 ; 26 Cr. L. J. 1329=3 Rang. 95 ; 84 Ind. Cas. 446=26 Cr. L. J. 302. If provisions of section 195 (3) apply no sanction is necessary. 50 C. 461=24 Cr. L. J. 944=75 Ind. Cas. 533. Direction by District Magistrate on Government notification constitutes sanction. 18 Cr. L. J. 634=39 Ind. Cas. 1002. Section 196 A does not alter former law but only prohibits entertainment of certain kinds of complaints for conspiracy without sanction of Government. A. I. R. 1934 Sind. 4. No consent of Local Government is necessary in case of conspiracy to commit offence punishable with more than two years. A. I. R. 1934 All. 171. A Magistrate need not direct Public Prosecutor to get sanction for validating pending proceedings before him. A. I. R. 1934 Sind 4. Sanction is necessary for proceedings under s. 19 F. of the Arms Act but not for conspiracy to commit substantive offence under s. 19 F. A. I. R. 1934 Nag. 21. No sanction is required for conviction under U. P. Excise Act, s. 60. A. I. R. 1932 All. 73=33 Cr. L. J. 373. Where previous consent of Local Government was not obtained, but no objection was also taken during enquiry or trial, the verdict of jury and conviction is not illegal. A. I. R. 1932 Cal. 786=34 Cr. L. J. 29 ; but see A. I. R. 1933 Pat. 273=34 Cr. L. J. 938. No person can be convicted of offences under s. 120 B. if prosecution is not sanctioned by District Magistrate under s. 196 A. A. I. R. 1934 Pat. 561.

* This section was inserted by s. 5 of the Criminal Law Amendment Act, 1913 (VIII of 1913).

† This figure and brackets were substituted for the figure and brackets "(3)" by s. 48 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

*[**196B.** In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police-officer not being below the rank of Inspector, in which case such police-officer shall have the powers referred to in section 155, sub section (3).]

Preliminary inquiry in certain cases.

† **197.** [(1) When any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Local Goverment or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Local Government.]

Prosecution of Judges and public servants.

(2) Such Government may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, ‡ (Magistrate) or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Power of Government as to prosecution.

Notes.—Sanction is only necessary when an offence is committed in the judicial or official capacity. 30 C. 927 ; 7 C. W. N. 750 ; 23 M. 540 ; 3 C. W. N. 539. The expression "offence alleged to have been committed by him while acting or purporting to act in discharge of his official duties" implies something in the nature of an official character to the act itself, that act being in fact done as an official act in pursuance of public office held by the public servant. Therefore in order that s. 197 may be applicable to the complaint of the offence against a public servant it is essential that the criminal act constituting the offence should have been done as an official act or under the cloak of what purported to be an official Act. It is not enough that this capacity of public servant put him in a position to do the act. *Amanat Ali* v. *Emperor*, 33 C. W. N. 1058=A. I. R. 1929 Cal. 724. The object of the section is to guard against vexatious proceedings by securing a well considered opinion before hand. A. I. R. 1929 Bom. 375. No sanction is necessary to prosecute liquidator who misappropriated money though he had also been appointed organiser of Co-operative Societies. A. I. R. 1933. Bom. 487=129 Ind. Cas. 344. Where act is illegal it cannot be given the colour of being in excess and no sanction is necessary. 31 Bom. L. R. 789=1929 Cr. C. 322=A. I. R. 1929 Bom. 376. No sanction is required to prosecute Receiver appointed by Court acting in excess of his authority. 30 Cr. L. J. 465=52 B. 898=30 Bom. L. R. 1273=115 Ind. Cas. 387. Sanction need not be directed to any particular officer. A. I. R. 1933 All. 543=1933 Cr. C. 874=196 Ind. Cas. 149. Provisions of section 197 are mandatory. A. I. R. 1933 Sind. 161=34 Cr. L. J. 191=27 S. L. R. 3=1933 Cr. C. 525. The test is whether the accused is acting in discharge of his official duty. 144 Ind. Cas. 477=27 S. L. R. 36=34 Cr. L. J. 819. "Official duty" means something a person is under obligation to do in virtue of his official capacity. 34 Cr. L. J. 253=A. I. R. 1232 Oudh. 308=9 O. W. N. 875. No sanction is necessary to prosecute *Kornam* and headman who in forwarding election proceedings are acting only as subordinates of the Revenue Divisional Officer. 1930 M. W. N. 1109. It is not in respect of every act done by a village officer that sanction is necessary, such as insult, hurt etc. 32 Bom. L. R. 1493=A. I. R. 1931 Bom. 192. To prosecute a muktear for neglect of duty sanction is necessary. 31 Cr. L. J. 597=A. I. R. 1930 Sind. 144. It is no official business of a chairman to threaten a voter and as such a sanction is not necessary for such an offence. 38 M. L. T. 338=50 M. 754=A. I. R. 1927 Mad. 566=52 M. L. J. 617=102 Ind. Cas. 347. Where a Municipal commissioner is authorized to prosecute, applied for search warrant, sanction is necessary to prosecute him under s. 500 I. P. Code. 31 P. L. R. 479=A. I. R. 1930 Lah. 147=124 Ind. Cas.

* Section 196 B was inserted by s. 49, *ibid.*

† This sub-section was substituted by s. 50, *ibid.*

‡ The word was inserted by s. 50 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

345 ; see also 52 Mad. 602=57 M. L. J. 31=1929 M. W. N. 387. Village Munsif executing decree by distrant is acting judicially. 56 M. L. J. 600=A. I. R. 1929 Mad 256=115 Ind. Cas. 53. Removal of President of Union Board does not require sanction of Government and so s. 197 does not apply. 30 Cr. L. J. 365= A. I. R. 1929 Lah. 175 ; see also 52 C. 431. But an elected chairman under the Bengal Municipal Act is not removable without sanction of Local Government and so s. 197 applies. 32 C. W. N. 1035=56 C. 227=30 Cr. L. J. 34 Cr. L. J. 348 =A. I. R. 1928 Cal. 516 ; see also 27 Cr. L. J. 1088. Sanction is necessary to prosecute *panchayat court* president. 29 Cr. L. J. 32=A. I. R. 1928 Mad. 391= 108 Ind. Cas. 66. Tasildar appointed to act as polling officer and committing offence under s. 58, Madras District Municipal Act can be prosecuted without sanction. 51 M. 259=54 M. L. J. 570=28 Cr. L. J. 1038. If offences committed by chairman were not in the discharge of his official duty, no sanction is necessary. 1928 M. W. N. 80=52 M. 695=30 Cr. L. J. 191=57 M. L. J. 331=A. I. R. 1928 Mad. 1158 Member of Municipal Board alleged to have a share in contract is a public servant for proceeding against whom sanction is necessary. 51 A. 372=30 Cr. L. J. 52 ; see also 52 M. 446=30 Cr. L. J. 164. Sanction must contain person to be prosecuted as well as manner of prosecution. 51 A. 377=30 Cr. L. J. 62=A. I. R. 1928 All. 756. Sanction containing a mistake as to date of offence is not bad. 29 Bom. L. R. 905=28 Cr. L. J. 1012=106 Ind. Cas. 100. To prosecute Revenue Patil for cheating Government sanction is necessary. 29 Bom. L. R. 707=28 Cr. L. J. 534=A. I. R. 1927 Bom. 432. Sanction after commencement of trial will not validate proceedings. 42 B. 172=20 Bom. L. R 89=19 Cr. L. J. 342= 44 Ind. Cas. 454. Union Chairman using abusive language in public street can be prosecuted without sanction. 4 L. W. 556=17 Cr. L. J. 462. Public servant does not include members of a Notified Area Committees. 48 P. W. R. 1916 Cr.=18 Cr. L. J. 106=37 Ind. Cas 319. Village Munsif can be prosecuted for taking bribes while acting as such without sanction. 18 Cr. L. J. 37=36 Ind. Cas. 869. Magistrate abusing or defaming witnessor advocate may be prosecuted without sanction. 25 C. W. N. 956=62 Ind. Cas. 825. Sanction is necessary to prosecute Village Magistrate preparing a false record. 55. Ind Cas. 105. No sanction is necessary to prosecute Municipal Secretary, 69 Ind. Cas. 638=A. I. R. 1924 Lah. 310. Forest Ranger being neither public servant nor removable duly by Government may be prosecuted without sanction. 23 Cr. L. J. 397=67 Ind. Cas. 349=A. I. R. 1922 Nag. 121. Zilladar appointed by Local Government cannot be prosecuted without sanction, though power of appointment had been subsequently delegated to Chief Engineer. 24 Cr. L. J. 411=A. I. R. 1922 Lah. 337=72 Ind. Cas. 523. Member of District Board appointed to sell cattle under s. 14 of the Cattle Trespass Act can not be prosecuted without sanction under s. 197, Cr. Pro. Code. 28 O. C. 155=12. O. L. J. 498=2 O. W. N. 395=26 Cr. L. J. 1157=88 Ind. Cas. 517. Excise Inspector being removable from office by Commisioner, can be prosecuted for taking bribe without sanction. 48 A. 264=24 P. L. J. 230=27 Cr. L. J. 345=A. I. R. 1926 All. 271. District Magistrate's sanction to prosecute Tahsilder is enough. 7 P. W. R Cr. 1919=99 Ind. Cas. 344. Order of sanction whether by a Court or not, is an executive rather than a judicial act and High Court has no revisonal powers. 23 Cr. L. J. 113=35 P. L. R. 1922=2 Lah. 305=112 P. L. R. 1921. No particular form of sanction is necessary. 24 P. L. R. (Lah.) 170=21 Cr. L. J. 760=58 Ind. Cas. 344. Order of Magistrate making over papers to police with a view to prosecute is sufficient sanction. 21 Cr. L. J. 589=57 Ind. Cas. 104 Head Clerk in U. P. District Board is not servant of Local Government and no sanction unders. 197 is necessary for his prosecution. A. I. R. 1934 All. 173. Section 197 applies to *Karvan* acting* as village Magistrate. A. I. R. 1933 Mad 270=34 Cr. L. J. 526. Where village Magistrate is charged with offence under s. 411. I. P. Code no sanction is necessary 34 Cr. L. J. 526=A. I. R. 1933 Mad. 270=1932 M. W. N. 1075. President of Taluk Board is public servant. A. I. R. 1933 Sind. 61=34 Cr. L. J. 191=27 S. L. R. 3. Status of accused at time of commission of offence and not at time of complaint is material. A. I. R. 1932 Sind. 177=34 Cr. L. J. 171. Commissioner of Sind is not Local Government. *Ibid.* Where offence is not committed in discharge of public duty no previous sanction under s. 197 is necessary. A. I. R. 1932 Oudh 308 ; 32 Cr. L. J 575. Policy of Legislature is to afford adequate protection to public servant. A. I. R. 1933 Mad. 268=34 Cr. L. J. 528. Administrative officer under s. 9 (1) Bombay Primary Education Act. can be prosecuted without sanction of Government. A. I. R. 1931 Bom. 527=33 Bom. L. R. 1177=33 Cr. L. J. 78 "While acting or purporting to act in discharge of his official duty" means doing or purporting to do the sort of act authorised by law to do. 62 M. L. J. 223=33 Cr. L. J. 557=A. I. R.

1932 Mad. 214. No previous sanction is necessary as regards offences under s. 168, Penal Code. A. I. R. 1932 Nag. 133=28 N. L. R. 156=34 Cr. L. J. 70. Defamatory statements made by members of District Board while canvassing for election are not in discharge of duties as members of Board and no sanction is necessary. A. I. R. 1932 Oudh. 308=9 O. W. N. 875 ; see also 32 Cr. L. J. 969=A. I. R. 1931 Mad. 492. Where District Magistrate directs Sub-divisional Magistrate to make enquiry regarding complaint against Judge, his action is wrong in view of ss. 197 and 202. 32 Cr. L. J. 991=8 O. W. N. 557. When a member ceases to be a member on failure to attend certain number of meetings and *ipso facto* ceases to be President he can not be said to be removed from office. A. I. R. 1933 Sind. 161=34 Cr. L. J. 191=1933 Cr. C. 525. Where previous sanction has not been obtained under s. 197. order should be under s. 203. A. I. R. 1934 Rang. 238. Sanction under s. 197 is necessary for complaint against Magistrate for using insulting language against witness while holding Court. A. I. R. 1934 All. 978. Section 197 affords no protectection to Municipal Commissioners making false entries in electoral roll after its publication. A. I. R. 1934 Cal. 838 ; see also A. I. R. 1934 Pat. 548.

Prosecution for breach of contract, defamation and offences against marriage.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence :

* [Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf.]

Notes.—The brother of the second (bigamous) husband of the accused is not a "person aggrieved." 25A. 132. This section is intended to prevent Magistrates from inquiring into cases coming under sections 493 to 496 unless the husband or some person aggrieved lodges a complaint. 25A. 209. Complaint even though written at the suggestion of the Police is valid and sufficient. 5 P. R. Cr. 1919=48 Ind Cas. 493. In case of defamation of Sub-Inspector, complaint by superior is insufficient. 26 O. C. 44=9 O. L. J. 342. Complaint is necessary even where person is charged with s. 496 and s. 114, I. P. Code. A. I. R. 1931 Mad. 247=1930 M. W. N. 694. The question where complainant is a person aggrieved within the meaning of s. 198 must be determined in each case on its own facts. 28 Cr. L. J. 996=A. I. R. 1928 Nag. 58 ; see also A. I. R. 1931 Mad. 247=1930 M. W. N. 694 ; 1930 M. W. N. 413=A. I. R. 1930 Mad. 705. No specific reference to every exhibit need be made in a complaint of defamation. 45 M. L. J. 754=25 Cr. L. J. 641=A. I. R. 1924 Mad. 348=81 Ind. Cas. 129.

Prosecution for adultery or enticing a married women.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or in his absence, † [made with the leave of the Court] by some person who had care of such woman on his behalf at the time when such offence was committed :

‡ [Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf.]

Notes.—If no complaint is made by any person of an offence under section 498 proceedings cannot be initiated on a police charge-sheet. 2 Weir 235. All that the

* This proviso was added by s. 51 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

† These words were inserted by s. 52 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ This proviso was added by *ibid.*

law require is that there should be a complaint by the husband in respect of the facts constituting the offence. 22 Cr. L. J. 742=64 Ind. Cas. 134. Complaint must be to the Magistrate and not to Police. 23 Cr. L. J. 592=68 Ind. Cas. 624=1922 M. W. N. 801. An accused who was found to have committed house-trespass with intent to commit adultery can be proceeded against in the absence of a complaint by the husband. 4 N. L. J. 245; see also 19 Cr. L. J. 881=47 Ind. Cas. 77. A person having the case of a woman on behalf of the husband is competent to prefer a complaint under s. 498. 4 Lah. L. J. 488=24 Cr. L. J. 780; see also 35 Ind. Cas. 667; 27 Cr. L. J. 414=A. I. R. 1925 Sind. 159. Express delegation of the trust by the husband is not necessary. 27 Cr. L. J. 414; see also 24 Cr. L. J. 120. The dissolution of marriage does not take away from the complainant the right to lodge a complaint. 23 Cr. L. J. 462=67 Ind. Cas. 734. Complaint is anterior to and distinct from examination of complainant. 22 Cr. L. J. 762=64 Ind. Cas. 282. The leave of the Court must expressly be given to the complainant to validate a complaint. 27 Cr. L. J. 414=93 Ind. Cas. 78; see also 27 Cr. L. J. 414=A. I. R. 1926 Sind. 159; A. I. R. 1933 Cal. 880. Absence in complaint oral or written, that the accused's purpose was to have illicit intercourse with the daughter or the statement as to puberty, is fatal to conviction under s. 498, Penal Code. 24 Cr. L. J. 837=74 Ind. Cas. 949. Conviction under s. 498 without complaint by husband in respect of that offence, is bad. 1933 A. L. J. 701=A. I. R. 1933 All. 626. For offence under ss. 497 or 498 I. P. Code complaint is necessary. 34 Cr. L. J. 498=A. I. R. 1933 Oudh. 163. Where no circumstances exist justifying complaint by father instead of husband, complaint could not be entertained. 34 Cr. L. J. 290=A. I. R. 1933 Cal. 144. Court of Session having got to try a case under s. 366, Penal Code, is not warranted to add charge under ss. 497 and 498 where ordinary inquiry before a committing Magistrate with regard to charge under those sections has not been followed. 32 Cr. L. J. 1135=53 C. L. J. 346. Where complaint by father of girl under s. 498 without leave of Court, the proceedings are illegal. A. I. R. 1934 Lah. 86.

Objection by lawful guardian to complaint by person other than person aggrieved.

*[199A. When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.]

Notes.—"We have added a new section 199 A, in order to safe-guard the rights of a legally appointed guardian."—*Report of the Select Committee.*

CHAPTER XVI.

Of Complaints to Magistrates.

Examination of complainant.

†200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant and also by the Magistrate:

Provided as follows:—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;

‡[(*aa*) when the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any

* Section 199A was inserted by s. 53, *ibid.*

† The words and figures "Subject to the provisions of section 476" were omitted by s. *ibid.*

‡ This proviso was inserted by s. 54 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties ;]

(*b*) where the Magistrate is a Presidency Magistrate, such examinaiion may be on oath or not as the Magistrate in each case thinks fit, and "where the complaint is made in writing"* need not be reduced in writing ; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing ;

(*c*) When the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Notes.—The prescribed mode of ascertaining what a complaint is, is to examine the complainant and to reduce his examination to writing. 2 Weir. 237 ; 10 A. L. J. 79=13 Cr. L. J. 704=16 Ind. Cas. 512. Section 537 does not apply to non-compliance with the provisions of s. 200 in recording the statement of the complainant. 6 C. W. N. 840. Non-examination of complainant before issuing summons against the accused is an irregularity which does not vitiate trial in the absence of any prejudice to the accused. *Anil Krishna* v. *Badan*, 116 Ind. Cas. 722=A. I. R. 1929 Cal. 175. Complainant should be examined in full on first day. But Magistrate's negligence to do so is not illegal. A. I. R. 1933 Cal. 552=37 C. W. N. 319 ; see also A. I. R. 1933 All. 816 ; 81 Ind. Cas. 218=25 Cr. L. J. 730 ; 76 Ind. Cas. 865=25 Cr. L. J. 273=1 Rang. 517 ; 4 Lah. 359=25 Cr. L. J. 125 ; 8 Pat. L. T. 349=21 Cr. L. J. 779=58 Ind. Cas. 459 ; 49 Ind. Cas. 919=20 Cr. L. J. 247 ; 1 Pat. L. J. 592=38 Ind. Cas. 750 ; 1 Pat. L. T. 446=22 Cr. L. J. 9=59 Ind. Cas. 41 ; but see 15 S. L. R. 200=23 Cr. L. J. 243=66 Ind. Cas. 179. An unsigned petition cannot be treated as a complaint. 1 Pat L. L. 564. Four courses are open to the Magistrate on receipt of a complaint. He may either order an enquiry under s. 202, or dismiss the complaint under s. 203 or issue process under s. 204 or postpone the recommencement of the proceeding under s. 344. 49 C. L. J. 388=A. I. R. 1929 Cal 281=121 Ind. Cas. 414. But there is no rule as to which he should proceed first. 49 C. L. J. 388=A. I. R. 1929 Cal. 281. When a complaint is in writing and is sufficiently clear, it would be a sufficient compliance of s. 200 if the Magistrate read it over to the complainant and the complainant on oath is asked to subscribe it. Only when the written complaint is obscure or vague that the Magistrate is bound to examine the complainant at length. 26 Cr. L. J. 1101=18 S. L. R. 274=88 Ind. Cas. 189. Direction for an enquiry before the complainant has been examined on oath is illegal. A. I. R. 1924 All 664=83 Ind. Cas. 736. Where there is no allegation of an offence, complaint should be dismissed. A. I. R. 1933 Rang. 297=1933 Cr. C. 1128. A petition that a certain person should be bound down under s. 107 is not complaint. 54 A. 1036=34 Cr. L. J. 42=A. I. R. 1932 All. 670. Joint complaint by two persons is not contemplated. Two separate petitions of complaint should be filed. 35 C. W. N. 782=33 Cr. L. J. 83. Where complaint under s. 6 of the Child Marriage Restraint Act is referred to Magistrate and Magistrate recommends prosecution of complainant also, the report of the Magistrate is complaint and as such cognizance can be taken under s. 190(1) (a) without any deposition on oath by the Magistrate. A. I. R. 1932 Pat. 87=13 P. L. T. 791=1933 Cr. C. 211. A Magistrate taking cognizance of a case and proceeding under s. 202 must record reasons showing why he is not satisfied as to the truth of the complaint and should pass final orders unless he is relieved of the case. 15 A. L. J. 642=18 Cr. L. J. 755=41 Ind. Cas. 141. A petition of objection in a counter case is a complaint within the Cr. Pro. Code. 3 Pat. L. J. 346=19 Cr. L. J. 874=47 Ind. Cas. 70. A written complaint cannot by itself be used as a basis for prosecution for perjury. But the examination of the complainant under s. 200 being taken on oath and signed by the complainant can be so used. 26 Cr. L. J. 1401=89 Ind. Cas. 713. Ss. 200 and 203 merely lay down the elementary principles before the Magistrate decide against a litigant. He should not refuse a complaint without hearing him. 28 Bom. L. R. 490=27 Cr. L. J. 740 ; see also 21 S. L. R. 293=27 Cr. L. J. 711 ; 54 C. 303=28 Cr. L. J. 577=A. I. R. 1928 Cal. 24. Cogni-

* Inserted by Act II of 1926.

zance can be taken of a case on a police report and without examining a police-officer. 29 Cr. L. J. 938=51 A. 382=A. I. R. 1928 All. 765=111 Ind. Cas. 858; see also 49 M. 525=27 Cr, L. J. 1031=52 M. L. J. 210. A Municipal Officer is a public servant and he need not be examined as to the complaint when lodging it. 50 C. L. J. 527=A. I. R. 1930 Cal. 222; see also A. I. R. 1930 Cal. 665; 31 Cr. L. J. 382=A. I. R. 1930 Nag. 33,

Procedure by Magistrate not competent to take cognizance of the case.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Notes—If the Magistrate has no jurisdiction he can return the complaint with an endorsement to that effect. 27 Cr. L. J. 704. Section 201 does not apply to the case of a Magistrate before whom is filed a complaint some of the charges in which he could take cognizance of but which contains allegations making out offences which he cannot take cognizance of. 1930 A. L. J. 1422=A. I. R. 1931 All. 10=129 Ind. Cas. 257; see also A. I. R. 1930 Nag. 291.

Postponement for issue of process.

202. *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

"Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200."†

‡[(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.]

§[(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.]

(3) This section applies also to the police in the towns of Calcutta and Bombay.

Object and Scope.—What is ordinarily contemplated by s. 202 is merely a preliminary examination of the complainant and his witnesses in the absence of the accused. 52 B. 448=29 Cr. L. J. 975=A. I. R. 1928 B. 290. A Magistrate acts beyond the scope of s. 202 in examining the accused before a *prima facie* case is made out. 29 Cr. L. J. 958=A. I. R. 1928 Lah. 88; see also 49 M. 926=51 M. L. J. 602=28 Cr. L. J. 113; 9 L. L. J. 508=29 Cr. L. J. 39=A. I. R. 1928 Lah. 97; 21 S. L. R. 293=27 Cr. L. J. 711=A. I. R. 1926 Sind. 194; 36 C. L. J. 414=27 C. W. N. 196. It is open to the Magistrate in case of doubt to hold an enquiry before summoning the accused in order to find out whether a *prima facie* case is made out or whether he should be summoned or not. A. I. R. 1921 Pat. 85; see also 8 L. L. J. 524=27 P. L. J. 779=28 Cr. L. J. 26=A. I. R. 1927 Lah. 30. The complainant need not have personal knowledge. 25 C. W. N. 357. Complaint against Police-officer should be handled with the greatest care. In such cases the complainant should be given every

* This sub-section was substituted by s. 55 *Ibid.*

† Substituted by Act II of 1926.

‡ This sub-section was substituted by s. 55 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ This sub-section was added by *Ibid.*

facility to prove his allegations. 27 Cr. L. J. 107=A. I. R. 1926 Mad. 288. Inquiry under s. 202 cannot supersede regular trial. 33 Cr. L. J. 72. Magistrate can give accused opportunity to explain circumstances against him. 32 Cr. L. J. 926=A. I. R. 1931 Sind. 113. Magistrate should carefully exercise his powers of preliminary investigation and inquiry. 9 Rang. 239=A. I. R. 1931 Rang. 225 (F. B.) Sending case to police is discretionary. A. I. R. 1933 Rang. 271=146 Ind. Cas. 196. In case of complaint to Magistrate against ordinary individual who has acted in collusion with police officer, Court should itself investigate matter and not act on police report without allowing complainant to adduce evidence. A. I. R. 1933 Sind. 339=146 Ind. Cas. 263. Omission to record reasons is mere irregularity. 32 Cr. L. J. 926=A. I. R. 1931 Sind. 113. There is nothing illegal in proper cases in calling accused to inquiry. 12 P. L. T. 710=32 Cr. L. J. 1023=A. I. R. 1931 Pat. 302. Magistrate has discretion of staying proceedings. A. I. R. 1933 Sind. 254=34 Cr. L. J. 891. Where District Magistrate directs Sub-divisional Magistrate to make enquiry regarding complaint against Judge, the action of District Magistrate was held to be wrong in view of ss. 197 and 202. 8 O. W. N. 157=32 Cr. L. J. 991=A. I. R. 1931 Oudh. 392. Where order to investigate is under s. 202, power of police under s. 156 is not affected. A. I. R. 1932 Lah. 579=14 Lah. 194=33 Cr. L. J. 737; see also 32 Cr. L. J. 690=54 M. 598=60 M. L. J. 520. Magistrate must not dismiss complaint upon result of inquest by another Magistrate held independently. 35 C. W. N. 1032=33 Cr. L. J. 218=A. I. R. 1932 Cal. 121. Where the complaint is for issue of process, the opposite party cannot appear and argue that process need not be issued. 36 C. W. N. 674=33 Cr. L. J. 636; see also 37 C. W. N. 709=34 Cr. L. J. 604. Report of police under s. 202 is part of record. A. I. R. 1931 Mad. 429=32 Cr. L. J. 689=1931 M. W. N. 325. District Magistrate cannot order preliminary inquiry under s. 202 in a case under s. 552 either by himself or by Sub-divisional Magistrate. A. I. R. 1933 Nag. 374. Magistrates' order to police under s. 202 does not debar police from arresting person in regard to matter forming subject-matter of complaint. 27 S. L. R. 67=34 Cr. L. J. 763=A. I. R. 1933 Sind. 136; see also A. I. R. 1934 Sind. 20. Additional Chief Presidency Magistrate can send to another Presidency Magistrate case under s. 202 for report. A. I. R. 1934 Cal. 405. Admission in proceedings under s. 202 are relevant only if proved. A. I. R. 1934 Lah. 286. Omission to examine a complainant on oath is not illegality but is merely an irregularity. 10 P. L. T. 779=30 Cr. L. J. 1056. A Magistrate cannot dismiss a complaint without an examination of the complainant. 2 Pat. L. T. 142=A. I. R. 1921 Pat. 205; see also 19 Cr. L. J. 263=44 Ind. Cas. 119; 17 Cr. L. J. 39=21 C. W. N. 127. Sending a case to police for investigation is not desirable where a member of the police themselves is accused. 29 Cr. L. J. 958=A. I. R. 1928 Lah. 88=111 Ind. Cas. 878. An enquiry or an investigation under s. 202 is designed to afford the Magistrate an opportunity of either confirming or removing such hesitation as he may feel in respect of issuing process against the accused. It is not a preliminary trial of the accused at which he is entitled to adduce his evidence before process can issue upon him. 10 P. L. T. 618=30 Cr. L. J. 554=A. I. R. 1930 Pat. 30=116 Ind. Cas. 46. Sections 202 and 203, Criminal P. C. are applicable only to complaints and a proceeding under s. 107 cannot be regarded a complaint within the meaning of cl. (*h*) sub-section (1), s. 4 of the Code. 29 P. L. R. 66=29 Cr. L. J. 866=A. I. R. 1928 Lah. 694=111 Ind. Cas. 450. The enquiry contemplated by s. 202 by the Magistrate himself does not necessarily make an enquiry by examining witnesses or by holding an investigation into the case. It is open to the Magistrate to investigate in any way he thinks proper. 26 Cr. L. J. 129=A. I. R. 1924 Pat. 797=83 Ind. Cas 689. Magistrate who is asked to set in motion s. 107 may avail himself of the help which is available to him under s. 202, when complaint of an offence of which he is authorized to take cognizance is made to him. Apart from s. 202 it is competent to a Magistrate to refer the matter to the police. 49 M. 315=50 M. L. J. 460=A. I. R. 1926 Mad. 521=93 Ind. Cas. 8. A prosecution can be ordered on the basis of evidence recorded under s. 202 (2) Cr. P. Code. 26 Cr. L. J. 862 (2)=A. I. R. 1924 Pat. 138=74 Ind. Cas. 1054. The term "investigation" as defined in s. 4 (1) of the Code expressly excludes an enquiry by a Magistrate other than the one entertaining the complaint. 21 Cr. L. J. 310=55 Ind. Cas. 470. Orders on complaints should not be unduly delayed. 18 Cr. L. J. 271=37 Ind. Cas. 639. Complainant should be given opportunity to meet evidence brought to oppose him. 29 Cr. L. J. 48=A. I. R. 1928 Mad. 135=106 Ind. Cas. 464. Local investigation means enquiry at the place into the truth of the complaint and is not restricted to investigation of physical features only. 19 Cr. L. J. 126. In local investigation Magistrate should see that he is not approached by an out-sider and he should not allow his mind to be

affected by outside matters. He ought not to allow himself to enter into a general conversation with the people of the neighbourhood about the case. 41 C. 711=18 Cr. L. J. 477=39 Ind. Cas. 317. Under s. 202 the Magistrate had the option of only one out of two alternatives namely, either to enquire into the case himself, or direct a previous local investigation. He cannot have recourse to both the alternatives. 44 A. 550=20 A. L. J. 355=66 Ind. Cas. 423. If the accused does not disclose his defence in the preliminary enquiry no adverse inference is to be drawn against him. 28 Cr. L. J. 611=8 P. L. T. 656=102 Ind. Cas. 899. The Criminal Procedure Code draws a clear difference between jurisdiction to try and jurisdiction to investigate. Trial by Magistrate does not bar investigation by police. 2 Pat. 379=4 P. L. T. 521=24 Cr. L. J. 375=A. I. R. 1923 Pat. 547. In case of complaint against Police-officer, it should not be referred for report to police, full investigation by Magistrate himself is necessary. 18 A. L. J. 781=2 U. P. L. R. All. 172=21 Cr. L. J. 649=57 Ind. Cas. 665 ; see also 56 Ind. Cas. 64 ; 55 Ind. Cas. 679 ; 52 Ind. Cas. 888. It is illegal and not merely irregular for a Magistrate to whom a complaint is made to call upon the accused for a report as to the truth or falsity of the charge preferred against him and renders the dismissal void. 5 Pat. L J. 61=1 Pat. L.T. 609=21 Cr. L. J. 621. On receiving a complaint against a Police-officer the Magistrate should at once hold a local enquiry himself or direct another Magistrate to hold it. 20 Cr. L. J. 396=50 Ind. Cas. 1004. A Magistrate has no jurisdiction to dispose of a complaint without examining the complainant on oath before ordering an inquiry under s. 202. 20 Cr. L. J. 413=51 Ind. Cas. 173. Where the Magistrate has doubt as to commission of an offence, he should hold an enquiry under s. 202 to find out the *prima facie* case. 1 Pat. L. J. 200=21 Cr. L. J. 519=A. I. R. 1921 Pat. 31. A Magistrate while making inquiry may allow accused to file statement and hear his arguments. A. I.R. 1934. Oudh. 372. Complainant need not have personal knowledge of the fact complained. A. I. R. 1934. Rang. 167.

Procedure—Where a Magistrate receives a complaint he should either himself examine one or more complainants and take action under s. 202, or if he is taking action on his own knowledge, he should transfer the proceedings completely to another Magistrate. It is also open to him to make a report to police who can take action under s. 167. But a Magistrate has not the powers of a police-officer to investigate and keep an accused person in custody for the purpose of such investigation. 1930 A. L. J. 635=A I. R. 1930 All. 259=126 Ind. Cas. 256 : 41 A. 550=23 Cr. L. J 270. A person to whom a complaint is sent for enquiry under s. 202 may impart his own personal knowledge into it or examine witnesses whom he knows to be able to throw light on the matter. 30 Cr. L. J. 1160=A. I. R. 1930 Mad. 443=120 Ind. Cas. 69. Where a Magistrate has referred a complaint for investigation under s. 202, the police after investigation are to make a report to the Magistrate. 53 B. 339=31 Bom. L. R. 84=30 Cr. L. J. 781=117 Ind. Cas. 329. But investigation partly by Magistrate and partly by police without recording any reason for doing so is not in accordance with law. 29 Cr. L. J. 958=A. I. R. 1928 Lah 88=111 Ind. Cas. 878. The accused has no right to be present while a Magistrate is holding an enquiry under s. 202. 20 S. L. R. 43=27 Cr. L. J. 494=93 Ind. Cas. 894=A. I. R. 1926 Sind. 188. Having once taken cognizance on a complaint, the Magistrate can direct the police to make an enquiry under s. 202, but he cannot direct the police to treat the complaint as first information. 29 Cr. L. J. 374=A. I. R. 1928 Pat. 359=108 Ind. Cas. 333. It is certainly not a correct procedure to defer the issue of process and order an enquiry without recording reasons. It is also as a rule undesirable that the enquiry should be prolonged by cross-examination and arguments *inter partes*. 7 P. L. T. 36=26 Cr. L. J. 139=89 Ind. Cas. 706.

Summons—Section 202 requires that reasons should be given when the issue of process is postponed. But the failure to do so would at most be a mere irregularity. 49 C. L. J. 164=33 C. W. N. 369=A. I. R. 1929 Cal. 176 ; see also 19 Cr. L. J. 527=45 Ind. Cas. 287. Magistrate may issue summons without enquiry if complaint is made by public officer and if it discloses an offence. 10 P. L. T. 618=30 Cr. L. J. 554=A. I. R. 1930 Pat. 46 ; see also 21 Cr. L J. 220=54 Ind. Cas. 1004. Magistrate who receives a complaint may at his option either issues process at once. or he makes a preliminary enquiry under s. 202 and thereafter issue process. 9 Pat. 155=A. I. R. 1929 Pat. 644. The mere fact that the Magistrate order issue of process to the accused does not take away from him the power to direct the police to enquire into the case, but issuing of process to the accused will make the order illegal. 30 Cr. L. J. 326=A. I. R. 1928 Mad. 1268=114 Ind. Cas. 365. Where a Magistrate distrusting the truth of a

complaint, directed an investigation under s. 202 but instead of waiting for the report issued summons against the accused the order was not regular and should be set aside. 41 C. L. J. 173=A. I. R. 1925 Cal. 989. Allowing a proposed accused person to appear while the proceedings are at the state contemplated by s. 202 is a procedure entirely unwarranted by the Code and is unfair to the accused. 49 M. 918=51 M. L. J. 605=28 Cr. L. J. 129=A. I. R. 1927 Mad. 19 ; see also 85 Ind. Cas. 449=30 C. W. N. 312=26 Cr. L. J. 305.

Revision—The High Court will not ordinarily interfere with the details of an enquiry or investigation on the ground that it was inadequate. 10 P. L. T. 618= 30 Cr. L. J. 554=A. I. R. 1930 Pat. 30=116 Ind. Cas. 46. It is not necessary for a superior Court to give any notice to any person against whom a Magistrate has refused to issue process under s. 202, where proceedings are being taken to revise that order. 27 Cr. L. J. 302=92 Ind. Cas. 560 ; see also 29 Cr. L. J. 89= A. I. R. 1928 Lah. 97=106 Ind, Cas. 455

Dismissal of complaint on perusal of police papers without giving complainant opportunity to argue the case is not proper. 1933 Cr. C. 1435=A. I. R. 1933 Sind. 398. A complaint under Merchant Shipping Act cannot be dismissed under Criminal Procedure Code. 58 C. L. J. 116=37 C. W. N. 1185=A. I. R. 1933 Cal. 647. Section 203 does not apply to proceedings under s. 107. 32 Cr. L. J. 21=127 Ind. Cas. 16=31 P. L. R. 350. Although evidence discloses *prima facie* case, Magistrate is not bound to issue process. 36 C. W. N. 16=54 C. L. J. 253=33 Cr. L. J. 3=59 C. 275. Where Lorry was purchased on hire purchase system and owner dispossessed purchaser on alleged breach of contract, Magistrate can dismiss the purchaser's complaint and can order return of lorry to purchaser on having bound from him to produce it whenever required. 34 Cr. L. J. 676=A. I. R. 1933 Cal. 149. In case of dismissal of complaint, a second complaint on same facts by a different complainant is competent. A. I. R. 1934 Lah 435 ; see also 33 Cr. L. J. 493=137 Ind. Cas. 520=33 P. L. R 318 ; A. I. R. 1934 Rang. 40. Motive of complainant is no ground of dismissal. A. I. R. 1934 Nag. 135.

Dismissal of complaint under s. 203 is no bar to fresh complaint. 1 Pat. L. T. 293=21 Cr. L. J. 660=57 Ind. Cas. 800 ; see also 16 Cr. L. J. 814 ; A. I. R. 1930 Lah.. 879=127 Ind. Cas. 15 ; 27 Cr. L. J. 383=A. I. R. 1926 All. 298 ; but see; 26 Cr. L. J. 284=3 Bur. L. L. J. 221=A. I. R. 1925 Rang. 114=84 Ind. Cas. 348 29 Cr. L. J. 1097=A. I. R. 1929 Sind. 61=112 Ind. Cas. 681. When Magistrate examines complainant and dismisses complaint under s. 203, on result of previous police enquiry, order dismissing complaint is incorrect. A. I. R. 1930 Rang. 226= 126 Ind. Cas. 534. Where Magistrate sent the case for preliminary inquiry under section 202 to jailor and on his report dismissed the application under s. 203, dismissal is illegal. 9 L. L. J. 548=29 Cr. L. J. 267=29 P. L. R. 271=A. I. R. 1928 Lah. 119. The effect of order dismissing a complaint under s. 203 is to restore the case to the stage under s. 202. Further enquiry if directed under s. 436 should be taken up from that point. 28 Cr. L. J. 857=9 P. L. T. 12=A. I. R. 1928 Pat. 12. For a dismissal of complaint by a Village Magistrate for default of appearnce, s. 203 has no application. 53 M. L. J. 102=28 Cr. L. J. 507=A. I. R. 1927 Mad. 695. Dismissal of complaint can be made under s. 203 without investigation under s. 202. 6 P L. T. 727=26 Cr. L. J. 921=A. I. R. 1925 Pat. 704=86 Ind. Cas. 985. Magistrate is bound to give reasons for dismissal of complaint 24 Cr. L J. 823=74 Ind. Cas. 855. Dismissal of complaint on the ground that other persons besides complainant could complain, is wrong. 27 Cr. L. J. 1104=A. I. R. 1927 All. 69=97 Ind. Cas. 368 under s. 203. Magistrate should record briefly his reason for dismissing complaint. 7 P. L. T. 481=26 Cr. L. J. 1502=90 Ind. Cas. 158. Where a case is dismissed under section 203 without sufficient enquiry a fresh investigation of facts should be ordered. 38 C. L. J. 158=25 Cr. L. J. 167=76 Ind. Cas. 391. A complaint cannot be dismissed without examining witnesses of complainant present in Court. Complainant should be given opportunity to establish truth. 26 Cr. L. J. 561=A. I. R. 1925 Cal. 1031=85 Ind. Cas. 705. Dismissal of complaint for defamation under s. 203 without taking evidence on ground that exception 8 to s. 499, Indian Penal Code, applied is not justified. 29 Bom. L. R. 713=28 Cr. L. J. 575=A. I. R. 1927 Bom. 436=102 Ind. Cas. 511. Where police report designates charge as false, complainant is entitled to file petition before Magistrate inspecting correctness of police report. This petition is complaint. Complainant is entitled to have complaint tried on the charge, or

else his statement (that is, complaint's statement) must be recorded on oath and complaint dismissed. 24 Cr. L. J. 854=A. I. R. 1928 Pat. 539=74 Ind. Cas. 957.

Magistrate dismissing complaint under s. 203, can revive the proceedings upon second complaint. 21 Cr. L. J. 379=55 Ind. Cas. 859. Dismissal of complaint of murder without examination of complainant or his witnenesses cannot be supported. 23 C. W. N. 392=29 C. L. J. 50=20 Cr. L. J. 175=49 Ind. Cas. 495; see also 55 C. 1280=30 Cr. L. J. 407. Entering theft case as false is dismissal under s. 203. District Magistrate can interfere in revision. 3 Pat. L. J. 346=19 Cr. L. J. 874=47 Ind Cas. 70. It is most improper and unjustifiable for a Magistrate to call upon accused to report as to the truth or falsity of a charge preferred against him. 6 P. L. J. 61=1 P. L. T. 609=21 Cr. L. J. 621=57 Ind. Cas. 285. In case of serious discrepancies in the evidence of important eye-witnesses for prosecution, Magistrate is competent to discharge and District Magistrate can not under s. 436 interfere. 31 Cr. L. J. 417=A. I. R. 1930 Nag. 353=122 Ind cas. In case of complaint dismissed under s. 203 notice to accused in revision by Sessions Judge is improper if not illegal. 29 Cr. L. J. 1059=11 A. I. R. 379=A. I. R. 1928 Mad 1198=112 Ind. Cas. 563; see also 24 Cr. L. J. 811=A. I. R. 1923 All. 479. But where complaint is dismissed on notice to accused, the District Judge before granting further inquiry, must give opportunity to him to show cause. 27 C. W. N. 552=25 Cr. L. J. 140=76 Ind. Cas. 236. In the case of a dismissal under s. 203 or s. 204 (3) notice to the other side is not desirable. Such cases are distinguished from cases in which accused have been tried and discharged. A I. R. 1922 Pat. 31=A. I. R. 1922 Pat. 54. Complaint challenging police-investigation must be examined on oath before complaint is dismissed. 2 P. L T. 142=72 Ind. Cas. 1. Discharge on withdrawal of case by the public prosecutor does not amount to acquittal. 30 P. L R. 58=30 Cr. L. J. 233=114 Ind. Cas. 50. Where a complaint is found to be false it is improper if not illegal to prosecute complainant before complainant was finally disposed of under s. 203, or otherwise. 10 P. L. T. 77=30 Cr. L. J. 545=A. I. R. 1929 Pat. 92. A magistrate of co-ordinate jurisdiction should not entertain a fresh complaint in respect of same offence based on facts known to the complainant and on evidence already available when first trial ended in discharge. 55 C. 1280=30 Cr. L, J. 444=115 Ind. Cas. 309. In case of grant of further inquiry by court of appeal the Magistrate is entitled to summon the accused without holding inquiry under s. 203. 29 L. J. 572. In case of refusal by Magistrate to entertain a complaint his successor can entertain a second complaint on same facts. 21 Cr. L. J. 815=58 Ind. Cas. 687. Magistrate ought only to see whether complaint has *prima facie* made out a true case. 4 P. L. T. 703=24 Cr. L. J. 316=72 Ind. Cas. 76=A. I. R. 1924 Pat. 379; but se 15 L. W. 552=24 Cr. L. J. 269. After order of further enquiry by the Sessions Judge, Magistrate can again dismiss complaint. 25 C. W. N. 312=22 Cr. L. J. 528=62 Ind. Cas. 416.

Dismissal of complaint.

203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, * [after considering the statement on oath (if any) of the complainant and the result of "the investigation" † or inquiry "if any" † under seetion 202], there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

Scope.—This section applies only to cases falling within Chapter XVI when there has been no issue of process. Rat Un. Cr. C. 544. Where a complaint is dismissed under this section, no fresh proceedings upon new complaint on the same facts can be taken unless the order of dismissal is set aside by a complaint authority. 28 M. 255.

Where a Magistrate dismisses a complaint under s. 403 Cr. Pro. Code, it is open to him at a latter stage to issue summons and receive the proceeding. The fact that in the meanwhile the Sessions Court has in revision directed or refused to direct further enquiry is immaterial in this connection. 1929 Pat. 469.

* These words were substituted for the words "after examining the complainant and considering the result of the investigation (if any) made under section 202" by s. 56 *Ibid.*

† Substituted by Act II of 1926.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDING BEFORE MAGISTRATE.

Issue of process.

204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which according to that column a warrant should issue in the first instance, he may issue a warrant, or if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jursdiction.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

Notes.—Magistrates should exercise a resonable discretion under this section as to whether a warrant or summons should issue in the case of complaints entertained by them. U. B. R. (1892-1896) VII. 131.

In case of counter-complaints, Magistrate can determine in which he should issue process first and not less so, when he made enquiry under s. 202 in one of them necessarily involving consideration of the other. 30 Cr. L. J. 554=10 P. L. T. 618=A. I. R. 1930 Pat. 90. In case of setting aside of dismissal of complaint by the Sessions Judge, Magistrate should not issue notice under this section without additional evidence. A. I. R. 1928 Mad. 1198=112 Ind. Cas. 563=29 Cr. L. J. 1059. Process under this section should not issue unless there are sufficient materials to justify it. 18 Cr. L. J. 626=39 Ind. Cas. 994. Omission to issue process when the accused are present before the Court, does not render the commitment illegal. 5 P. R. Cr. 1919=13 P. W. R. 1919 Cr.=20 Cr.L.J. 3. Under s. 204 the Magistrate taking cognizance of case is bound to proceed against all the accused if there is *prima facie* case. 16 N. L. R, 9= 58 Ind. Cas. 449. Magistrate should see if there is *prima facie* evidence for the alleged offender to answer irrespective of notice of the complainant. 27 Cr. L. J. 711=94 Ind. Cas. 903=A. I. R. 1926 Sind. 194. In a complaint under s. 363, Penal Code, nothing is irregular or illegal for a Magistrate to issue process piece-meal for the various accused persons. 29 Cr. L. J. 293= A. I. R. 1928 Lah. 541=107 Ind. Cas. 778. In non-cognizable warrant cases, neither the complainant nor the accused can be compelled to pay process fees for production of witnesses although the complainant must under s. 204, pay process fee for the summoning of the accused. 4 Bur. L. J. 187=27 Cr. L. J. 415=A. I. R. 1926 Rang. 13=93 Ind. Cas. 79. When one order was passed by a Magistrate to complainant to pay process for enforcing accused's attendance on the date of Judgment, and the process-fee was not paid, the complaint could not be dismissed. A. I. R. 1925 All. 392=87 Ind. Cas. 419. Section 314 is applicable to cases even before issue of process under s. 204. and Magistrate is entitled under s. 344, for reasonable cause to postpone any enquiry or trial and postpone issue of process under s. 204 even in a warrant case. 6 P. L. T. 477=26 Cr. L. J. 1179. Section 204 applies even when cognizance is taken on police report and Magistrate can issue process for appearance of accused. 33 Cr. L. J. 349=12 P.L.T. 937=A. I. R. 1932 Pat. 72. Where there are two Magistrates at Sub-Divisional head-quarters with residential powers the matter of taking cognizance of offences of complainants and of issue of warrants under s. 204, in the absence of one, the other is presiding officer for purpose of s. 75 and can sign for the other, warrant issued under latter's direction. 13 P. L. T. 135=A. I. R. 1932 Pat. 171. A presiding offier is not necessarily one who took cognizance of offence, but one who presides in Court at the time of signing warrant. 13 P. L. T. 167=34 Cr. L. J. 297=A. I. R. 1932 Pat. 175.

Magistrate may dispense with personal attendance of accused.

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceeding, direct the personal attendance of the accused, and if necessary, enforce such attendance in manner hereinbefore provided.

Notes.—Even in warrant cases a Magistrate can dispense with the personal appearance of a *purdah* lady if he issues summons. 8 Cr. L. J. 454. Where warrant has been issued personal appearance cannot be dispensed with 24 Cr. L. J. 872; 18 Cr. L. J. 975; 13 C. W. N. (cl.) Where Magistrate dispenses with personal attendance of accused under s. 205, he is not bound to question him personally under s. 342. A. I. R. 1934 Bom. 212. Order for attendance of exempted accused for giving explanation under s. 342 is illegal. A. I. R. 1934 All. 693; see also 28 Cr. L. J. 226=4 Rang. 506=A. I. R. 1927 Rang. 73. S. 205 should be freely exercised in country like Sind where prejudice exists against appearance of females in public. A. I. R. 1931 Sind. 37=32 Cr. L. J. 665. Personal attendance of accused can be excused even if brought under warrant of arrest after issue of summons in the first instance. 26 N. L. R. 50=12 N. L. J. 180=30 Cr. L. J. 284; see also 46 C. L. J. 368=29 Cr. L. J. 49=136 Ind. Cas. 545. Where a Magistrate has referred to excuse the personal attendance of a *purdah nashin* lady, High Court will interfere. 28 Cr. L. J. 94=A. I. R. 1927 All. 149=99 Ind. Cas. 126. Where personal attendance is dispensed with Court should make a notice to trial effect, though ommision to do so is a mere irregularity. 50 M. 250=28 Bom. L. R. 102=27 Cr. L. J. 440=A. I. R. 1926 Bom. 218. The Sessions Judge can dispense with the attendance of the accused in Sessions trial. 45 M. 359=42 M. L. J. 387=15 L. W. 550=23 Cr. L. J. 266=66 Ind. Cas. 330. When a warrant is issued for the arrest of an accused the Magistrate cannot dispense with his attendance and convict him in his absence. 36 P. R. Cr. 1917=47 P. W. R. Cr. 1917=42 Ind. Cas. 335. Accused cannot be convicted when he is not represented by a pleader but by a co-accused. 3 Ber. L. J. 182=26 Cr. L. J. 845. Magistrate should not revoke the concession which he had previously extended to an accused of allowing himself to appear by pleader. 38 C. L. J. 9=24 Cr. L. J. 902=75 Ind. Cas. 150.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. (1) *Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, or any Magistrate* [not being a Magistrate of the third class] empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Notes.—The powers conferred under this section convey authority to carry into effect any of the provisions of Chapter XVIII of the Code. 6A. 477=A. W. N. 1884, 205. Where the evidence for prosecution would tend to show that an offence of murder was committed it is not for the Magistrate enquiring into the offence, to weigh his evidence. It is better for him to commit the accused to the Sessions and leave it to the Sessions Judge to decide upon the value of the evidence led. 114 Ind. Cas. 58=A. I. R. 1929 Lah. 403. A Magistrate may try a case himself though triable exclusively by Sessions Court, if the evidence indicates that the course is

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* The words and figures "subject to the provisions of section 443," were omitted by s. 9 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words and brackets were inserted by s. 57 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

proper. 37 C. L. J. 34=24 Cr. L. J.=73 Ind. Cas. 770. An accused not tried as such in the preliminary inquiry but issued a witness cannot be committed to the Sessions. 17 Bom. L. R. 910=16 Cr. L. J. 747=31 Ind. Cas. 347. Magistrate of first class specially appointed to try accused can commit him to Court of Sessions. 33 Bom. L. R. 1192.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquires before Magistrate where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Notes.—A commitment once made by a Magistrate could be quashed by the High Court only on a point of law. 11 A. L. J. 439=19 Ind. Cas. 960=14 Cr. L. J. 304. Commitment by Magistrate competent to try the case is not illegal, if made upon good cause shown therefor. 18 Cr. L. J. 524=39 Ind. Cas. 492. The Criminal Procedure Code does not require that all cases ending in death should be committed to the Court of Sessions. The expression "ought to be tried by such Court in s. 207 of the Code" is limited to cases which the Magistrate is not competent to try or is unable to inflict an adequate punishment. 118 L. R. 79=19 Cr. L. J. 319=44 Ind. Cas. 355. A Magistrate can commit cases triable exclusively by Court of Sessions as well as by himself under s. 30. 20 Cr. L. J. 97=48 Ind. Cas. 977. In cases of commitment of cases not exclusively triable by Sessions Court, Magistrate must record adequate reasons. 31 Cr. L. J. 178=A. I. R. 1930 Lah. 312. Where a connected case is pending in Sessions Court, the Magistrate should await the result of the Session trial. *Ibid.* In cases of complicated and difficult questions of law and fact, Magistrate should commit accused to Sessions. A. I. R. 1932 Rang. 193=10 Rang. 445. Magistrate having committed powers must frame sound charge. A. I. R. 1935 Sind. 34.

Taking of evidence produced.

208. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any) and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.

Proceess for production of further evidence.

(3) If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

Notes.—An order of commitment to Sessions based on evidence recorded while the accused was not arrested on the charge at all, is not valid. 2 Weir 259. A Magistrate inquiring into a case triable by the Court of Sessions is not empowered to frame a charge or make out an order for commitment until after he has taken all such evidence as the accused produces before him in his behalf. 20 A. 264=A. W. N. 1898, 52. Clause (1) enjoins that the complainant (if any) shall be heard. It is not the examination of the complainant that it is necessary but only that he shall be heard. 118 Ind. Cas. 572=30 A. L. J. 942=A. I. R. 1929 Cal. 229. Lengthy cross-examination should not be allowed in committal proceedings as Magistrate has to find only whether a *prima facie* case is made out or not. 23 S. L. R. 340=30 Cr. L. J. 845=A. I. R. 1929 Sind. 137. In an enquiry conducted under chapter 18, the accused has no right to reserve cross-examination of prosecution witnesses. 33 C. W. N. 535=30 Cr. L. J. 1107=57 C. 44=A. I. R. 1929 Cal. 593. Cross-examination of prosecution witnesses must be allowed before determining whether case should be committed to Sessions. A. I. R. 1930 Cal. 754=128 Ind. Cas. 802. Evidence recorded under s. 208, after it had been filed as an exhibit, cannot be removed from the record. 31 Cr. L. J. 121=A. I. R. 1930 Sind. 54=120 Ind. Cas. 524. Prosecution need not get recorded every jot of evidence

in committal proceedings. 31 Cr. L. J. 117=A. I. R. 1930 Sind. 99=120 Ind. Cas. 520. The provision of s. 208 is mandatory and cannot be disregarded. The failure to comply with the requirements of this section is an illegality. 6 Rang. 531=30 Cr. L. J. 1=A. I. R. 1928 Rang. 299=112 Ind. Cas. 769. Failure to take defence evidence is illegal. 21 A. L. J. 911=46 A. 137=25 Cr. L. J. 624=A. I. R. 1924 All. 317=81 Ind. Cas. 112. In case of refusal to summon witnesses, reasons must be recorded. 24 M. L. W. 713=27 Cr. L. J. 1327=A. I. R. 1927 Mad. 162=98 Ind. Cas. 399. Mere recording reasons does not oust appellate court's jurisdiction. Reasons must be valid and acceptable. 31 Bom. L. R. 523=30 Cr. L. J. 1966=A. I. R. 1929 Bom. 269. A Magistrate may decline to examine summoned witnesses, if cited for causing vexation and delay. 29 Cr. L. J. 725=A. I. R. 1928 Mad. 652=110 Ind. Cas. 581. The proper time for cross-examination of a witness is immediately after examination in chief. An accused has no right under s. 208 (2) to postpone his cross-examination of the witnesses for the prosecution, until they have been all examined in-cheif. 9 L. B. R. 109=11 Bur L. T. 144=19 Cr. L. J. 327=44 Ind. Cas. 343; see also 8 P. L. T. 590=6 Pat. 606=A. I. R. 1927 Pat. 248; but see 6 Pat. 329=28 Cr. L. J. 709=8 P. L. T. 780=A. I. R. 1927 Pat. 243. Accused must be allowed to cross-examine prosecution witnesses, especially if accused applies before framing of charge. 51 C. 442=26 Cr. L. J. 63=83 Ind. Cas. 591. Non-compliance with the section though undesirable does not necessarily vitiate conviction. 42 C. L. J. 114=26 Cr. L. J. 1560=A. I. R. 1926 Cal. 410=90 Ind. Cas. 440. Where a warrant case is subsequently converted into an enquiry and where the accused has not cross-examined the witnesses, he has a right to have the witnesses re-called for cross-examination. 19 A. L. J. 463=22 Cr. L. J. 496=A. I. R. 1921 All. 148=62 Ind. Cas. 192. Magistrate can commit accused even though entire evidence on both sides is not heard. 145 Ind. Cas. 481=1933 A. L. J. 799=34 Cr. L. J. 967=A. I. R. 1933 All. 690. Where evidence is sufficient to make out a *prima facie* case further evidence need not be called. A. I. R. 1933 All. 690=34 Cr. L. J. 967=145 Ind. Cas. 481. Where petition is made for production of police diaries, Magistrate must take steps for their production unless he deems unnecessary to do so. A. I. R. 1933 Cal. 184=34 Cr. L. J 868=144 Ind. Cas. 930. "To take all such evidence as may be produced in support of the prosecution" means not only examination in chief but also cross-examination and re-examination unless express provision is made for cross-examination as in ss. 208 and 256. 33 Cr. L. J. 310.

When accused person to be discharged.

209. (1) When the evidence referred to in section 208, sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Notes—The words "sufficient ground for committing" mean not sufficient ground for convicting, but refer to a case in which the evidence is sufficient to put the accused on his trial and such a case arises when credible witnesses make statements which if believed would sustain conviction. 148 P. L. R. 1903. If a *prima facie* case is made out he should commit the accused. In every other case he is entitled to discharge the accused. 51 C. 849=28 C. W. N. 587=26 Cr. L. J. 117=83 Ind. Cas. 67. The Magistrate is to see whether there is a *prima facie* case fit for the jury to decide. He has discretion and power to weigh the evidence. 42. M. L. J. 49=1922 M. W. N. 13=23 Cr. L. J. 209=65 Ind. Cas. 993. Where there is a *prima facie* case and the case is triable by a court of sessions, the Magistrate should commit and not to try himself. 21 Cr. L. J. 61=54 Ind. Cas. 413. Magistrate must discharge if there are no sufficient grounds for convicting. 46 A. 537=22 A. L. J. 411=25 Cr. L. J. 795=81 Ind. Cas. 315: see also 30 Cr. L. J. 459=A. I. R. 1929 Sind. 17; 30 C. W. N. 336=27 Cr. L. J. 509=A. I. R. 1926 Cal. 528=93 Ind. Cas. 973; 27 Cr. L. J. 274=92 Ind. Cas. 450; 25 Cr. L. J. 1089=A. I. R. 1925 Pat.

279=81 Ind. Cas. 913 ; A. I. R. 1923 Lah. 279=68 Ind. Cas. 825 ; 62 Ind. Cas. 586=22 Cr. L. J. 570=15 S. L. R. 1 The Magistrate is not only competent to discharge the accused, but in proper case he is also bound to do so. 17 Bom. L. R. 910=16 Cr. L. J. 747=31 Ind. Cas. 347. The committing Magistrate is not to consider the probablities of the case. 28 Cr. L. J. 120=A. I. R. 1927 Mad. 277=92 Ind. Cas. 328 ; see also 21 Cr. L. J. 202=54 Ind. Cas. 986. Satisfactory proof of the guilt of the accused is the ground for conviction. Satisfactory evidence to go to trial is the ground for committing for trial. 49 M. L. J. 155=48 M. 874=26 Cr. L. J. 1570=A. I. R. 1925. Mad. 1061=90 Ind. Cas. 530. A magistrate in a matter of reasonable doubt, must not rely upon his own opinion. He must not encroach upon the functions of a court of trial 4 Rang. 471=28 Cr. L. J. 219=A. I. R. 1927 Rang. 74=99 Ind. Cas. 1019 A Magistrate not disbelieving prosecution evidence in a case under s. 302, Penal Code, should commit accused to sessions. 30 P. L. R. 36=30 Cr. L. J. 235=A. I. R. 1929 Lah. 403=114 Ind. Cas. 58. Committing Magistrate has ample discretion to weigh the evidence before him. L. R. 2 A. Cr. 43. Magistrate should not dispose of a case if *prima facie* case is made out L. R. 1 A Cr. 72. Where evidence is doubtful commitment should be ordered. 49 A. 443=25 A. L. J. of 191=28 Cr. L. J. 281 ; see also 22 Cr. L. J 570. Where a case is triable by First Class Magistrate as well as by Sessions, committal is discretionary. 7 P. L. T. 343=27 Cr. L. J. 313=A. I R. 1925 Pat. 755=92 Ind. Cas. 697. The District Magistrate can commit in a case where the 1st Class Magistrate refuses to frame charge for offences triable by a Sessions Court. 19 S. L. R. 353=25 Cr. L. J. 1368=A. I. R. 1925 Sind 190=82 Ind. Cas. 760 ; but see 1 P. L. T. 153=21 Cr. L. J. 328. In cases triable by a Court of Session, the Magistrate should commit and not discharge the accused. 18 A. L. J. 232=24 P. L. R. All. 90=21 Cr. L. J. 318=55 Ind. Cas. 478. A Magistrate ought to commit when the evidence is enough to put the party on his trial. 4 Lah. 69=5 L. L. J. 276=25 Cr. L. J. 238=A. I. R. 1923 Lah. 337=76 Ind. Cas. 702. Where an order of discharge under s. 209 has been confirmed by a higher authority a fresh complaint on the same charge does not lie. 21 S. L. R. 127=28 Cr. L. J. 57=A. I. R. 1928 Sind. 49. The examination of the accused prior to commitment is in the discretion of the Magistrate. 11 S. L. R. 52=18 Cr. L. J. 913=42 Ind. Cas. 145. No compensation should be awarded whilst discharging an accused where the offence is triable by a Court of Sessions. 40 A. 615=16 A. L. J. 486=19 Cr. L. J. 706=46 Ind. Cas. 290. Order of discharge must be based on ground that charge is groundless. 1933 M. W. N. 217=144 Ind. Cas. 519=34 Cr. L. J. 800. Order of discharge should not be lightly set aside in revision. 35 Bom. L. R. 245=34 Cr. L. J. 564=57 Bom. 430=A. I. R. 1933 Bom. 158. There is no distinction between order of discharge passed under s. 209 and that passed under s. 253. 35 Bom. L. R. 245=34 Cr. L. J. 564=A. I. R. 1933 Bom. 158. Magistrate discharging accused on ground that he has no jurisdiction to entertain a complaint is not order of discharge and Sessions Judge is not competent to deal with it under s. 436. A. I. R. 1933 Mad. 413=34 Cr. L. J. 800=1933 M. W. N. 217.

210. (1) When upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

When charge is to be framed.

(2) As soon as* (such charge) has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

Charge to be explained, and copy furnished to accused.

Notes.—Magistrate should not add charges apparently for the purpose of enabling than to commit the case to the Court of Sessions, without any reasonable ground for the addition. 11 Bom. L. R. 18=9 Cr. L. J. 163=1 Ind. Cas. 104. A committing Magistrate can even after he has framed charge cancel it after the hearing of evidence for the defence. 19 Cr. L. J. 102.

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* These words were substituted for the words "the charge" by s. 58 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

List of witnesses for defence on trial.

211. (1) The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of the witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Notes.—A Magistrate is bound to require the accused to give in a list of witnesses he desires to call. It is not enough to put him the question, "Have you any evidence?". Since the question is ambiguous and might suggest to the accused only an inquiry as to whether he had witnesses ready in Court. 7 Bom. L. R. 723=2 Cr. L. J. 601. Accused must put in his list of defence witnesses on the day of order of commitment. If accused fails, Magistrate has discretion to allow such application or not. A. I. R. 1930 Cal. 188=124 Ind. Cas. 513. Refusal to summon witnesses vitiates the trial. 47 C. 758=24 C. W. N. 527=21 Cr. L. J. 842. Sessions Judge has no right to refuse examining witness mentioned in list of witnesses under s. 211 on ground of adjournment causing inconvenience. 34 C. W. N. 1014=58 C. 412=32 Cr. L. J. 316=A. I. R. 1931 Cal. 6.

Power of Magistrate to examine such witnesses.

212. The Magistrate, may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

Notes.—The discretion given to a Magistrate to commit a case to the Sessions under s. 347 of the Code of Criminal Procedure, is neither restricted nor taken away merely because he issues summons to the defence witnesses under s. 212. 15 Cr. L. J. 704=26 Ind. Cas. 152.

Order of commitment.

213. (1) When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such lists and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(2) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.

Notes.—This section gives a committing Magistrate power to cancel a charge when he has heard witnesses for the defence. 2 L. B. R. 140. This section uses the expression "not sufficient grounds for committing the accused." This expression is quite different from such expressions as "the case not proved" or "the accused are innocent." 24 A. L. J. 133=27 Cr. L. J. 2=A. I. R. 1925 All. 670=91 Ind. Cas. 34. The discretion is to be carefully exercised, and wherever there is evidence, the Magistrate, even though he may himself not think sufficient for a conviction, should leave it to the Sessions Court. 24 A. L. J. 133=27 Cr. L. J. 2=A. I. R. 1925 All. 670=91 Ind. Cas. 34. Magistrate has power to discharge accused after taking into consideration the evidence for the defence. 44 A. 57=19 A. L. J. 831=22 Cr. L. J. 703=63 Ind. Cas. 831=A. I. R. 1922 All. 168. Expression "witnesses for the defence" does not include witnesses for the prosecution who are cross-examined. 33 C. W. N. 535=30 Cr. L. J. 1107=57 C. 44=A. I. R. 1929 Cal. 593=119 Ind. Cas. 808. In offences triable by Court of Sessions, it is the duty of Magistrate to commit if there is evidence. 21 Cr. L. J 10=23 C. W. N. 1031=30 C. L. J. 132=52 Ind. Cas. 58. The function of a Court of revision is not to sit in judgment over the order of a Magistrate committing a case to the Court of Session. 24 A. L. J. 1050=27 Cr. L. J. 1369=49 A. 181=A. I. R. 1927 All. 90=98 Ind. Cas. 489.

214. [*Person charged outside presidency-towns jointly with European British subject.*] Omitted by s. 10 of Act XII of 1923.

Quashing commitments under section 213.

215. A commitment once made under section 213* by a competent Magistrate † or by a Civil or Revenue Court under section 478, can be quashed by the High Court only, and only on a point of law.

Notes.—Under this section a commitment once made by a competent Magistrate can be quashed by the High Court only, and that only on a point of law. 3 Bom. L. R. 703 ; see also 2 Weir 262. But a commitment to a Court of Sessions cannot be quashed after the accused has been put on his trial and has pleaded to the charge. 9 Cr. L. J. 250=1 S. L. R. 6 Cr. A Judge of the High Court sitting in Sessions has power under this section to quash a commitment. 56 C. 785=A. I. R. 1929 Cal. 777. Section 215 is a negative or restrictive section. It is intended to negative the existence of power in Sessions Court to quash commitments and it is intended to restrict a High Court to cases in which it can be said that the commitment is bad in law. A. I. R. 1929 Cal. 756 (F. B). Commitment can be quashed only on a point of law and not on ground of want of evidence. 26 Cr. L. J. 1045=87 Ind. Cas. 965 ; 88 Ind. Cas. 849=26 Cr. L. J. 1276=29 C. W. N. 698=88 Ind. Cas. 1052 ; 88 Ind. Cas. 849=26 Cr. L. J. 1233 ; 50 C. L. J. 408=24 C. W. N. 22=A. I. R. 1929 Cal. 756 ; 33 C. W. N. 535=30 Cr. L. J. 1107=A. I. R. 1929 Cal. 593. Test to determine whether there is illegality is to see Magistrate's findings on evidence and whether they sustain charge framed. 31 Bom. L. R. 523=A. I. R. 1929 Bom. 229=119 Ind. Cas. 647. Where there is no evidence to support order of commitment, commitment must be quashed. 31 P. L. R. 348=31 Cr. L. J. 814=A. I. R. 1930 Lah 545=125 Ind. Cas. 324. A commitment should be quashed when the accused was not given an apportunity to cross-examine prosecution witnesses. 57 C. 945=128 Ind Cas. 802. High Court cannot quash commitment merely because of doubts as to credibility of evidence. 1 Rang. 526=25 Cr. L. J. 261=A. I. R. 1924 Rang. 165=76 Ind Cas. 821. A commitment can be quashed by the High Court on a point of law only even though it is indiscreet or inconvenient. 15 A. L. J. 756=19 Cr. L. J. 224=43 Ind Cas. 800. Trial if legal is not vitiated by irregularity in commitment. 42 C. L. J. 114. The absence of evidence to warrant a commitment is a point of law. 3 U. B. R. 29=19 Cr. L. J. 102=43 Ind. Cas. 326. see also 19 Cr. L. J. 801=46 Ind. Cas. 817 ; 54 Ind. Cas. 172=21 Cr. L. J. 28. Proceedings are to be set aside when commitment is to Court of Session not having territorial jurisdiction. 57 Ind. Cas. 459=23 O. C. 87. Where first class Magistrate is not punishing an offence punishable by him it is an eror of law. 17 S. L. R. 181=83 Ind. Cas. 708. Commitment by directions of Sessions Judge can be inferred with in revision by the High Court. 1 Bur. L. J. 250=25 Cr. L. J. 518=77 Ind. Cas. 982. Proof as to allegations not sufficient, commitment was quashed. 39 Cr. L. J. 127=29 Ind. Cas. 345. Where Magistrate is unable to punish adequately, he can commit accused to sessions. A. I. R. 1934 Oudh. 185. Commitment is not illegal merely because no reasons for commitment are given inspite of s. 30. A. I. R. 1934 Lah. 326. High Court can quash illegal commitment at any stage. A. I, R. 1933 Pat. 273=34 Cr. L. J. 938=14 P. L. T. 281. Single Judge can quash commitment under s. 215. A. I. R. 1932 Sind. 157=43 Cr L J. 14=26 S. L. R. 407. Order of commitment cannot be quashed only because evidence was insufficient. 22 P. L. R. 581=32 Cr. L J 867. Section 215 precludes High Court from quashing commitment unless it is opposed to law or that there is any point of law involved which must necessitate quashing of commitment. 140 Ind. Cas. 539=33 P. L. R. 1068=34 Cr. L. J. 39=A. I. R. 1932 Lah. 39 ; A. I. R. 1932 Sind. 157. While quashing commitment High Court can pass subsequent order directing Magistrate to make further enquiry. 35 Bom. L. R. 1062=A. I. R. 1933 Bom. 494.

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* The words and figures "or section 214" were omitted by s. 11 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† The words and figures "or by a Court of Sessions under section 477" were omitted by s. 59 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list, as have not appeared before himself, to appear before the Court to which the accused has been committed :

Summons to witnesses for defence when accused is committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

Refusal to summon unnecessary witness unless deposit made.

Notes.—A Magistrate is not at liberty to refuse to summon witness tendered by the accused, except on the grounds specified in this section. 8 C. L. R. 70. Accused tried for offences of a serious nature must be afforded every opportunity of adducing evidence unless his object is to cause delay or vexation. A. I. R. 1930 Cal. 362=126 Ind. Cas. 720. Committing Magistrate has power to take bond from any person for appearance before Sessions Court, and whatever the form of summons thereafter he is triable under s. 174 I. P. Code. 1 Pat. L. T. 342=21 Cr. L. J. 718=58 Ind. Cas. 63. Magistrate has no right to limit arbitrarily the member of defence witnesses. A. I. R. 1934 All. 735.

217. (1) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Sessions or High Court is necessary and who appear before the Magistrate shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Sessions or High Court to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

(2) If any complainant or witness refuses to attend before the Court of Session or High Court or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Sessions or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bonds.

Notes.—*Vide* A. W. N. 1883, 37.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order * to such person as may be appointed by the Local Government in this behalf notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge ;

Commitment when to be notified.

and shall send the charge, the record of the enquiry and any weapon or other thing which is to be produced in evidence, to the Court of Sessions or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charges, etc., to be forwarded to High Court or Court of Session.

* *See* Sch. V., Form XXVII. *infra.*

(2) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

English translation to be forwarded to High Court.

219. (1) *[The committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under section 206] may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

(2) Such examination shall, if possible, be taken in the presence of the accused, and where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall† [be given to the accused free of cost.]

Notes.—The committing Court becomes *functus officio* and loses all jurisdiction over the cases after the commitment and special provisions have been made in ss. 216 to 219 to enable the Court to retain jurisdiction only in respect of some matters. 51 C. 980. S. 226 cannot be applied with reference to additional evidence taken under s. 219. 34 Cr. L. J. 278=65 M. L. J. 6=A. I. R. 1933 Mad. 247. In case of examination of new witnesses by prosecution after commitment accused should be allowed to summon more witnesses if applied for. A. I. R. 1933 Pat. 577=1933 Cr. C. 1344.

220. Until and during the trial, the Magistrate shall subject to the provisions of this Code regarding the taking of bail, ‡ commit the accused by warrant, to custody.

Custody of accused pending trial.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.§

221. (1) Every charge under this Code shall state the offence with which the accused is charged.

Charge to state offence.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient descriptfon.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence, has no specific name.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

(6) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Language of charge.

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* These words were substituted for the words "The Magistrate" by s. 60 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVII of 1923).

† These words were substituted for the words "if the accused so require, be given to him free of cost" by *ibid.*

‡ *See* Chapter XXXIX, *infra.*

§ *See* Sch. V. Form XXVIII, *infra.*

(7) If the accused * (having been previously convicted of an offence, is liable, by reason of such previous conviction to enhanced punishment or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence,) the fact, date and place of the previous conviction shall be stated in the charge. If such statement † [has been omitted], the Court may add it at any time before sentence is passed.

Previous conviction when to be set out.

Illustrations.

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code‡, that it did not fall within any of the general exceptions of the same Code ; and that it did not fall within any of the five exceptions to sections 300 or that, if it did fall within Exception 1, one or other of the three provisos to that exception apply to it.

(*b*) A is charged, under section 326 of the Indian Penal Code, ‡ with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, ‡ and that the general exceptions did not apply to it.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code ‡ ; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d*) A is charged, under section 184 of the Indian Penal Code ‡ with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Notes.—Under this section, if the accused has been previously convicted of an offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction should be stated in the charge. 7 M. L. T. 77. It is not necessary in a charge of rioting to set out the allegation that there were four or five persons actuated by a common object. 55 C. 879=111 Ind. Cas. 327. Where complaint mentions name of conspirators, charge need not contain names. A. I. R. 1933 All. 498=1933 Cr. C. 433. Charge under s. 366 Penal Code must make clear to what exactly the charge relates. 145 Ind. Cas. 925=A. I. R. 1933 Cal. 194. Where accused is charged for both kidnapping and abduction, separate charges are necessary. A. I. R. 1933 Cal. 563=34 Cr. L. J. 682=144 Ind. Cas. 93. Charge of lesser offence implies and connotes discharge regarding more serious offence. 32 Cr. L. J. 1029= A. I. R. 1931 Lah. 402. Where in a trial under s. 124 A, Penal Code, substance of speech made by accused is not mentioned, charge was held defective. 32 P. L. R. 13=32 Cr. L. J. 1202=A. I. R. 1931 Lah. 186. Where charge though vague was understood by counsel, objection at the time of arguments is of no use. 8 Rang. 25=31 Cr. L J. 793=A. I. R. 1930 Rang. 201. Charge must set out at least all the material facts. 55 C. 858=32 C. W. N. 319=A. I. R. 1928 Cal. 675=112 Ind. Cas. 350. In a charge for conspiracy specific acts in their minds need not be set out. 6 Rang. 6=29 Cr. L. J. 555=A. I. R. 1928 Rang. 118. Good charge should contain particulars of manner in which offence is committed. A. I. R. 1934. Sind. 34. Charge must specify the offence which accused intend to commit. 25 Cr. L. J. 1186=A. I. R. 1925 Cal. 160=82 Ind. Cas. 50. Where charge is house-trespass with the object of theft, accused cannot be convicted of house-trespass with a different object, unless the accused has not been prejudiced thereby. 26 C. W. N. 344=71 Ind. Cas. 247. In a charge of rioting object of assembly must be set out. 25 Cr. L. J.

* These words were substituted for the words "has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award," by s. 61 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "is omitted" by *ibid.*

‡ XLV of 1860.

43=75 Ind. Cas. 731. Where conjunction "or" was used by mistake for "and" between two distinct charges of omitting to apprehend by public servant and possessing counterfeit coins accused were not prejudiced. 1930 Cr. C. 1108=A. I. R. 1930 Cal. 708=129 Ind. Cas. 99. Charge under s. 302 I. P. Code should contain the language of s. 300 I. P. Code. 2 O. W. N. 862=27 Cr. L. J. 62=A. I. R. 1926 Oudh. 148=91 Ind. Cas. 238. If charge mentions publication to a wrong person, objection is technical only. 27 Cr. L. J. 947=A. I. R. 1927 Sind. 51=96 Ind. Cas. 499. Where accused is separately charged under ss. 325 and 149 I. P. Code, that under s. 325 need not mention the other under s. 149 I. P. Code. 27 Cr. L. J. 830=A. I. R. 1926 Nag. 459=95 Ind. Cas. 606. Charge corresponds to indictment and must set out facts with the greatest precision. 2 O. W. N. 862=27 Cr. L. J. 62=A. I. R. 1926 Oudh. 148=91 Ind. Cas. 238. Charge should not contain more than what prosecution can prove. 27 Cr. L. J. 57=A. I. R. 1926 Oudh. 245=91 Ind. Cas. 233. In a charge of cheating particular manner must be set out lest accused be misled and injustice occurs. 26 Cr. L. J. 849=29 C. W. N. 408=86 Ind. Cas. 705; but 19 Cr. L. J. 657. An accused entitled to know exact value of charge and the Court must use language of the statute. 26 Cr. L. J. 567=A. I. R. 1926 Cal. 439=85 Ind. Cas. 711. Where accused was merely present at the commission of the offence to make him liable as conspirator or principal, s. 114 Penal Code should be introduced into charge. 40 C. L. J. 541=29 C. W. N. 173. Enhanced punishment in sub-section (7) relates to one provided by Penal Code, s. 75. A. I. R. 1933 Nag. 315. Failure to use form of charge appropriate to previous conviction is mere irregularity under s. 537. 8 L. B. R. 461=10 Bur. L. T. 169=37 Ind. Cas. 63. Where the offence is under s. 304 Penal Code, the accused must be given clear notice of part under which he is charged. A. I. R. 1934 Sind. 23.

222. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time, place and persons.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234;

Provided that the time included between the first and last of such dates shall not exceed one year.

Notes.—When charges refer to items which extend over a year, the trial is illegal. 17 C. W. N. 479; 25 M. 61 P. C. Trial involving offences under s. 409 I. P. Code, committed on five distinct dates is not bad. 116 Ind. Cas. 722=A. I. R. 1929 Cal. 175. Section 222 is intended to give accused full knowledge of particulars. 34 C. W. N. 901=A. I. R. 1930 Cal 717=129 Ind. Cas. 359; see also L. R. I. A. Cr. 121. Particulars as to time, place and person should be set out only in case of breach of trust and misappropriation. A. I. R. 1931 Pat. 102=12 P. L. T. 12. Charge may set out particulars too very fully. 34 C. W. N. 901=A. I. R. 1930 Cal. 717. Where date and place are different from those in the charges, accused cannot be convicted. 25 Cr. L. J. 471=6 L. L. J. 572=A. I. R. 1924 Lah. 616=77 Ind. Cas. 823. Where there is doubt as to offence charged it must be clearly framed. 15 A. L. J. 796=19 Cr. L. J. 796=19 Cr. L. J. 35. Where accused was charged under s. 193 the particular question and answer must be set out. 25 Cr. L. J. 177=38 C. L. J. 103=A. I. R. 1924 Cal. 104=76 Ind. Cas. 417. Where the charge is under s. 477, any number of falsification may be proved to sustain the one charge they being the method adopted. 34 C. W. N. 925=A. I. R. 1931 Cal. 8=128 Ind. Cas. 356. Particulars should be given in the charge; but omission to give details is not an illegality unless failure of justice is caused. 37 C. W. N. 1074=A. I. R. 1933 Cal. 676. Section 222 has no application to offence under Penal Code s. 477 A. A. I. R. 1933 Nag. 327=34 Cr. L. J. 673=144 Ind. Cas. 94. Where the charge of defamation is clear and unambiguous and the accused is not liable to be misled, though exact

† XLV of 1860.

words of defamation is not used in charge the accused was held not to be in any way prejudiced. A. I. R. 1932 Nag. 158=34 Cr. L. J. 154. Where there is no proper compliance with s. 222, conviction should be set aside. A. I. R. 1933 Pat. 132. In a charge of criminal conspiracy, acts committed by conspirators whether amounting to offences or not can be enumerated in charge. A. I. R. 1934 Sind. 57. In a conspiracy to defraud public, allegation in charge of such object without specifying persons defrauded is insufficient. A. I. R. 1934 Sind. 57. Charge of cheating when it is not in accordance with this section is defective. A. I. R. 1933 Sind. 169=34 Cr. L. J. 1049=145 Ind. Cas. 617. Where one of the convicts in a charge referred to eight lootings, it was regarded as too vague especially as each formed a separate offence. 49 M. 74=41 M. L. J. 308=1925 M. W. N. 192=26 Cr. L. J. 1513=90 Ind. Cas. 297. Where charge merely stated that accused was present at the commission of offence without referring to anything previous, conviction under ss. 114 and 420 was set aside. 21 M. L. W. 19=25 Cr. L. J. 1254=A. I. R. 1925 Mad. 364=82 Ind. Cas. 262.

Sub-section (2)—To convict accused of misappropriation there must be a definite finding of a definite sum. 42 A. 522=18 A. L. J. 633=22 Cr. L. J. 84=59 Ind. Cas. 372 ; see also 29 C. W. N. 54=40 C. L. J. 555=A. I. R. 1925 Cal. 260=85 Ind. Cas. 372. Misappropriation of only one of several sums may be proved during a specified period. 30 Bom. L. R. 1530=30 Cr. L. J. 185=53 B. 119=A. I. R. 1928 Bom. 557. Several persons, each committing a complete act of misappropriation can be tried together under s. 222 (2). There is misjoinder. A. I. R. 1931 Rang. 90=8 Rang. 632. But where several persons entrusted with different sums misappropriated them in the course of the same transaction they may be tried together as charge must include all the sums, separate trial for each during same period being illegal. 17 Cr. L. J. 30=30 Ind. Cas. 158. Breach of trust under s. 409 and suppresion of document under s. 477 A constituted misjoinder. 38 A. 42=13 A. L. J. 1059=16 Cr. L. J. 813=31 Ind. Cas. 829. In case of embezzlement of four sums of money, only one charge will suffice ; there is only one offence. A. I. R. 1931 All 267=1930 A. L. J. 1130=33 Cr. L. J. 155=52 A. 941=128 Ind. Cas. 595. Provided a certain amount was not included in a previous gross sum, prosecution in respect of another amount within the same period may be started. 27 C. W. N. 578=50 C. 632=38 C. L. J. 286=25 Cr. L. J. 156=A. I. R. 1923 Cal. 654 ; see also 59 M. L. J. 854=32 Cr. L. J. 223=A. I. R. 1930 Mad. 978 ; 32 Cr. L. J. 376=A. I. R. 1931 All. 209=129 Ind. Cas. 558. Persons can be convicted of criminal misappropriation without specifying particular items. A. I. R. 1932 Oudh 145=6 Luck. 433=33 Cr. L. J. 342. Criminal breach of trust in respect of three items of collection of taxes within one year constitutes single item of Municipal property and charge in respect of gross sum is sufficient and valid. A. I R. 1934 Pat. 232. In case of misjoinder of charges resulting in prejudice to the accused, High Court will interfere in revision. A. I. R. 1932 Rang. 162=32 Cr. L. J. 1068. Where one of the three accused was charged with misappropriation a sum of money and second with smaller portion of that sum and third with abetting the two, each act of misappropriation being complete in itself, there is misjoinder of charges. 32 Cr. L. J. 930=8 Rang. 632=A. I. R. 1931 Rang. 90.

When the manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Notes.—The question as to whether particulars are necessary under this section is a question of discretion in each case. 39 C. 781. Common object of unlawful assembly should always be stated in the charge. 27 C. W. N. 28=25 Cr. L. J. 524. Though charge did not refer to amount received for returning jewel, as accused was not prejudiced trial was not vitiated. 26 Cr. L. J. 906=29 C. W. N. 483=A. I. R. 1925 Cal. 674=86 Ind. Cas. 970. Where charge is defective only a fresh trial (not a *de novo* trial) from the stage at which illegality accused should be ordered. 25 Cr. L. J. 1152=A. I. R. 1925 Nag. 147=81 Ind. Cas. 976.

Words in charge taken in sense of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of errors.

225. No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations.

(*a*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit." the word "fradulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction, The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B and A had no means of knowing as to which of them the charge referred, and offered, no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, material error.

(*d*) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of Haider Baksh. The Court may infer from these facts that A was not misled and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haider Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haider Baksh. he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haider Baksh. The court may infer from this that A was misled and that the error was material.

Notes.—This section and section 537 would cure any commission that may be as regards particulars of charge required by section 223. 81 Ind. Cas. 976. Details of charge may be set out in one comprehensive evidence. 29 Cr. L. J. 287. If the common object is specified in the complaint and not in the charge, omission does not vitiate trial. 28 Bom. L. R. 497=27 Cr. L. J. 744=A. I. R. 1926 Bom. 314=95 Ind. Cas. 72. Where three offences are specified in one Court, it accused understood them a right and were not prejudiced there is no illegality. 28 Cr. L. J. 409=2 Luck. 430=A. I. R. 1927 Oudh. 235 Error or omission in framing charge is not fatal

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unless causing failure of justice to accused. A I. R. 1932 All. 73=33 Cr. L. J 373=137 Ind. Cas. 73.

Procedure on commitment without charge or with imperfect charge.

226. When any person is committed for trial without a charge or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be having regard to the rules contained in this Code as to the form of charges.

Illustrations.

1. A is charged with the murder of C. A. charge of abetting the murder of C may be added or substituted.

2. A is charged with forging a valuable security under section 467 of the Indian Penal Code.* A charge of fabricating false evidence under section 193 may be added.

3. A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Indian Penal Code* cannot be added.

Notes.—The power to alter any charge should be used with great caution and discretion. 6 C. W. N. 72. Sessions Court has power to amend or add to charge framed by committing Magistrate. A. I. R. 1933 Oudh 375=10 O. W. N. 738. Section 226 cannot be applied with reference to additional evidence taken under s. 219. 65 M. L. J. 6=34 Cr. L. J. 278=A. I. R. 1933 Mad. 247. Conviction on charge not expressly formulated is not improper if facts are same and aditional evidence is unnecessary. A. I. R. 1933 Pat. 302=34 Cr. L. J. 83=13 P. L. T. 440. Court of Session having got to try a case under s. 366, Penal Code is not warranted to add charge under s. 497 and 498. Where ordinary inquiry before committing Magistrate with regard to charge under those sections has not been followed. 53 C. L. J. 346=32 Cr. L. J. 135=A. I. R. 1931 Cal 524. Sessions Judge can add charges under s, 326, 325 and 323 § I. P. Code to charge under s. 302 I. P. Code. 71 Ind. Cas. 593. under proper circumstances a Sessions Judge can add distinct charge 26 Cr. L. J. 5=83 Ind. Cas. 485. Charge under section 506 I P. Code can be added, to charge under s 341 I. P. Code 7 O. W. N. 1048. In offences involving force, Sessions Court can add charges under ss. 497 and 498 in presence of a specific complaint under the said sections. 48 C. 1105=25 C. W. N. 615=34 C. L. J. 51=64 Ind. Cas. 280. Before charging accused under s. 271 judge to see if alterations are possible to charge under s. 226. 18 Cr. L. J. 346=38 Ind. Cas. 730.

Court may alter charge.

227. (1) Any Court may alter or add to any charge at any time before judgment is pronounced, or in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

(2) Every such alteration or addition shall be read and explained to the accused.

Notes.—The Court has power to add a fresh charge upon which the accused has not been committed. 9 A. 525. The words "return of verdict" mean the return of the final verdict which the Judge is bound to record. 8 B. 200. The fact that the learned Public Prosecutor might have examined witnesses had not been of opinion that he had been tampered with is not a reasonable ground for adding a charge of conspiracy to a charge of an offence under s. 314, Penal Code in the absence of any evidence of such a conspiracy. 1929 Cr. C. 678. Charge can be altered at any time but only before judgment 49 M. L. J. 93=26 Cr. L. J. 1618=A. I. R. 1925 Mad. 1065. Magistrate can charge accused with aggravated offence if it has been committed. A. I. R. 1929 Lah. 838=118 Ind. Cas. 653. Whether a new charge can be added or fresh evidence led in the Sessions Court for the first time under s. 227 is doubtful. 21 S. L. R. 55=27 Cr. L. J. 1217=A. I. R. 1927 Sind. 28=97 Ind. Cas. 1041. Alteration shall be read and explained to the accused. 24 A. L. J. 168=27 Cr. L. J. 152=A. I. R. 1926 All. 227=91 Ind. Cas 888

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ss. 237 and 227 so together, accused is entitled to know the charge against him. 23 A. L. J. 436=26 Cr. L. J. 1057=88 Ind. Cas. 1. Charge cannot be altered at the end of a trial without accused having opportunity to answer it. 54 Ind. Cas. 409=1920 M. W. N. 149=11 L. W. 317. Charge cannot be amended after the assessors have given their opinion. 33 P. R. (Cr.) 1916=50 O. W. R. Cr. 1916=36 Ind. Cas. 134. Sessions Judge is to compare charge-sheet with the section and amend if necessary. 27 Cr. L. J. 57=A. I. R. 1926 Oudh. 245=91 Ind. Cas. 233. Offence under s. 122, Bombay Police Act may be altered into s. 352 I. P. Code. 28 Bom. L. R. 291=27 Cr. L. J. 496=A. I. R. 1926 Bom. 255=93 Ind. Cas. 896. Without charging the accused illegal conviction under s. 30 (a) Burma Excise Act cannot be altered to a conviction under s. 37 of the same Act. 7 Rang. 316=30 Cr. L. J. 990=A. I. R. 1929 Rang. 256. Court may alter charge at any time before judgment is pronounced. A. I. R. 1931 Mad. 439=32 Cr. L. J. 756.

When trial may proceed immediately after alteration.

228. If the charge framed or alteration or addition made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecution in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

Notes.—The addition or alteration of a charge does not open up the trial from the beginning and the Court may immemiately proceed with the trial if it is of opinion that there will be no prejudice to the accused. 1 Pat. 54=3 Pat. L. T. 91=23 Cr. L. J. 146. Even where s. 228 applies the accused has the right to recall prosecution witness although alteration in the charge did not affect his evidence. 52 M. 345=29 M. L. W. 111=30 Cr. L. J. 223=113 Ind. Cas. 672.

When new trial may be directed, or trial suspended.

229. If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Notes.—Vide 8 B. 200; A. I. R. 1934 Lah. 833.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

230. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained, for a prosecution on the same facts as those on which the new or altered charge is founded.

Notes.—Vide 31 P. R. 1919.

Recall of witnesses when charge altered.

231. Whenever a charge is altered or added to by the High Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

Notes.—Refusal to recall witnesses after alteration in charge vitiates trial, whether there is prejudice to the accused or not. 36 C. W. N. 542=33 Cr. L. J. 265=A. I. R. 1932 Cal. 486. But no duty is cast upon Court to ask if accused wants to recall and re-examine witness. 1930 A. L. J. 572=A. I. R. 1930 All. 215=127 Ind. Cas. 587. When charge is amended, the accused is entitled to recall and cross-examine any one of the prosecution witnesses. 26 Cr. L. J. 1497=A I. R 1926 Lah. 60=90 Ind. Cas. 153. The provisions of s. 231 are pre-emptory. 6 Pat. 832=28 Cr. L J. 769=A. I. R. 1927 Pat. 398. Section 231 is not applicable when charge is altered before the accused enters on his defence. 65 Ind. Cas. 610=23 Cr. L. J. 146. Where the committing Magistrate at a late stage of the commitment proceeding altered the charge without giving the accused an opportunity to re-examine the witnesses for

the prosecution and to produce evidence in his defence relating thereto and committed the accused to the Sessions on the altered charge the procedure of the Magistrate was entirely illegal and likely to prejudice the accused in his trial before the Court of Sessions. 22 A. L. J. 230.

Effect of material error.

232. (1) If any Appellate Court or the High Court in the exercise of its powers of revisions or of its powers under Chapter XXVII is of opinion, that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustrations.

A is convicted of an offence under section 196 of the Indian Penal Code,* upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Notes.—This section applies as well to case in which the conviction was in compliance with the terms of the law as to cases in which the conviction was irregular. 10 Pat. L. T. 875=A. I. R. 1929 Pat. 712; see also 3 P. L. T. 585=68 Ind. Cas. 945. It is illegal to join charges under Bombay Abkari Act (5 of 1878) ss. 47, 43 (1) (c) and s. 45. A. I. R. 1933 Sind. 255.

Joinder of charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustrations.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Notes.—Where one charge was framed in respect of two-offence, *held*, for each offence a separate charge should have been framed. 17 C. W. N. 827=20 Ind. Cas. 609=14 Cr. L. J. 449=40 C. 846. It is better to have too many charges than to have too few and once a charge has been framed it should not be dropped until the conclusion of the trial unless on the face of it, it is wholly inappropriate or the trial is open to attack on the ground of misjoinder or multifariousness of the charges. 8 Pat. 289=10 Pat. L. T. 549. In case of illegality with regard to s. 233, whole trial is not vitiated. A. I. R. 1934 Sind. 57. In case of failure to frame separate charges, defect is cured by s. 537 if no prejudice is caused to accused. A. I. R. 1934 Oudh. 244; see also A. I. R. 1934 Cal. 85. Trial of offences under s. 170 and 175, I. P. Code together is illegal. A. I. R. 1933 Mad. 434=146 Ind. Cas. 195. Breach of provisions of s. 233 vitiates the whole trial. 130 Ind. Cas. 350=8 O. W. N. 92=32 Cr. L. J. 540=6 Luck. 441=A. I. R. 1931 Oudh. 86. Non-compliance with s. 233 would be condemned if offences are committed in one transaction and evidence is identical. 14 P. L. T. 580=34 Cr. L. J. 892=A. I. R. 1933 Pat. 488. Objection as to the frame of charge should be raised at an early stage. A. I. R. 1933 Pat. 488=14 P. L. T. 580=144 Ind. Cas. 936. Where accused withdraws money on two different dates by forged withdrawal cheques, two charges are necessary. A. I. R. 1933 Pat. 488=14 P. L. T. 580=34 Cr. L. J. 892. Where allegation is against two persons that both jointly committed offences, joint trial is not illegal. 144 Ind. Cas. 944=10 O. W. N. 325=34 Cr. L. J. 852=A. I. R. 1933 Oudh. 251; see also A. I. R. 1933 Lah. 313=34

* Act XLV of 1860.

Cr. L. J. 724. Illegality of joint trial depends on accusation and not on result of trial. 33 Cr. L. J. 373=A. I. R. 1932 All. 73=37 Ind. Cas. 73. Joint trial for separate offences is illegal. 25 O. C. 151=23 Cr. L. J. 687=A. I. R. 1922 Oudh. 250 =69 Ind. Cas. 271 ; see also 25 Cr. L. J. 274=A. I. R. 1923 Lah. 394=76 Ind. Cas. 866. The joinder of two offences in a single charge is only an irregularity cured by s. 537 Cr. P. Code and not an illegality. 30 Cr. L. J. 799=48 L. L. J. 138=32 C. W. N. 839=A. I. R. 1928 Cal. 700. Section 233 requires for every distinct offence a separate charge, but under ss. 225 and 537 of the Code an irregularity of this kind is immaterial unless the accused was in fact misled by the error. 16. S. L. R. 15=A. I. R. 1921 Sind. 47=66 Ind. Cas. 672. The trial of several persons jointly for an offence under s. 193, Penal Code is illegal. 1 P. W. R. Cr. 1922=23 Cr. L. J. 439= A. I. R. 1923 Lah. 89=67 Ind. Cas. 615. Lumping several charges together is an irregularity curable by s. 537. 8 O. L. J. 10=34 P. L. R. (J. C.) 4=22 Cr. L. J. 344. Charge is bad if it contains more than one offence. But if distinct offences form one transaction, accused can be charged with and tried at one trial for each offence. 50 C. 94=36 C. L. J. 149=24 Cr. L. J. 72=A. I. R. 1922 Cal. 573=71 Ind. Cas. 120. Section 233 is mandatory and objection of its violation is permissible in revision before High Court. 2 P. L. T. 47=57 Ind. Cas. 283 ; see also 7 P. L. R. 1921= A. I. R. Lah. 381. Charge of breach of trust could not be combined with charge of falsification of accounts. A. I. R. 1931 Oudh. 86=8 O. W. N. 92=130 Ind. Cas. 350. There is no misjoinder in charging accused with murder and under ss. 201 to 268 I. P. Code. 1930 M. W. N. 482=32 M. L. W. 389=129 Ind. Cas. 230. Abettors could be tried alone with offenders : if the offence is escape from lawful custody, all could be tried also under ss. 147 and 323 I. P. Code if the whole thing is one transaction. 25 Cr. L. J. 792=A. I. R. 1924 Mad. 384=81 Ind. Cas. 312. Where in the course of one transaction three murders were committed three separate charges should have been employed. 54 C. 237=28 Cr. L. J. 99=44 C. L. J. 253=A. I. R. 1927 Cal. 17=99 Ind. Cas. 227. Conviction can be of two offences committed against the same person if they are distinct and do not form part of the same transaction. 21 A. L. J. 859=2 Cr. L. J. 964=A. I. R. 1924 All. 211=81 Ind. Cas. 612. A joinder of charges for offences under s. 20 of the Cattle Trespass Act and s. 504. Penal Code, is not illegal when both reasonably form part of the same transaction, 50 M. 841=52 M. L. J. 251=28 Cr. L. J. 301=A. I. R. 1927 Mad. 366=100 Ind. Cas. 381. One charge may be framed in respect of two offences committed in the same transaction, provided no miscarriage of justice is caused. 4 Bur. L. J. 213=27 Cr. L. J. 669=A. I. R. 1926 Rang. 53=94 Ind. Cas. 717. In case of murder of several by one act, single charge is only a technical defect. 40 C. L. J 511=29 C. W. N. 173=52 C. 253=26 Cr. L. J. 487=A. I. R. 1925 Cal. 341=85 Ind. Cas. 231. Section 149 is merely declaratory. Omission of s. 149 from a charge does not create an illegality. 47 M. 746=47 M. L. J. 221=25 Cr. L. J. 1297=A. I. R. 1925 Mad. 17 (F. B.)=82 Ind. Cas. 465. Charge cannot be vague. 30 Cr. L. J. 1073= A. I. R. 1930 Sind. 62=119 Ind. Cas. 532. No separate inquiry is necessary in case of each accused. S. 233 applies only to separate trials only. 30 Cr. L. J. 404= A. I. R. 1929 Nag. 234=115 Ind. Cas. 169. In a case where the act of mischief is quite separate from that of riot, and the same persons are not accused in both the trial is bad for misjoinder of charges. 29 Cr. L. J. 34=A. I. R. 1928 Lah. 185= 106 Ind. Cas. 450. Treating prosecution evidence as defence evidence in a cross-case in a joint trial is illegal. 25 Cr. L. J. 551=A. I. R. 1925 Lah. 149=81 Ind. Cas. 39. Where the accused must have been charged with an offence for which sanction is required, he may be charged with and tried for offences in respect of which no sanction is required. 35 C. L. J. 279=26 C. W. N. 680=49 C. 573=23 Cr. L. J. 657=69 Ind. Cas. 145. The simultaneous trial of two separate cases cannot be cured under section 537. 11 L. B. R. 73=A. I. R. 1921 L. B. 51=23 Cr. L. J. 49= 64 Ind. Cas. 833. But lumping several charges together is an irregularity cured by s. 537. 8 O. L. J. 10=3 U. P. R. L. (J. C.) 4=22 Cr. L. J. 344. Theft of two accused out of the many who were all of them charged under s. 147 Penal Code, may be held as one offence. 21 Cr. L. J. 682=57 Ind. Cas. 922. Trial charging accused under ss. 302 and 201 Penal Code is not illegal. 33 Cr. L. J. 283=A. I. R. 1932 All. 71. Section 233 applies to summons cases also. 33 Cr. L. J. 589=35 M. L. W. 661=A. I. R. 1932 Mad. 497. In cases of criminal breach of trust previous acquittal in respect of gross sum between specified dates does not bar second trial. 53 A. 411=32 Cr. L. J. 376=1931 A. L. J. 98. Where case does not come under s. 236, but two distinct offences are included in charge in alternative, defect is mere irregularity and not illegality. 37 C W. N. 1074=A. I. R. 1933 Cal. 676=146 Ind. Cas. 305. Joint trial of accused charged with abduction alone and accused charged

with both abduction and kidnapping is irregular. A. I. R. 1933 Cal. 563=34 Cr. L. J. 682=144 Ind. Cas. 93. Where two similar offences were committed on different dates and Judge after framing single charge, asks jury for single finding, retrial should be ordered. 14 P. L. T. 580=34 Cr. L. J. 892=A. I. R. 1933 Pat. 488. Where each act of misappropriation connected with specific act of falsification and whole of acts of misappropriation united together in single sum contained during period of one year, charges of embezzlement and falsification can be linked together. 10 Pat. 463=12 P. L. T. 696=32 Cr. L. J. 1026=A. I. R. 1931 Pat. 349. Joinder of three distinct charges each under s. 103 (a) (iii) and b (ii) is illegal. A. I. R. 1934 Bom. 303. Inclusion of kidnapping and abduction in one head under one charge is irregular. A. I. R. 1934 Sind. 164.

Three offences of same kind within year may be charged together.

234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences,* [whether in respect of the same person or not], he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code† or of any special or local law.

[Provided that for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code† shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code,† or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.]‡

Notes.—This section is not limited to cases where the offences have been committed against the person. It applies where the complainants are different persons. 19 C. W. N. 557=16 Cr. L. J. 332=28 Ind. Cas. 668 ; 69 Ind. Cas. 628. Section 234, Cr. P. Code does not apply to a single charge under s, 401, I. P. Code. 47 C. 154=31 C. L J. 19=21 Cr. L. J. 386=55 Ind. Cas. 994. "Person" does not under s. 234 include the plural, 19 A. L. J. 798=22 Cr. L. J. 657=63 Ind. Cas. 449 ; see also 21 Cr. L. J. 794=58 Ind. Cas. 522 ; see also 44 M. L. J 130=16 M. L. W. 831=23 Cr. L. J. 719=A. I. R. 1923 Mad. 181=69 Ind. Cas. 447. Joint trial for offences on different dates is illegal. 21 A. L. J. 820=46 A. 54=77 Ind. Cas. 818. Trial of more than three offences together is illegal. 45 C. L. J, 1=28 Cr. L. J. 291=A. I. R. 1927 Cal. 946=100 Ind. Cas. 371. A conviction for misappropriating 26 different sums cannot be upheld. 25 Cr. L. J. 210=A, I. R. 1923 All. 483=76 Ind. Cas. 652. A joinder of charges under s, 408 I. P. Code with one under s. 477 A vitiates the trial. 44 A. 543=20 A. L. J. 320=23 Cr. L. J. 258=66 Ind. Cas. 322. Joint trial of four accused for three offences on three different dates within one year is illegal. 19 A. L. J. 798=22 Cr. L. J. 697=63 Ind. Cas. 449. A joint trial of two accused for criminal breach of trust is illegal. 3 Pat, L. J. 124=5 P. L. W. 34=19 Cr. L. J. 673=46 Ind. Cas. 33. Six accused jointly committing three offences can be jointly tried for all the three charges. 38 A 457=14 A. L. J. 700=18 Cr. L. J. 47=36 Ind. Cas. 879. Where two persons were accused of offences under s. 379 and s. 380 I. P. Code on two different days, joint trial is illegal. 30 C. W. N. 679=17 Cr. L. J. 224=35 Ind. Cas. 336. Conviction at one trial for three acts of misappropriation commited against three different persons is not illegal. 20 Cr. L. J. 71=48 Ind. Cas. 871. One trial of six accused for offences under ss. 147, 223 and 342 committed on the same day cannot be justified under ss. 234 or 239 Cr. P. Code. 46 A. 51=21 A. L. J. 820=25 Cr. L. J. 466. The joinder of the charges of offences under section 411 I. P. Code with those under section 414 I. P. Code is bad except when they are in the alternative. 49 C. 535=24 Cr. L. J. 86=A. I. R. 1922 Cal. 401=71 Ind. Cas. 214.

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* These words were inserted by s. 62 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† XLV of 1860.

‡ This proviso was added by s. 62 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Each false entry constitutes a separate offence although a number of false entries might be proved to cover one defalcation. 1922 M. W. N. 476=24 Cr. L. J. 462=44 M. L. J. 67=A. I. R. 5922 Mad. 435. Sections 234, 235 and 336 are mutually exclusive. 51 A. 544=1929 A. L. J. 329=30 Cr. L. J. 687=A. I. R. 1929 All. 202. Three offences of the same kind within the meaning of the section committed within the space of one year can be tried at one trial. 29 Cr. L. J. 287=107 Ind. Cas. 826. Where an accused is charged with and tried at one trial for four offences, it is not illegality which vitiates the trial. A. I. R. 1930 Mad. 508=127 Ind. Cas. 295. Trial of accused under ss. 218, 409 and 466 Penal Code on 8 counts is illegal. L. R. I. A. Cr. 10. In falsification of accounts any number of false entries or omission of entries may be proved and is not contrary to s. 254 Cr. P. Code. 34 C. W. N. 925. charge for an offence under s. 406 I. P. Code made about fifteen months after the offence is not a mere irregularity. 34 C. W. N. 959. Charge under s. 408 I. P. Code specifying gross sums, dates between which such sums were taken as also items misappropriated in one year comes under s. 222, cl. (2) Cr. P. Code and is a good charge. A. I. R. 1930 Cal. 717=129 Ind. Cas. 359. In a charge of criminal breach of trust, when the offence is committed during 15 months, defect is not cured by s. 537 and the conviction is illegal. A. I. R. 1931 Cal 357=34 C. W. N. 954=32 Cr. L. J. 195=128 Ind. Cas 816. If the accused is charged with making false entries only each false entry is a distinct offence. 34 C. W. N. 925. In case of theft of eight articles on different occasions extending over one year, each offence should be tried separately. 49 A. 312=25 A. L. J. 217=28 Cr. L. J. 171=A. I. R. 1927 All. 223=69 Ind. Cas. 603. Though amount misappropriated is of sums payable in four amounts realised in one transaction a single charge of all such items is not bad. 45 C. L. J. 207=28 Cr. L. J. 469=A. I. R. 1927 Cal. 409. Single charge of six thefts from five persons on five occasions is illegal. 20 S. L. R. 3=27 Cr. L. J. 32=A. I. R. 1926 Sind. 129=94 Ind. Cas. 64. It is misjoinder when charge under s. 210 I. P. Code is committed in one year is joined with others of criminal misappropriation committed in the previous year. 37C. L. J. 311=23 C. W. N. 590=19 Cr. L. J. 808=47 Ind. Cas. 64. Under s. 234 clause (2) offences are of the same kind when punishable with same amount of punishment under the same section and where this is not the case neither s. 279 nor s. 237 can be read with s. 234 of the Code. 29 Cr. L. J. 7=48 Ind. Cas. 482. Offences of the same kind as referred to in the section need not necessarily have been committed against the same person. 38 A. 58=88 Cr. L. J. 41=36 Ind. Cas. 873. Joinder of three charges on offences of the same kind in three different places and against three different persons within one year, is legal. 20 M. L. T. 234=17 Cr. L. J. 479=36 Ind. Cas. 159. But where an accused commits more than three offences of the same kind within 12 months by distinct, separate and wholly unconnected acts, he may be tried in batches of 3 at each trial under separate charges. 4 P. L. W. 105=19 Cr. L. J. 255=44 Ind cas. 47. Trial on three charges for 69 offences is bad in law but the irregularity is covered by s. 537 of the Cr. P. Code. 19 Cr. L. J. 353=44 Ind. Cas. 577; but see 18 Cr. L. J. 310=38 Ind. Cas. 422; 38 Ind. Cas. 314=18 Cr. L. J. 282. The operation of s. 234 is not limited to offences committed against the same person. 2 Pat. L. J. 209=18 Cr. L. J. 614=39 Ind. Cas. 982. One trial for cheating two persons within the space of one month is not illegal. 27 Cr. L. J. 909=A. I. R. 1926 Pat. 347=96 Ind. Cas. 221. Section 232 will not control the provisions of section. 239, 2 O. W. N. 760=26 Cr. L. J. 1602=A. I. R. 1926 Oudh. 161=90 Ind. Cas. 706. Sections 234 and 235 must be construed apart. 27 Cr. L. J. 1099=A. I. R. 1927 Nag. 22=97 Ind. Cas. 363. Where three acts of criminal breach of trust and three acts of falsification of accounts were committed, it is illegal to charge three distinct acts of criminal breach of trust and three distinct acts of falsification of accounts though in respect of the same items. 49 B. 892=27 Bom. L. R. 1343=27 Cr. L. J. 305=A. I. R. 1926 Bom. 110=92 Ind. Cas. 689. Joint trial in respect of two sets of separate and independent transactions, in which different offences have been committed is not permissible. 48 A. 236=24 A. L. J. 239=27 Cr. L. J. 143=A. I. R. 1926 All. 961=91 Ind. Cas. 815. Legality of a joint-trial depends upon the accusation made provided the accusation is a real and not an excuse for misjoinder. The offence of waging war is a continuing offence. More than these offences spread over a period longer than a year may be tried under a single charge. 49 M. 74=48 M. L. J. 308=1925 M. W. N. 192=26 Cr. L. J. 1513=A. I. R. 1925 Mad. 690=90 Ind. Cas. 297. There is no presumption as to the date of receipt of stolen articles where several are found with the accused. In such cases, accused is to be charged with three offences in respect of three articles. 3 Pat. 503=2 Pat. L. R. Cr. 131=25 Cr. L. J. 738=A. I. R. 1925 Pat. 20=81 Ind. Cas. 226. Section 239 read with s. 234, permits the joinder of

two charges against one accused with the charges of abetment of those two offences against another accused but not the joinder of a third charge against the one accused with either or both of the first two charges against the other accused. 26 Cr. L. J. 319=3 Bur. L. J. 254=A. I. R. 1925 Rang. 198=84 Ind. Cas. 463. Offence of breach of trust and falsification of accounts in respect of three items should be linked. A. I. R. 1934 Pat. 232. Sections 234 and 235 can be regarded as cumulative in their effect in a proper case. A. I. R. 1924 Pat. 232. Where offence of embezzlement of four sums of money on specified dates within one year were committed, charge in respect of all as one offence is correct and does not contravene provisions of section 234. 128 Ind. Cas. 595=1930 A. L. J. 1130=32 Cr. L. J. 155=52 A. 941=A. I. R. 1931 All. 267. Joinder of three offences under s. 409 I. P. Code and three offences under s. 477 I. P. Code is illegal. 36 C. W. N. 542=33 Cr. L. J. 265=55 L. L. J. 111=A. I. R. 1932 Cal. 486. Joinder of charges more than three is illegal. 146 Ind. Cas. 176=1933 Cr. C. 1172=A. I. R. 1933 Rang. 325. Three offences under Penal Code. ss. 409 and 477 A cannot be tried together. A. I. R. 1933 Nag. 327=34 Cr. L. J. 673=144 Ind. Cas. 94. Charges under ss. 393, 394 and 397 I. P. Code cannot be joined unless they form part of same transaction. 34 Cr. L. J. 502=34 P. L. R. 498=A. I. R. 1933 Lah. 512. Charge under s. 477 A. I. P. Code relating to false entries in different pay-sheets held to be in contravention of s. 234. 54 C. L. J. 470=33 Cr. L. J. 357=A. I. R. 1932 Cal. 377. Where accused was charged with criminal breach of trust and the offence was committed during 15 months, defect is not cured by s. 537 and conviction is illegal. 34 C. W. N. 959=32 Cr. L. J. 195. One trial for six offences evading toll is bad. Such irregularity cannot be cured under s. 537. A. I. R 1935 Bom. 24. If more than one offence of receiving or retaining stolen property, is by application of s. 234, Cr. Pro, Code tried at one summary trial, the aggregate value of the property in respect of the separate offences should not be taken, but the value of the property in respect of each separate offence should be taken. Each offence is regarded as separate offence and tried separately. S. 324 Cr. Procedure Code does not permit of three offences being lumped together so as to be treated as one offence but merely permits of the trial of the three entirely separate offences at the same trial. A. I. R. 1934 Sind. 185 ; see also A. I. R. 1934 Pat. 483 where offences are distinct separate trial is necessary. A. I. R. 1934 Oudh. 457.

235. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Trial for more than one offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Offence falling within two definitions.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

Acts constituting one offence, but constituting when combined a different offence.

(4) Nothing contained in this section shall affect the Indian Penal Code,* section 71.

Illustrations.

to sub-section (1)—

(*a*) A rescues B. a person in lawful custody, and in so doing causes grievous hurt to C a constable in whose custody B was. A may be charged with, and convicted of, offences under section 225 and 333 of the Indian Penal Code.*

(*b*) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately

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charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.*

(*e*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of offences under sections 498 and 497 of the Indian Penal Code.*

A has in possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of the possession of each seal under section 473 of the Indian Penal Code.*

(*e*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.*

(*f*) A with intent to cause injury to B, falsely accused him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted, of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.*

(*g*) A with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under section 147, 325 and 152 of Indian Penal Code.*

(*h*) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them, A may be separately charged with, and convicted of the three offences under section 506 of the Indian Penal Code.*

The separate charges referred to in illustrations (*a*) to (*h*) respectively may be tried at the same time.

to sub-section (2)—

(*i*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.*

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under section 411 and 414 of the Indian Penal Code.*

(*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.*

(*l*) A dishonestly uses a forged document as genuine evidence, in order to convict B, public servant, of an offence under section 167 of the Indian Penal Code.* A may be separately charged with, and convicted of offences under sections section 471 (read with s. 466) and 196 of same Code.

to sub-section (3)—

(*m*) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of offences under sections 323, 392 and 394 of the Indian Penal Code.*

Scope.—This section is enabling and so it is not obligatory that all the charges should be specified. 6 Pat. 208=8 P. L. T. 12=27 Cr. L. J. 110; 12 Bom. L. R. 226. ss. 236 and 235 are not mutually exclusive. A. I. R. 1931 All. 49. If one offence falls under separate definitions a second trial is prohibited. 29 Cr. L. J. 552=A. I. R. 1928 Bom. 177=30 Bom. L. R. 342=109 Ind. Cas. 346. ss. 235 and 236. Can both be applicable where such application does not lead to anomaly. 1932 A. L. J. 113=33 Cr. L. J. 122=54 A. 337=A. I. R. 1932 All. 25.

Same transaction.—"Same transaction" suggests not proximity of time but continuity of action and purpose A.I.R. 1931 Pat. 52=32 Cr. L.J. 478=130 Ind. Cas. 269; 7 P.L.R. 1921. "Same transaction" is to be interpreted according to the facts of each case. 32 Cr. L. J. 540=6 Luck. 441=A. I. R. 1931 Oudh. 86. In order to constitute "same transaction" same time and place is not necessary. Purpose in view must however be particular and decisive. A. I. R. 1931 Pat. 102=32 Cr. L.J. 611. Proximity of time, community of intention and continuity of action are some indications of "same transactions". 45 C. L. J. 591=31 C. W. N. 337=28 Cr. L. J. 347=100 Ind. Cas.

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827. The expression "same transaction" is inacapable of exact definition. The arena of facts covered by the expression "same transaction" varies with the circumstances of each case. The real and substantial test for determining whether several offences are so connected together as to form one transaction depends upon whether they are so related together in point of purpose or as cause and effect or as principal or subsidiary act as to constitute one continuous action. 18 S.L. R. 199=27 Cr. L. J. 259=A. I. R. 1925 Sind. 233=92 Ind. Cas. 433; see also 20 S. L. R. 74=27 Cr. L. J. 456=A. I. R. 1926 Sind. 151; 43 M. 411=38 M. L. J. 209=21 Cr. L. J. 297=55 Ind. Cas. 345. Same transaction will not apply to cases where there are distinct intervals of time. 10 S. L. R. 192=18 Cr. L. J. 664=40 Ind. Cas. 312. Parties may be in the same transaction or conspiracy without necessarily meeting each other. 2 Bur. L. J. 224=25 Cr. L. J. 270=A. I. R. 1924 Rang. 98=76. Ind. Cas. 830. Acts provided they are connected together may be dealt with under various sections. 27 C. W. N. 626=25 Cr. L. J. 343=77 Ind. Cas. 231. As to what is same transaction depends on facts of each case, but offences of cutting crops in different lands on different dates consequent on a decree may be tried together. 26 Cr. L. J. 369=A. I. R. 1925 Cal. 530=84 Ind. Cas. 849. Association of persons for the same end though one does more than another creates continuity of purpose. 5 Pat L. J. 11=1 Pat. L. T. 180=21 Cr. L. J. 161=54 Ind. Cas. 769. Proximity of time is necessary though prior conspiracy is not, to make the acts form the same transaction. If offences are on different dates and against different persons they do not form the same transaction. 20 Cr. L. J. 354=25 M. L. T. 379=50 Ind. Cas. 834. Separate acts complete in themselves even if they are the accomplishments of a common object should not be tried together. A. I. R. 1931 Pat. 102=12 P. L. T. 12. Escaping from custody, rioting and hurt as they form part of the same transaction may be taken together. 18 M. L. W. 818=81 Ind. Cas. 312. Joint trial where offences are connected by continuity of action and purpose is a public necessity. 50 C. 1004=81 Ind. Cas. 906. There is no continuity of purpose where each action is complete in itself. 25 Cr. L. J. 1020=A. I. R. 1924 Lah. 734=81 Ind. Cas. 796. Abduction is a continuing offence. 50 C. 1004. Transaction is to be interpreted with reference to the facts of each case. A. I. R. 1931 Oudh. 86=8 O. W. N. 92=130 Ind. Cas. 350. Offences forming part of the same transaction may be any number. 19 A. L. J. 392=22 Cr. L. J. 641=63 Ind. Cas. 401. Inspite of interval of true offences may form same transaction if they are related by purpose, causation or as subsidiary and principal. 19 A. L. J. 302=22 Cr. L. J. 641=63 Ind. Cas. 401. Dacoits robbing one cart after another are acting in pursuance of a common object. 20 A. L. J. 926=24 Cr. L. J. 153=A. I. R. 1923 All. 137=71 Ind. Cas. 505. Illegal sale and possession of residue of opium form same transaction. 3 Pat. L. J. 433=19 Cr. L. J. 446=44 Ind. Cas. 974. If the accused had a single purpose he could be tried for various offences of the same kind with respect to various documents. 12 P. R. Cr. 1918=89 P. L. R. 1918=45 Ind. Cas. 270. Several falsifications to conceal one which referred to the amount misappropriated may be tried together. 30 Cr. L. J. 958=A. I. R. 1929 Lah. 843. Though the unlawful assemblies were three in number and in different places they may be taken together for there was a common design throughout. 24 M. L. T. 96=20 Cr. L. J. 145=49 Ind. Cas. 337. Accused may be charged with offence of waging war and conspiracy though only a few were involved in the latter. 2 Luck. 631=A. I. R. 1927 Oudh. 369=106 Ind. Cas. 721. Conspiracy and several offences in furtherance of conspiracy form one transaction and can be jointly tried. 34 Bom. L. R. 598=56 B. 304=33 Cr. L. J. 666=A. I. R. 1932 Bom. 406. Accused separately charged with kidnapping and abduction can be tried for each of such offences at one trial, 37 C. W. N. 1074=A. I. R. 1933 Cal, 676.

The word "transaction" is not to be interpreted in any special or artificial or conventional or technical sense, but as it is ordinarily understood by men of education and common sense. The usual tests applied to decide whether different acts are parts of the same transaction are proximity of time, unity of place, community of purpose or design and continuity of action. It is not possible to enunciate any comprehensive formula of universal applicability for the purpose of determining whether two or more acts constitute the same transaction, but circumstances which bear on the determination of the question in any individual case can be indicated by saying that proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the principal criteria for deciding whether certain acts form parts of same transaction or not. The real and substantial test for determination whether several offences were so connected together as to form one transaction depends upon whether they are related together in point of purpose,

or as cause and effect, or as principal and subsidiary acts, so as to constitute one continuous action. A. I. R. 1934 Oudh. 499=35 Cr. L. J. 1496=11 O. W. N. 1309. A joint trial of an accused under ss. 406 and 174 I. P. Code is not legal if both offences were not committed in the course of the same transaction. A. I. R. 1934 Lah. 630=35 P. L. R. 653.

Joinder of charges.—It is better to have too many than too few charges, so long as there is not misjoinder or multifariousness. 8 Pat. 289=10 P. L. T. 549=30 Cr. L. J. 675=A. I. R. 1929 Pat. 275. Offences connected with the common object but beyond its scope may be tried at the same time. 29 Cr. L. J. 805=A. I. R. 1928 Oudh. 401. Where accused formed themselves into a body with a particular intention all their acts in consequence form one transaction and separate charges are not necessary. 1930 M. W. N. 377=127 Ind. Cas. 654. Though s. 235 is enabling yet rest of embarrassment to accused must be avoided. 40 C. L. J. 541=29 C. W. N. 173=52 C. 253=29 Cr. L. J. 487=85 Ind. Cas. 231. Though charge of dacoity was added to that of waging war conviction for the former may be dropped without affecting validity of conviction for the other. 49 M. 74=48 M. L. J. 308=26 Cr. L. J. 1113=90 Ind. Cas. 297. Prosecution may ask Court to try accused on all the charges on proving that they formed one transaction. 13 A. L. J. 1131=16 Cr. L. J. 795. Where the same evidence would be sufficient under s. 380 and s. 420 the two charges may be joined. 20 A. L. J. 324=28 Cr. L. J. 671=69 Ind. Cas. 159. Joinder of charges under ss. 408 and 477A vitiates the trial. 20 A. L. J. 320=23 Cr. L. J. 258=44 A. 54=66 Ind. Cas. 322. Where accused and others were charged under s. 336 to and s. 147 addition of charge under s. 376 against him alone is illegal. 4 L. L. J. 322=25 Cr. L. J. 533=77 Ind. Cas. 997. Offences of preparing false balance sheets for different years cannot be joined. 21 Bom. L. R. 732=20 C. R. L. J. 657=52 Ind. Cas. 481. Trial of the accused for offences under s. 406 and for the offences not committed within the same year under s. 210 is illegal. 22 C. W. N. 596=27 C. L. J. 311=19 Cr. L. J.868=47 Ind. Cas. 64. Misjoinder whether accused was prejudiced or not vitiates whole trial. 1 Lah. 562=7 P. L. R. 1921=57 Ind. Cas. 481 ; see also 3 P. L. R. 1922=22 Cr. L. J. 505=62 Ind. Cas. 329. To a charge under s. 408 may be added three charges under s. 477 committed within the same period and relating to the same misappropriation. 22 Cr. L. J. 230=60 Ind. Cas. 422. Unless offences are committed in the same transaction joint trial is illegal. 7 L. L. J. 64=26 Cr. L. J. 1167=88 Ind. Cas. 527 ; see also 50 Ind. Cas. 833=17 A. L. J. 614. Objection to joint trial must be made before judge goes into evidence. 17 Cr. L. J. 477 (All)=56 Ind. Cas. 157. Joint trial for offences under s. 408 I. P. Code and of embezzlement of sums received from two persons is illegal. 40A. 565=16 A. L. J. 596=19 Cr. L. J. 967=47 Ind. Cas. 867. Charge of falsfication of accounts must be separately tried unless it relates to the misappropriation committed. 19 Cr. L. J. 987=48 Ind. Cas. 167 ; see also 35 Ind. Cas. 801=17 Cr. L. J. 369. Where four distinct offences were committed at different times, though by the same persons, one trial is illegal. 18 Cr. L. J. 739=40 Ind. Cas. 739. Hearing a person to commit riot and rioting are distinct offences and cannot be tried together. 25 Cr. L. J. 594=85 Ind. Cas. 819=A. I. R. 1925 Cal. 903. Different acts connected with different documents cannot be tried together. 29 Cr. L. J. 798=A. I. R. 1926 Lah. 193. Charges either disconnected or tending to produce a mass of evidence cannot be tried together. 29 Cr. L. J. 801=3 Luck. 664=111 Ind. Cas. 305. Though witnesse's false statements occur in the same deposition they may constitute different offences. 51 B. 310=29 Bom. L. R. 170=28 Cr. L. J. 373=A. I. R. 1927 Bom. 177=100 Ind. Cas. 981. When members of an unlawful assembly caused hurt to one person and later by a separate act to another they may be tried together at the same trial. 39A. 623=15 A. L. J. 591=18 Cr. L. J. 788=41 Ind. Cas. 308. Single trial for charges of criminal breach of trust and falsification of accounts in respect of three items on different dates within space of one year is not legal. A. I. R. 1932 Sind 64=32 Cr. L. J. 650=26 S. L. R. 191. Where sub-inspector assaulted and confined persons to extort confussion and subsequently altered diary to save himself, the acts are connected together as to form one transaction. A. I. R. 1932 Bom. 545=34 Cr. L. J. 357=56 B. 488. Where the two realizations by black mail, common purpose and design and continuity of action were found and there was no prejudice to the accused who fully knew the case against them, the trial is not bad for misjoinder. A. I. R. 1933 Cal. 308=56 C. L. J. 73=34 Cr. L. J. 530. Charges of cheating and forging can be tried with charge of conspiracy. A. I. R. 1933 Oudh. 86=8 Luck. 286=34 Cr. L. J. 124. An offence under s. 201 I. P. Code can be validly added to one under s. 302. A. I. R. 1933 Nag. 136=29 N. L. R. 251=54 Cr. L. J. 505. Where an accused is guilty of three distinct

offences he can be tried for two of the offences although acquitted in respect of the third. A. I. R 1931 Sind. 116=25 S. L. R. 9=33 Cr. L. J. 41. Person charged with murder may be convicted under s. 201. A. I. R. 1933 All. 30=1932 A. L. J. 1079=34 Cr. L. J. 445. Intention to defalcate certain amount and actual method adopted form parts of the same transaction. 32 Cr. L. J. 318=34 C. W. N. 925=129 Ind. Cas. 356. Ss. 235 (1) and 236 Cr. Pro. Code are mutually exclusive, and if a case is governed by one of them, it cannot be governed by the other. S. 237 applies only to cases governed by s. 236. 67 M. L. J. 583=A. I. R. 1934 Mad. 673=35 Cr. L. J. 1503=152 Ind. Cas. 154. The words "any number of them" must not be construed too literally. Multitude of accusations should not be hurried in one and same trial so as to bewilder accused. A. I. R. 1934 Sind. 57. Criminal breach of trust in respect of three items of collection taxed within one year constitutes single item of Municipal property and charge in respect of gross sum is sufficient and valid. A. I. R. 1934 Pat. 232 ss. 234 and 235 are cumulative and not mutually exclusive. 13 Pat. 170=148 Ind. Cas. 990=35 Cr. L. J. 876=15 P. L. T. 126. Ss. 235 and 236 are exclusive and s. 237 applies only to cases under s. 236. A. I. R. 1934 Mad. 673. Word "transaction" has wider significance for which synonym may be found in word "affair". A. I. R. 1934 Pat. 483. Where several articles were stolen on different dates and there is no evidence of separate acts of reception, single trial under s. 411, I. P. Code is not bad. A. I. R. 1934 Pat. 483.

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once ; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations.

(*a*) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(*b*) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

Notes.—This section only authorizes a charge in the alternative, when it is doubtful which of the several offences the facts which can be proved will constitute, and not when there may be a doubt as to the facts which constitute one of the elements of the offence. 21 C. 955 ; see also 43 P. R. 1887 Cr. It is entirely for the jury to decide whether charges under ss. 147 and 304 spring out of one and the same incident or out of two entirely different incidents and thus ultimately the legality of the charges under both the sections depends on the decision of the jury, 119 Ind. Cas. 139. Section 9. 236 applies only if there is a doubt as to law applicable to facts, and s. 237 is supplemental. 4 Pat. L. W. 40=19 Cr. L. J. 202=43 Ind. Cas. 618. Section 236 applies when there is doubt as to what offence has been committed. 3 P. L. T. 127=23 Cr. L. J. 30. see also 23 Cr. L. J, 270 ; 85 Ind. Cas. 818 ; A. I. R 1930 All. 481 ; A. I. R. 1929 Rang. 209 ; this applies also where there is doubt as to the law applicable to certain facts. 6 Bur. L. J. 83=28 Cr. L. J, 759=A. I. R. 1927 Rang. 254=103 Ind. Cas. 839. Where the age is doubtful alternative charges under abduction and kidnapping are legal. 50 C. L. J. 593=A. I. R. 1930 Cal. 209=125 Ind. Cas. 656. Accused may be convicted for offence proved though otherwise charged with. 1930 M. W. N. 1041. Alternative charges under I. P. Code and Post-office Act are not illegal. A. I. R. 1930 Lah. 460=129 Ind. Cas. 760. There is no misjoinder in charging alternatively for same offence. A. I. R. 1930 Mad. 870=129 Ind. Cas. 230. Offence of lurking house-trespass is minor to dacoity and alternative charges may be framed. 50 C. L. J. 467=31 Cr. L. J. 610=A. I. R. 1930 Cal. 139=124 Ind. Cas. 66. Court must be satisfied that the accused is not misled in his defence. 30 Cr. L. J. 891=10 P. L. T. 875=A. I. R. 1929 Pat. 712=118 Ind. Cas. 323. Alternative charge may be framed on statements before police and Magistrate. 45 B. 834=23 Bom. L. R. 1=22 Cr. L. J. 241 (F. B.)=60 Ind. Cas. 593 ; see also 2 O. W. N. 637=12 O. L. J. 644=26 Cr. L. J. 145=89 Ind. Cas. 1025. Person convicted of offence under s. 363 can be

convicted of offence of abetment thereof without such a charge. 21 Cr. L. J. 44=54 Ind. Cas. 252 conviction under s. 54 A of the Calcutta Police Act may be given in the alternative though not charged therewith instead of under s. 380. 24 Cr. L. J. 372 =50 C. 564=A. I. R. 1923 Cal. 596=72 Ind. Cas. 372. Statements made at investigation, inquiry and trial form "a series of acts" so as to frame alternative charges. 16 S. L. R. 285=25 Cr. L. J. 1195=A. I. R. 1924 Sind. 1=82 Ind. Cas. 59. Same person may be charged alternatively with murder or causing disappearance of evidence thereof, and convicted under the last. 18 S. L. R. 185=26 Cr. L. J. 909= A. I. R. 1925 Sind. 306=86 Ind. Cas. 973. Where a ring and diamond in a pocket were lost only one offence of retaining stolen property was committed by accused. 2 Rang. 80=25 Cr. L. J. 907=81 Ind. Cas. 443. Alternative charges if made, must be made clear to the accused and must be clearly dealt with in the Judges final decision. 25 Cr. L. J. 592=A. I. R. 1928 All. 285=81 Ind. Cas. 80. Conviction may be recorded in the alternative. 15 A. L. J. 587=18 Cr. L. J. 790=41 Ind. Cas. 310. Accused may be convicted of offence disclosed though charged with another offence. 54 C. 476=31 C. W. N. 527=26 Cr. L. J. 404. Where the accused was charged with abetment of forgery he cannot be convicted of presenting the document for registration. 53 C. 466=30 C. W. N. 432=27 Cr. L. J. 606=94 Ind. Cas. 270. It cannot be laid down as universal rule that in no circumstances whatsoever, where there is a charge of a substantive offence and there is no charge of abetment of that substantive offence, can the person so charged with the substantive offence be convicted of the abetment of that offence. The answer to the question really depends on the facts of each case and it must be seen in each case whether or not prejudice has been caused to the accused by reason of the conviction for abetment of substantive offence in the absence of a charge therefor. Person may be convicted of abetment even if the charge is only that of the substantive offence. 29 Cr. L. J. 1093=A. I. R. 1928 Cal. 466=112 Ind. Cas. 677 ; see also 36 C. W. N. 595= 59 C. 1192. Section 236 applies only to those rare cases in which prosecution cannot establish exclusively any one offence. 25 S. L. R. 9=A. I. R. 1931 Sind. 116= 33 Cr. L. J. 41. Sections 236 and 237 do not say that they are applicable only when facts are clear but law is doubtful. 146 Ind. Cas. 392=11 Rang. 351=A. I. R. 1933 Rang. 236. When married girl was seized, taken away and raped, the charge is under s. 366 I. P. Code for kidnapping or abduction and s. 236 has no application. 37 C. W. N. 1074=146 Ind. Cas. 305=A. I. R. 1933 Cal. 676. When facts are in doubt or are consistent with innocence, s. 236 does not apply. 35 C. W. N. 809= 134 Ind. Cas. 433=32 Cr. L. J. 1167. Where accused is charged under s. 302 I. P. Code alone, conviction cannot be altered into one under s. 411 I. P. Code. A. I. R. 1933 Oudh. 315=8 Luck. 518. High Court can alter conviction from principal offence to one of abetment thereof. 32 Cr. L. J. 905=8 O. W. N. 755=7 Luck 102=A. I. R. 1931 Oudh. 274. Section 237 applies to cases falling within provisions of s. 236. Section 236 applies where there is doubt in law as to which offence is committed. When facts are in doubt neither section applies. 35 C. W. N. 945=132 Ind. Cas. 254=32 Cr. L. J. 892=59 C. 8=A. I. R. 1931 Cal. 414. Where evidence is sufficient to establish charge for principal offence which is not framed, conviction on such charge is allowed. 32 Cr. L. J. 753=35 M. L. W. 98=A. I. R. 1931 Mad. 225. ss. 235 (1) and s. 236 are mutually exclusive. 67 M. L. J. 583= A. I. R. 1934 Mad. 673. A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made. 28 S. L. R. 304. It is no doubt true that in the circumstances postulated by s. 236 any number of charges may be tried at once. But this provision does not do away with the obligation so as to state the charge as to give to the accused a sufficient notice of the matter which they have to meet. A. I. R. 1934 Sind. 164=152 Ind. Cas. 1061.

When a person is charged with one offence he can be convicted of another.

237. If in the case mentioned, in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section he may be convicted of the offence which he is shown to have committed, although he was not charged with it.*

* Sub-section (2) was omitted by s. 63 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

Illustrations.

A is charged with theft. If it appears that he committed the offence of criminal breach of trust or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.

Notes.—This section must necessarily be limited in its operation to cognate offences. 99 Ind. Cas. 861=28 Cr. L. J. 189=A. I. R. 1927 Nag. 163. For application of s. 237 there should be no doubt about facts. A. I. R. 1933 Mad. 843= 65 M. L. J. 723=1933 M. W. N. 718. Accused can be convicted of offence different from one with which he is charged. 10 O. W. N. 134=34 Cr. L. J. 285=A. I. R. 1933 Oudh. 162. In a trial under ss. 302 and 144 I. P. Code, conviction for hurt to companion of deceased without charge under s. 323 I. P. Code is competent. A. I. R. 1931 Lah. 566=33 Cr. L. J. 315=33 P. L. R. 952=136 Ind. Cas. 721. Where accused is charged under s. 366, Penal Code, High Court can convict him for rape. A. I. R. 1932 All. 580=1932 A. L. J. 776=34 Cr. L. J. 100; 11 O. W. N. 1392=152 Ind. Cas. 463. Where an accused is charged under s. 302. Penal Code, he can be convicted under s. 302; 114 Penal Code. 59 C. 1192=33 Cr. L. J. 720=A. I. R. 1932 Cal. 455. Where a complaint is brought under s. 64 A. of the Stamp Act, before accused can be convicted, under s. 62 B, his attention must be drawn to such fact. A. I. R, 1933 Lah. 959=1933 Cr. C. 1414. Where the Charge is under s. 395, Penal Code and the Judge in charging jury made reference to ss. 448 and 323, Penal Code, a conviction under s. 323 without charge is bad in law. 35 C. W. N. 945=32 Cr. L. J. 892. Under s. 237 a person charged for robbery under s. 392 I. P. Code can be convicted for cheating under s. 420 I. P. Code. 152 Ind. Cas. 1036=35 P. L. R. 595. An appellate Court is competent to alter a conviction under s. 408 I. P. Code into one under s. 403. 152 Ind. Cas. 463=11 O. W. N. 1392. A man charged with the main offence can be convicted of abetment for the same if he is not prejudiced thereby. A. I. R. 1934 Sind. 89=28 S. L. R. 12; see also A. I. R. 1929 Cal. 807=34 C. W. N. 198: 30 Cr. L. J. 224=A. I. R. 1930 Nag. 145; 24 A. L. J. 998=27 Cr. L. J. 118=49 A. 120=A. I. R. 1927 All. 35=97 Ind. Cas. 430. Section 237 applies only to cases mentioned in s. 236 and not to cases where it is doubtful what offence is committed. 24 A. L. J. 168=27 Cr. L. J. 152=A. I. R. 1926 All. 217=91 Ind. Cas. 888. Section 237 should be read subject to s. 227 Cr. P. Code. Alteration of charge should be explained to the accused. 24 A. L. J. 168=27 Cr L. J. 152=91 Ind. Cas. 888; see also 23 A. L. J. 436=26 Cr. L. J. 1057=A. I. R. 1925 All. 448=88 Ind. Cas. 1. Conviction for greater offence than charged with is illegal. 11 L. B. R. 45=69 Ind. Cas. 628. Where the offence is not charged conviction is maintainable if accused might have been charged with it under s. 236 Cr. P. Code. 3 P. L. T. 127=23 Cr. L. J. 30; see also 23 Cr. L. J. 270. But where a complaint clearly charged an offence under s. 501 a conviction under s. 500 is illegal 9 O. L. J. 342=23 Cr. L. J. 641=26 O. C. 44=69 Ind. Cas. 81. So also a charge of murder cannot be converted into one of robbery. 4 Lah. 473=6 L. L. J. 59=28 Cr. L. J. 385=77 Ind. Cas. 433. ss. 237 and 238 are exceptions to the rule that a man cannot be convicted of an offence not charged. 26 Cr. L. J. 594=A. I. R. 1925 Cal. 903=85 Ind. Cas. 818. Conviction for offence not charged should be quashed if accused is prejudiced. 26 Cr. L. J. 356 =A. I. R. 1925 Cal. 581=84 Ind. Cas. 708. Where the charge is for substantive offence, conviction for that offence read with s. 114 I. P. Code is maintainable. 49 B. 84=26 Bom. L. R. 954=26 Cr. L. J. 1000=87 Ind. Cas. 600. Where charge is under s. 302, conviction under s. 201 is proper. 6 Lah. 226=41 C. L. J. 437=30 C. W. N. 581=A. I. R. 1925 P. C. 130=88 Ind. Cas. 3 (P. C.); see also 29 Cr. L. J. 457=108 Ind. Cas. 905; 94 Ind. Cas. 901=A. I. R. 1926 Lah. 88. Where principal offence is suspected but not proved, conviction for accessory offence is not illegal. 21 S. L. R. 206=28 Cr. L. J 674=A. I. R. 1927 Sind. 241=103 Ind. Cas. 402. But where charge is under section 366 I. P. Code for kidnapping, conviction for abduction under same section is improper. 45 C. L. J. 584=31 C. W. N. 171=28 Cr. L. J. 201=99 Ind. Cas. 937=A. I. R. 1927 Cal. 200. A conviction under s. 160 I. P. Code (committing affray) is maintainable though the accused were charged only under s. 147 I. P. Code. 28 Cr. L. J. 189=A. I. R. 1927 Nag. 163=99 Ind. Cas. 861. Where charge is under s. 420 I. P. Code conviction for abetment without a charge is sustainable if the absence of charge did not prejudice accused. 50 C. L. J. 472= 34 C. W. N. 198=A. I. R. 1929 Cal. 807. Where accused is charged for theft, he can be convicted for mischief, provided the conviction does not prejudice

the accused. A. I. R. 1920 Cal. 773=50 C. L. J. 285=1929 Cr. C. 517. On a charge under s. 397 I. P. Code, conviction under s. 412, I. P. Code is not improper. 7 O. W. N. 527=A. I. R. 1930 Oudh. 353=127 Ind. Cas. 247. Where charge for an offence is not sustainable on evidence, conviction as accessory is not illegal. 6 O. W. N. 1017=31 Cr. L. J. 575=A. I. R. 1930 Oudh, 113=123 Ind. Cas. 886. Where accused is charged with dacoity under s. 395 I. P. Code, conviction under s. 403 I. P. Code is sustainable. 30 Cr. L. J. 875=A. I. R. 1929 Sind. 147=118 Ind. Cas. 193. Where there is an acquittal on charge of murder a conviction under ss. 201 and 203 I. P. Code is not irregular. A. I. R. 1930 Mad. 870=129 Ind. Cas. 230. But where the charge is under s. 392 I. P. Code, conviction under s. 194 I. P. Code isnot proper. 27 Cr. L. J. 1351=A. I. R. 1927 All. 75=98 Ind. Cas. 471. So also where the charge is under s. 452 I. P. Code, conviction under Arms Act is illegal. 4 Rang. 355=27 Cr. L. J. 1360=A. I. R. 1927 Rang. 32=981 Ind. Cas. 480. If offence for which consent is given is not proved but some other is proved instead, conviction on latter cannot be maintained. 4 Rang. 131=27 Cr. L. J. 1075 =A. I. R. 1926 Rang. 169= 97 Ind. Cas. 51. Where the charge is under s. 302 or under s. 201 in the alternative, conviction under latter section is legal. 30 C. W. N. 816=27 Cr. L. J. 1011=45 C. L. J. 581=96 Ind. Cas. 867. Where the accused has been acquitted by the lower Court on a charge under s. 302 I. P. Code, the High Court on appeal can convict him under s. 193 I. P. Code. 29 Cr. L. J. 403=52 B. 385=30 Bom. L. R. 330=A. I. R. 1928 Bom. 130=108 Ind. Cas. 501. Where the ciharge is under s. 395, but facts justify conviction under s. 457, 395 or 392, a conviction under s. 457 is proper. 2 Luck 444=4 O. W. N. 442=20 Cr. L. J. 460=A. I. R. 1927 Oudh. 196. The Magistrate can convict the accused of a lesser offence than that with which charged. 5 O. W. N. 641=29 Cr. L. J. 893=A. I. R. 1928 Oudh. 402=111 Ind, Cas. 573, Where the accused is charged under s. 226 and s. 149 I, P. Code' conviction under s. 326 and s. 34 I. P. Code is maintainable without charges under the latter section. 7 Pat. 758=30 Cr. L. J. 205=A. I. R. 1929 Pat. 11=113 Ind. Cas. 676. In case of acquittal for principal offence, there is no bar to conviction under s. 201 I. P. Code if there is proof that accused caused evidence to disappear to screen some unknown offender. 10 Lah. 213=30 P. L. R. 402=29 Cr. L. J. 746=A. I, R. 1928 Lah. 906=110 Ind. Cas. 682. Where the accused is charged under s. 147 and s. 353 I. P. Code, appellate Court can alter the conviction into one under s. 149 and s. 323 I. P. Code. 7 Pat. 484=9 P. L. T. 738=29 Cr. L. J. 648=A. I. R. 1928 Pat. 454. Appellate Court can substitute conviction under lesser offence than the one by the lower Court, e.g., conviction under s. 353 can be altered in one under s. 189 I. P. Code. 2 Luck. 503=28 Cr. L. J. 673=A. I. R. 1927 Oudh. 296=103 Ind. Cas. 401. Where charge is under s. 304 conviction can be under s. 304 A. 26 Bom. L. R. 910=26 Cr. L. J. 211=A. I. R. 1924 Bom. 450=83 Ind. Cas. 995 Where there is no charge for attempt to commit an offence, a conviction for it is legal. 25 Cr. L. J. 1313=27 C. W. N. 821=82 Ind. Cas. 545. Where the charge is under s. 325 I. P. Code, the appellate Court cannot alter conviction for an offence for which evidence is ample. 25 Cr. L. J. 1292=A. I. R. 1924 All. 766=82 Ind. Cas. 364. Where the charge is under s. 326 and 149 I. P. Code, conviction under s. 326 is not bad if no prejudice to accused is caused. 47 M. 746=47 M. L. J. 221=20 M. L. W. 261=25 Cr. L. J. 1297=82 Ind. Cas. 465. Sessions Judge can convert conviction from s. 405 to s. 403 Penal Code. A. I. R. 1935 Oudh. 4.

When offence proved included an offence charged.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

* [(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.]

* This sub-section was inserted by s. 64 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under section 407 of the Indian Penal Code* with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) A is charged under section 325 of the Indian Penal Code* with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

Notes.—The effect of this section is to invest a jury trying an offence triable by a jury with authority to find, as an incident to such trial that certain facts only are proved in the trial which facts constitute a minor offence, and return a verdict of guilty of such offence, though it may not be triable by a jury. 26 M. 243=2 Weir. 463=2 Weir, 388. The word "minor offence" in this section ought to be taken in their ordinary sense and not in any technical sense. 22 C. 1006. Where the husband is the complainant and brings his complaint under section 366 of the Penal Code, a conviction under section 498 of the Penal Code may properly be had, even in the absence of complaint by the husband under s. 199 Criminal Procedure Code, of an offence under s. 498 of the Penal Code if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction under the graver one. 20 C. 483. Conviction of an accused on a different charge from that for which he is tried is illegal. 3 Pat. L. T. 322=23 Cr. L. J. 114=A. I. R. 1922 Pat. 5=65 Ind. Cas. 546. Where the charge is under s. 452, conviction under s. 426 is legal. 25 Cr. L. J. 1087=A. I. R. 1925 Oudh. 89=81 Ind. Cas. 911. s. 238 is no bar to alter the conviction from one under s. 14, to one under s. 323. 20 A. L. J. 213=23 Cr. L. J. 198=A. I. R. 1922 All. 114=65 Ind. Cas. 854. Where charge is under s. 304, conviction under s. 304 read with s. 149 is bad in law. 26 Cr. L. J. 594=A. I. R. 1929 Cal. 903=85 Ind. Cas. 818. Where the charge is under s. 326 and s. 149, conviction under s. 326 alone is not bad in the absence of prejudice. 25 Cr. L. J. 1297=47 M. 746=47 M. L. J. 221=A. I. R. 1925 Mad. 1=82 Ind. Cas. 465. Where charge is for substantive offence, conviction for attempt without charge. is valid. 26 Cr. L. J. 755=48 Mad. 774=A. I. R. 1925 Mad. 480=86 Ind. Cas. 339 Where charge is under s. 457 I. P. Code, conviction under s. 456 in the absence of prejudice to accused is valid. 44 C. 358=20 C. W. N. 1075=17 Cr. L. J. 424. In convicting an accused with minor offence, Court must find that proved facts constitute minor offence. 45 B. 619=22 Cr. L. J. 51=A. I. R. 1921 Bom. 54=59 Ind. Cas. 195. Where the charge is under s. 430 I. P. Code, the conviction can be under s. 427. 6 P. L. T. 39=26 Cr. L. J. 682=86 Ind. Cas. 58. Where accused is charged is major offence jury is competent to return verdict of guilty of minor offence. A. I. R. 1929 Nag. 295. But on a charge of dacoity, conviction for hurt cannot be legally sustained. 1929 M. W. N. 185=A. I. R. 1928 Mad. 1186. Where the charge is under s. 457 Penal Code, conviction under s. 456 is not illegal if accused is not prejudiced. 2 Pat. L. T. 140=A. I. R. 1921 Pat. 214. Where a person is charged under one offence he cannot be charged under another offence which is not a minor one without amendment. A. I. R. 1930 Lah. 544=129 Ind. Cas. 300. A charge of rioting does not include as minor offence any specific act of violence by an individual accused so as to authorize under s. 238 a conviction under s. 352 Penal Code. 30 Cr. L. J. 891=10 P. L. T. 875=A. I. R. 1929 Pat. 712=118 Ind. Cas. 323. Where the accused could have been charged with docoity, theft and criminal misappropriation but is charged under s. 395 Penal Code it is legal to convict him under s. 403 Penal Code. 30 Cr. L. J. 875=A. I. R. 1929 Sind. 147=118 Ind. Cas. 193. Where charge is under s. 409 I. P. Code. conviction under s. 409 or s. 427 alternatively is bad. 8 Rang. 13=A. I. R. 1930 Rang 158=125 Ind. Cas. 271. So also where the charges are under ss. 304 and 149. I. P. Code conviction under ss. 325 and 34 is illegal. 6 L. L. J. 630=26 Cr. L. J. 820=A. I. R. 1925 Lah. 286=86 Ind. Cas. 468. The offence of receiving stolen property cannot be considered a minor one as compared with that of docoity or of house breaking by night. 26 Cr. L. J. 136=A. I. R. 1926 Lah. 132=89 Ind. Cas. 449. But where charge is under s. 413 I. P. Code and out of several instances only three proved, conviction under s. 411 for the three in-

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stances is valid. 29 Cr. L. J. 232 =A. I. R. 1928 All. 139=107 Ind. Cas. 241 ; see also 27 Bom. L. R. 1416=27 Cr. L. J. 650=A. I. R. 1926 Bom. 134=94 Ind. Cas. 602. In a trial for offence with assessors, conviction for minor offence triable by jury is legal. 45 B. 610=22 Bom. L. R. 1211=22 Cr. L. J. 51 ; see also 27 Bom. L. R. 1416=27 Cr. L. J. 650=A. I. R. 1926 Bom. 134=94 Ind. Cas. 602. The offence of grievous hurt is a minor offence when compared with the offence of culpable homicide punishable under s. 304, Penal Code. 35 Cr. L. J. 943=A. I. R. 1934 Oudh. 165=A. I. R. 1934 Oudh. 251. Where the charge is one for committing a substantive offence, the accused may be convicted of an attempt to commit that offence or of abetment of that offence and no additional charge need be framed for that. A. I. R. 1934 Pat. 561=13 Pat. 729=15 P. L. T. 523.

What persons may be charged jointly.

* [239. The following persons may be charged and tried together, namely—

(*a*) persons accused of the same offence committed in the course of the same transaction ;

(*b*) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence ;

(*c*) persons accused of more than one offence of the same kind within the meaning of section 234 committed by them jointly within the period of twelve months ;

(*d*) persons accused of different offences committed in the course of the same transaction ;

(*e*) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of property possession of which is alleged to have been transferred by anys uch offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence ;

(*f*) persons accused of offences under sections 411 and 414 of the Indian Penal Code† or either of those sections in respect of stolen property, the possession of which has been transferred by one offence and

(*g*) persons accused of any offence under Chapter XII of the Indian Penal Code † relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.]

Test of same transaction.—Proximity of time, continuity of action and purpose and such subsidiary acts as would make the co-accused *particeps criminis* or an accessory after the fact are the tests to determine whether an offence was committed in the same transaction. 21 S. L. R. 107=98 Ind. Cas. 49 ; 1 S. L. R. 73. Theft and assult cannot be said to form part of the same transaction. 28 Cr. L. J. 357. The real and substantial test to determine whether several offences are so connected together as to form one transaction depends on whether they are so related together in point of purpose, or as cause and effect, or as principal and subsidiary acts, so as to constitute one continuous action. 35 Cr. L. J. 1496=11 O. W. N. 1309=A. I. R. 1934 Oudh. 499. Common purpose must be seen, unity of time and place are not always safe guides. 28 Cr. L. J. 357=A. I. R. 1927 Lah. 274=100 Ind. Cas. 965. A series of acts separated by intervals of time are not excluded from the purview of s. 230 provided that those have been directed to one and the same objection. 23 Cr. L. J. 268=66 Ind. Cas. 332. Transaction in s. 239 means "carrying through" and suggests more a continuity of action and purpose than proximity of time. 17 P. R. Cr. 1917=11 P. W. R. (Cr.) 1917=18 Cr. L. J. 282=38 Ind. Cas. 314. The expression "in the course of the same transaction" includes both the immediate cause and effect of an act or event, and also its collocation or relevant circumstances and the

* Section 239 was substituted by section 65 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

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other necessary antecedents of its occurrence connected with it. 53 B. 479=31 Bom. L. R. 545=31 Cr. L. J. 65=A. I. R. 1929 Bom. 296=120 Ind. Cas. 340. Whether offences form part of the same transaction is a question of fact. 26 Cr. L. J. 29=A. I. R. 1923 All. 277=83 Ind. Cas. 509. Each act if it is a complete act so far as that is concerned will not go to form continuity of action. 25 Cr. L. J. 1020=A. I. R. 1924 Lah. 734=81 Ind. Cas. 796. Acts for which there is community of purpose or design and continuity of action form same transaction. A. I. R. 1931 Mad. 225=1930 M. W. N. 1041=1931 Cr. C. 321.

Clause (a)—In deciding whether offences are so connected as to form one and the same transaction, the determining factor is not so great proximity in time as continuity and community of purpose and object. Section 239 of the Cr. Pro. Code is merely an enabling section and does not in any way trammel the discretion of the Court. 16 Cr. L. J. 3=26 Ind. Cas. 307=21 C. L. J. 195=19 C. W. N. 672. "Same offence" does not merely refer to nature of offence, but to one and the same physical act of crime. 4 N. L. R. 71=8 Cr. L. J. 11. Joint trial for murder committed by members of an unlawful assembly is legal, 27 Cr. L. J. 193=92 Ind. Cas. 145.

Clause (c)—Where offences are under the Factories Act, they are of the same kind. A. I. R. 1932 Pat. 188=33 Cr. L. J 274=13 P. L. T. 252.

Clause (d)—Where two police-officers had several intercourse with defenceless woman in police-station one after another joint trial is not illegal. 57 B. 400=35 Bom. L. R. 474=34 Cr. L. J. 870=A. I. R. 1933 Bom. 266. Joinder of charges of dacoity and receiving stolen property is permissible if part of the same transaction. 20 A. L. J. 981=24 Cr. L. J. 149=45 A. 223=71 Ind. Cas. 501. Identity of purpose is necessary for joint trial, community of purpose is not necessary. 48 A. 325=24 A. L. J. 472=27 Cr. L. J. 445=A. I. R. 1926 All. 334=93 Ind. Cas. 237. Joint trial if offences are part of same transaction are valid. The test is to be applied on facts as alleged by the prosecution and not what it would be after trial. 27 Cr. L. J. 193=A. I. R. 1924 All. 233=92 Ind. Cas. 145. Joint-trial of persons charged under ss. 215 and 411 I. P. Code with another under s. 411, there being no connexion between the two, is illegal. A. I. R. 1933 Sind. 352=1933 Cr. C. 1180. Joint-trial in absence of evidence of prior consultation or community of purpose is bad. 16 N. L. J. 196=146 Ind. Cas. 116=A. I. R. 1933 Nag. 368. Where different persons mis-appropriate several sums independently, joint trial is bad. A. I. R. 1933 Pat. 91=11 Pat. 779. In case of complaint of dacoity with murder, all can be tried together. A. I. R. 1933 Rang. 271=1933 Cr. C. 1014. Six dacoities committed in one night is not part of one and the same transaction. A. I. R. 1934 Oudh. 325=11 O. W. N. 731=35 Cr. L. J. 1048. Two persons accused of an offence ought not to be tried together if the prosecution cases against them are mutually exclusive. A. I. R. 1934 Rang. 193=35 Cr. L. J. 1312=7 R. R. 71. Persons charged with conspiracy and charged with offences committed in pursuance of the conspiracy can be tried together. A. I. R. 1934 All. 61=A. I. R. 1934=35 Cr. L. J. 1349=1934 A. L. J. 852. Joint trial of distinct offences is illegal but the illegality can be cured by s. 537 Cr. Pro. Code. 35 Cr. L. J. 1410=A. I. R. 1934 Pat. 112=151 Ind. Cas. 816. Persons may be tried together for offences committed as part of a transaction although charge is alternative and distinct. 30 Cr. L. J. 619=A. I. R. 1929 Cal. 160=116 Ind. Cas. 369. Joint complicity of which one is undoubtedly guilty must be established to justify a joint trial. 10 L. L. J. 525=29 Cr. L. J. 996=A. I. R. 1929 Lah. 61=112 Ind. Cas. 212.

Clause (f)—The phrase "possession which has been transferred by one offence" has reference to original theft of stolen property. 34 Bom. L. R. 301=137 Ind. Cas. 146=33 Cr. L. J. 594=A. I. R. 1932 Bom. 201.

Clause (g)—Joint trial of three persons charged under ss. 240, 243 and 240, 243, 109 respectively is illegal. A. I. R. 1933 Lah. 228=146 Ind. Cas. 261=1933 Cr. C. 348

Joint trial.—Joint trial of different set of persons under ss. 401 and 413. Penal Code, is illegal. 33 P. L. R. 736=33 Cr. L. J. 584=A. I. R. 1932 Lah. 486=138, Ind. Cas. 424. It is doubtful whether offences under s. 366 and under s. 68 committed by different persons can be tried together. A. I. R. 1932 Lah. 203=33 P. L. R. 485=33 Cr. L. J. 190. One person was arrested with revolutionary leaflets and another which distributing at another place, the latter can be charged under s. 120 B. in order to make joint trial possible. 37 C. W. N. 426=A. I. R. 1933 Cal. 603=1933 Cr. C. 967=145 Ind. Cas. 814. Where one of three accused was charged with misappropriating sum of money and second with smaller portion of that sum and third with abetting the two, each act of misappropriation is complete in itself

and there is misjoinder of charges. A. I. R. 1931 Rang. 90=32 Cr. L. J. 930=8 Rang. 632=132 Ind. Cas. 548. Where receiver from receiver of stolen property was jointly tried with receiver and thieves, it was held that the former was likely to be prejudiced by joint trial and he should be tried separately. A. I. R. 1933 Sind. 390=1933 Cr. C. 1430. Same accused cannot be convicted under s. 457 and some others under s. 411 I. P. Code at one and the same trial. 49 P. W. R. Cr. 1916=18 Cr. L. J. 112=37 Ind. Cas. 320. Joint trial of several accused for offences which cannot be tried together is illegal and void. 5 Pat. L. J. 11=1 Pat. L. T. 180=21 Cr. L. J. 161=54 Ind. Cas. 769. The charges that five tenants acted in concert for committing mischief in respect of different plots in their respective possessions, can be jointly tried. 1 Pat. L. W. 691=18 Cr. L. J. 687=40 Ind. Cas. 335. Joint trial of different offences committed by different persons in pursuance of a conspiracy is not allowed unless their acts form part of the same transaction. 13 N. L. R. 35=18 Cr. L. J. 339=38 Ind. Cas. 723. The offences of rape and an attempt to commit rape can be tried jointly if committed in the same transaction. 30 P. R. Cr. 1919=21 Cr. L. J. 306=55 Ind. Cas. 466. In case of several dacoities by same persons, each dacoity is separate transaction and joint trial is illegal. 19 A. L. J. 610=22 Cr. L. J. 397=A. I. R. 1921 All. 408=61 Ind. Cas. 525; see also 19 A. L. J. 796=22 Cr. L. J. 657=A. I. R. 1921 All. 246=63 Ind. Cas. 449. A joint trial of 4 accused for riot, theft and murder is illegal where some of them did not participate in the riot. 23 Cr. L. J. 268=66 Ind. Cas. 332. A joint trial of two persons one under s. 302 and the other under s. 202 of the I. P. Code is illegal and cannot be cured by s. 537. A. I. R. 1921 All. 161=19 A. L. J. 915=23 Cr. L. J. 8=64 Ind. Cas. 376. It is always necessary to justify a joint trial and to point out the provisions under which it can be held. The separate trial is the rule, the joint trial is the exception. 20 A.L.J. 767=24 Cr. L.J. 155=A. I.R. 1923 All. 88=71 Ind. Cas. 507. The legality of joint trial depends on the accusation and not on the result of the trial. 26 Cr. L. J. 1329=3 Rang. 95=A. I. R. 1925 Rang. 296=89 Ind. Cas. 305; see also 30 Cr. L. J. 619. A person cannot be tried upon a charge under s. 412, jointly with others tried for the offence of dacoity under s. 396 Penal Code. 26 Cr. L. J. 1361=A. I. R. 1926 Lah. 132=89 Ind. Cas. 449. Where joinder of charges is doubtful, procedure prescribed by law should be followed and joint trial should not be allowed. A. I. R. 1931 Pat. 102=12 P. L. T. 12. In case of separate offences under s. 283. I. P. Code joint trial of different persons for different obstruction without common object is invalid. 1 Pat. L. T. 564. Joint trial of two sets of offences is bad when they do not form one transaction. 1930 Cr. C. 202=A. I. R. 1930 Pat. 159=27 Ind. Cas. 571. A case of joint trial of several persons of acts not committed in the course of the same transaction is a case of illegality which vitiates the whole trial. 28 Cr. L. J. 357=A. I. R. 1927 Lah. 274=100 Ind. Cas. 965; see also A. I. R. 1927 Nag. 22=97 Ind. Cas. 363=27 Cr. L. J. 1099; 26 A. L. J. 623=30 Cr. L. J. 214=A. I. R. 1928 All. 417=113 Ind. Cas. 721. Where rape was committed by both accused in one place and the woman was taken by one of them to another place where he alone committed rape, joint charge of rape at different places against both is improper. A. I. R. 1926 Cal. 320=92 Ind. Cas. 439=27 Cr. L. J. 263=42 C. L. J. 524. Joint trial of two accusd both charged under s. 412 I. P. Code is illegal. 12 O. L. J. 339=2 O. W. N. 330=26 Cr. L. J. 1291=A. I. R. 1925 Oudh. 452=89 Ind. Cas. 155. Where injury is caused by firing fire-works in public road, persons causing injury cannot be tried together. 23 A. L. J. 5=26 Cr. L. J. 734=A. I. R. 1926 All. 301=86 Ind. Cas. 222. Joint trial must be condemned as prejudicial to the accused, where proceedings are taken against the accused not only for conduct coming within s. 110, Cr. Pro. Code clauses (d) and (e) but also under clause (f). 26 Cr. L. J. 673=47 M. L. J. 689=A. I. R. 1925 Mad. 189=86 Ind. Cas. 49. Joint trial is invalid in the absence of the evidence against all of them being the same. 45 A. 109=20 A. L. J. 881=24 Cr. L. J. 257=A. I. R. 1923 All. 35=71 Ind. Cas. 865. It is in the discretion of Court to allow joint trial where number of persons are tried for offences committed in the same transaction. 38 C. L. J. 309=25 Cr. L. J. 294 (F. B)=76 Ind. Cas. 966.

Misjoinder of parties.—Two persons giving separate information on different dates, ought not to be tried together for offences under s. 211, Penal Code. 22 Cr. L. J. 333=61 Ind. Cas. 61. But joint trial of several persons for offences under ss. 366 and 368, Penal Code is not illegal. 29 Cr. L. J. 496=A. I. R. 1928 Lah. 751=109 Ind. Cas. 224. Where accused are charged under s. 302 and ss. 201 to 203 alternatively there is no misjoinder. 1930 M. W. N. 489=A. I. R. 1930 Mad. 870=129 Ind. Cas. 230. Where two persons executed one Kabuliyat and two others executed another Kabuliyat on the same day, the trial of the four persons together in one

trial under s. 193 I. P. Code is illegal and is not curable by s. 535, 21 C. W. N. 756=18 Cr. L. J. 833=41 Ind. Cas. 657. Joint trial of two persons, allegations against whom are mutually exclusive is not proper. 1 Bur. L. J. 69=24 Cr. L. J. 750=A. I. R. 1923 Rang. 67=74 Ind. Cas. 78; see also 9 L. L. J. 100=28 Cr. L. J. 459=A. I. R. 1927 Lah. 737=101 Ind. Cas. 491. Where there is a misjoinder of four charges the illegality of trial is not cured by striking out one charge when the trial is practically over. 27 Cr. L. J. 793=A. I. R. 1926 Lah. 193=95 Ind. Cas. 393. But joint trial is legal even where periods during which accused were members of the offending gang were not same. 49 M. 74=A. I. R. 1925 Mad. 690=90 Ind. Cas. 297.

Principal and abettor.—Persons who abet an offence of helping others to escape from lawful custody could be tried along with those who escaped. 25 Cr. L. J. 792=A. I. R. 1924 Mad. 384=81 Ind. Cas. 312.

Receiving stolen property.—Joint trial of several persons for offence of receiving stolen property if the articles are stolen in the course of the same theft is legal. 6 Pat. 583=28 Cr. L. J. 962=A. I. R. 1928 Pat. 38=105 Ind. Cas. 674. When parts of stolen properties were found in possession of each accused, and the accused acted in concert, joint trial is legal. I Pat. L. J. 64=2 Pat. L. W. 316=17 Cr. L. J. 234=34 Ind. Cas. 650; but see 2 P. L. T. 47=A. I. R. 1921 Pat. 291=57 Ind. Cas. 283; 24 Cr. L. J. 684=63 Ind. Cas. 620; 19 A. L. J. 815=23 Cr. L. J. 409=67 Ind. Cas. 505. Joint trial of the receiver of the stolen property and of the person to whom it was sold afterwards is illegal. 25 Cr. L. J. 807=A. I. R. 1925 Cal. 218=81 Ind. Cas. 343. Joint trial for receiving stolen property from different persons on different occasions though out of the same theft is bad. 17 Cr. L. J. 477=36 Ind. Cas. 157. The different persons charged with the possession of different articles out of the same theft cannot be tried together unless these properties are under joint control or the theft is commutent connectedly or in collusion. 1 Pat. L. T. 431=21 Cr. L. J. 757=58 Ind. Cas. 341. The trial of a person accused of receiving a portion of the stolen property from another who was either the thief or the first receiver of the stolen property along with the later is bad. 21 C. W. N. 1111=19 Cr. L. J. 17=42 Ind. Cas. 977.

Theft.—The joint trial of persons gone on the charge of theft and the others for having dishonestly received stolen property is legal. 44 A. 276=20 A. L. J. 95=23 Cr. L. J. 414=A. I. R. 1922 All. 208=67 Ind. Cas. 510. Joint trial of separate thefts in the absence of common object is illegal. 51 M. L. J. 692=27 Cr. L. J. 1381=50 M. 735=98 Ind. Cas. 597. The thief and the receiver of the stolen property should be tried together if possible. 38A. 741=14 A. L. J. 344=17 Cr. L. J. 159=33 Ind. Cas. 639. Three persons each of whom is found in separate possession of some article stolen during the same burglary, cannot be tried for an offence under s. 411. 19 A. L. J. 815=67 Ind. Cas. 505=A. I. R. 1921 All. 206.

Conspiracy.—In the absence of conspiracy to publish defamatory matter, two opposite parties cannot be charged together. 36 C. L. J. 287=50 C. 159=24 Cr. L. J. 206=71 Ind. Cas. 670. Joinder of charges is not illegal when all charges as alleged by prosecution formed one transaction although they were not proved. 53 B. 344=31 Bom. L. R. 148=A. I. R. 1929 Bom. 128; see also 53 B. 479=31 Bom. L. R. 545=31 Cr. L. J. 65=A. I. R. 1929 B. 296=120 Ind. Cas. 340; 31 Cr. L. J. 387=A. I. R. 1930 Rang. 114=122 Ind. Cas. 273.

Gambling.—Joint trial for offences under ss. 3 and 4 of Public Gambling Act is legal if committed in the same transaction. 50 A. 412=26 A. L. J. 78=28 Cr. L. J. 1001=A. I. R. 1928 All. 20=105 Ind. Cas. 825; see also 20 A. L. J. 967=24 Cr. L. J. 155=A. I. R. 1923 All. 88=71 Ind. Cas. 507; 20 Cr. L. J. 768=53 Ind. Cas. 496; 49 Ind. Cas. 779=49 P. L. R. 1919=6 P. R. 1919 Cr.; 31 Cr. L. J. 35=1930 A. L. J. 229=A. I. R. 1929 All. 937.

Separate trial.—Where the accused was charged under s. 413 I. P. Code with other persons who were charged under s 401 I. P. Code, held that the accused cannot be tried with others. 26 Cr. L. J. 1097=26 P. L. R. 470=A. I. R. 1925 Lah. 537=88 Ind. Cas. 185. Whenever the applicability of s. 239 is doubtful it is better that it should not be applied and that accused should be tried separately. 50 M. 735=51 M. L. J. 692=27 Cr. L. J. 1381=A. I. R. 1927 Mad. 177=98 Ind. Cas. 597. Where a number of villagers were tried jointly for disobedience of a lawful order held that each of the accused committed a separate offence. 25 Cr. L. J. 319=A. I. R. 1923 Rang. 132=76 Ind. Cas. 1039. Resistance to and rescue from arrest after

warrants and different times by different persons cannot be investigated at one trial, 22 Cr. L. J. 145=3 Lah. L. J. 346=59 Ind. Cas. 849. Either the trials must be separate if the law requires them to be separate or they may be and ordinarily will be joint, if the law permits them to be joint unless for some particular reason the Judge considers that the trial should be held separately. 48 A. 325=24 A. L. J. 472=27 Cr. L. J. 445=A. I. R. 1926 All. 334=93 Ind. Cas. 237.

Withdrawal of remaining charges on conviction on one of several charges.

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been made on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

Notes.—This section applies to cases in which at the same trial more charges than one have been formally drawn up against the same person under the provisions of Chapter XIX of the Code. 10 C. P. L. R. Cr. 1. The permission to withdraw one of the several charges against an accused person allowed by this section only applies to charges against the same accused in the same case and not to separate charges of distinct offences in different cases. Rat. Un. Cr. C. 362 ; see also 9 Cr. L. J. 495=2 Ind. Cas. 128=6 M. L. T. 90. This section applies to cases where more charges than one are made against an accused person. Rat. Un. Cr. C. 286. The provision of this section applies to every grade of Court, not only to the Court of trial 27 A. L. J. 1056=119 Ind. Cas. 575. When a charge containing more heads than one is framed against the same person and conviction has been made on one or more of them and the complainant applies in revision to inflict sentence on the others but subsequently withdraws the application the withdrawal amounts to the withdrawal of complaints with regard to such charge with the consent of the Court and so amounts to one of acquittal. 27 A. L. J. 1056=119 Ind. Cas.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Notes.—Accused is not entitled to information about detailed evidence of prosecutions before he appears in Court. 1930. A. L. J. 389.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted ; but it shall not be necessary to frame a formal charge.

Notes.—The omission to comply with the provisions of this section is nothing more than a curable irregularity where a failure of justice has not been caused. 28 Cr. L. J. 511 ; but see 54 C. 359=31 C.W.N. 167=28 Cr. L. J. 155. The provisions of ss. 242 and 245 do not delimit s. 342. 45 B. 672=22 Cr. L. J. 17=A. I. R. 1921 Bom. 374=59 Ind. Cas. 129. Omission to state particulars in accordance with s. 242 not accompanied by failure of justice is cured by ss. 535 and 537. 33 Cr. L. J. 938=28 N. L. R. 163=A. I. R. 1932 Nag. 127. S. 242 does not require a Magistrate to record his statement to the accused. A. I. R. 1934 Nag. 258.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him ; and, if he shows no sufficient cause

why he should not be convicted, the Magistrate* [may convict] him accordingly.

Notes.—If an accused does not admit that he committed the offence of which he is accused, the Magistrate cannot convict him except upon evidence that the accused did commit the offence. L. B. R. 95. Accused in a summons case can be convicted on his own plea of guilty. 5 O. W. N. 641=29 Cr. L. J. 893=3 Luck. 680=A. I. R. 1928 Oudh. 402. Court has discretion to accept or not to accept accused's plea of guilty Where Court accepts plea of guilty it may call evidence to determine the sentence to be passed. If it rejects the plea and proceeds to take evidence it cannot go back again and base a conviction on the plea of guilty. A. I. R. 1931 Bom. 195=33 Bom. L. R. 340. One admission for several accused is bad. 140 Ind. Cas. 67=26 S. L. R. 345=34 Cr. L. J. 67=A. I. R. 1932 Sind. 211. Admission of truth of allegations on which charge is based is not legal admission. A. I. R. 1931 Nag. 100=32 Cr. L. J. 1132=14 N. L. J. 39. Taking of evidence before accepting or rejecting plea of guilty in itself does not preclude Courts from convicting accused on that plea. A. I. R. 1931 Bom. 195=33 Bom. L. R. 340. In a summons case conviction based on Counsel's admission is illegal. 26 Cr. L. J. 179=A. I. R. 1925 Oudh. 305. Where personal attendence of accused is dispensed with Court can act upon the plea of the pleader in a case falling under ss. 242 and 243. 50 B. 250=28 Bom. L. R. 102=27 Cr. L. J. 440=A. I. R. 1926 Bom. 218. Admission must be recorded as nearly as possible in the words used by the accused. A. I. R. 1928 Cal. 243. Where the accused pleads guilty in a murder case, the case must nevertheless proceed. A. I. R. 1928 Cal. 775=115 Ind. Cas. 582. Disobedience of command to disperse is not ingredient of offence under s. 17, Criminal Law Amendment Act and as such admission of not having dispersed inspite of orders of police is not admission for purposes of section 17. 34 Cr. L. J. 67=A. I. R. 1932 Sind. 211=26 S. L. R. 345. Under ss. 243, 255 and 272 (2) of Criminal Procedure Code independent evidence should be taken by Court notwithstanding accused's plea of guilty. 17 S. L. R. 268=26 Cr. L. J. 177=A. I. R. 1925 Sind. 188=83 Ind. Cas. 881. In a summons case the accused can be convicted on his plea of guilt. A. I. R. 1934 Lah. 96=35 P. L. R. 295=35 Cr. L. J. 1394. The Court should consider the statement as a whole and place a fair and liberal construction on it after giving the benefit of every reasonable doubt in favour of the accused. A. I. R. 1934 Nag. 65=30 N. L. R. 317; see also 17 N. L. J. 250.

Procedure when no such admission is made.

244. (1) † [If the Magistrate does not convict the accused under the preceding section, or] if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence :

‡ [Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has deen made by a Court.]

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue§ [a summons to any witness directing him to attend or to produce] any document or other thing.

(3) The Magistrate may before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

Notes.—There is no discretionary power given by this section to refuse, in summons cases, to compel the attendance of a witness upon whom the Court has

* These words were substituted for the words "shall convict" by s. 66 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by s. 67 *ibid.*

‡ This proviso was added by s. 67 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923).

§ These words were substituted for the words "process to compel the attendance of any witness or the production of" by *ibid.*

already issued process. 30 C. 121 ; see also 2 Weir 305. Where procedure laid down in s. 244 has been adopted, Magistrate is not competent to take a further plea of guilty from the accused. A. I. R. 1928 Cal. 243. Offence under s. 2 (2) Bengal Disorderly House Act is triable according to the provisions of the Cr. Pro. Code and a portion according to s. 244. 30 Cr. L. J. 517=10 P. L. T. 523=A. I. R. 1929 Pat. 406. In a summons case Court has no discretion to refuse to compel attendance of witness on whom process has been issued. 14 P. L. T. 453=A. I. R. 1933 Pat. 494. Where Magistrate writes order without taking evidence of witnesses named in complaint, the procedure cannot be justified. A. I. R. 1932 All. 188= 54 A. 416=34 Cr. L. J. 18=1932 A. L. J. 168. "To take all such evidence as may be produced in support of the prosecution" means not only examination-in-chief but also cross-examination and re-examination unless express provision is made for cross-examination as in ss. 208—256. 54 A. 212=A. I. R. 1931 All. 621.

Acquittal.

245. (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

*[(2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.]†

Notes—Where a Magistrate dealt with a warrant case as a summons case and acquitted the accused under this section, the order amounted only to one of discharge under s. 253. A. W. N. 1888, 96 ; see also A. W. N. 1886, 260. Acquittal under s. 245 without recording evidence is illegal. A. I. R. 1932 Mad. 25=33 Cr. L. J. 274=33 M. L. W. 140. Where compromise is alleged order of acquittal without inquiring whether case was not compounded is bad in law. A. I. R. 1932 Sind. 7. Opportunity to cross-examine the complainant must be given. 3 Pat. L. T. 347=23 Cr. L. J. 440.

Finding not limited by complaint or summons.

246. A Magistrate may, under section 244 or section 243, convict the accused of any offence triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Notes.—In a summons case, conviction for an offence not referred to in the complaint or summons is not proper. 22 Cr. L. J. 559=62 Ind. Cas. 578.

Non-appearance of complainant.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day ;

Provided that where the complaint is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

Notes.—This section does not apply to a proceeding under s. 107 of the Code. 31 C. W. N. 388=45 Cr. L. J. 211=28 Cr. L. J. 479. An order of acquittal passed by a Magistrate under this section 247, Cr. Pro. Code, although the accused, had not been served with a summons, is a good order and such an acquittal operates as a bar to any such trial on the same facts. 53 B. 693=31 Bom. L. R. 795. Court acquitting under this section has no power *suo motu* to restore the case.

* This sub-section was substituted by s. 68 *ibid.*
† *See* Sch. V., Form XXIX. *infra.*

Revision is the only remedy of the complainant. 1930 M. W. N. This section is not applicable to the case of complainant's death. 20 C. W. N. 862=2 Pat. L. W. 409=18 Cr. L. J. 151=37 Ind. Cas. 519. Where complainant is present through out the whole case but is absent only on the day of delivery of judgment, acquittal is improper. 6 N. L. J. 68=19 N. L. R. 48=21 Cr. L. J. 205=A. I. R. 1923 Nag. 158=71 Ind. Cas. 669 ; see also 46 C. 867=29 C. L. J. 387. The presence of the complinant's vakil is not sufficient to take away the jurisdiction of the Magistrate to proceed under s. 247. 49 M. 883=51 M.L.J. 730=27 Cr. L. J. 988=24 M. L. W. 669= A.I.R. 2926 Mad. 1009=26 Ind. Cas. 652. "Upon any day appointed for the appearance of the accused" does not mean any time before the close of the day. 49 M. 883= 1926 M. W. N. 928=51 M. L. J. 730=27 Cr. L. J. 918=A. I. R. 1926 Mad. 1009= 96 Ind. Cas. 652. Absence of the complainant at the time the case is taken up is sufficient to justify the Magistrate in dealing with the case under s. 247. 49 M. 833=51 M. L. J. 730. The object of s. 247 is to prevent the complainant from being dilatory. *Ibid.* Where accused is acquitted the Magistrate is incompetent to restore the case. 52 M. L. J. 173=A. I. R. 1927 Mad. 473=100 Ind. Cas. 238. Acquittal bars a second trial. 2 P. L. T. 170=22 Cr. L. J. 33=61 Ind. Cas. 59 ; see also 28 Cr. L. J. 183=A. I. R. 1927 Nag. 388=99 Ind. Cas. 355. Where complainant was unaware of the transfer of his case from one to court another but was present on the due date in the former court, this section was not applicable. 24 C. L. J. 444=18 Cr. L. J. 104=37 Ind. Cas. 312. Trial of a summons case as a warrant case does not preclude the application of this section. The plea that the date of hearing was a holding is not a sound excuse for complainant's absence. A. I. R. 1923 Mad. 439=72 Ind. Cas. 885. Where complainant is absent when the case is called up the Magistrate in his discretion may dismiss the case. A. I. R. 1932 Mad. 563=1932 M. W. N. 647=33 Cr. L. J. 579=36 M. L. W. 379. Court has power to continue the trial even after the death of the complainant. A. I. R. 1932 Nag. 72= 28 N. L. R. 49=33 Cr. L. J. 407. When a date is fixed for hearing of a case, parties should be present till the close of the court. It is no excuse that the complainant expected that his case would not be reached. But when a case is nominally fixed for hearing, the mere unexplained absence of a complainant when a case is only called on for the purpose of fixing a new date is not, under ss. 247 and 259, a good ground for taking action under those sections. 35 Cr. L. J. 1139= 36 Bom. L. R. 105=A. R. 1934 Bom. 130. This section is applicable only to summons cases. A. I. R. 1934 All. 340=152 Ind. Cas. 249. Dismissal of a complaint on a date not fixed for hearing does not operate as an acquittal. 1934 A. L. J. 1061=A. I. R. 1934 All. 1025. Order of discharge or acquittal should not be mere matter of routine to be followed automatically on absence of complainant. A. I. R. 1934 Bom. 130. Where the accused was acquitted under s. 247 owing to the mistake of complainant and his counsel as regards the date fixed for hearing, no fresh complaint is competent. A. I. R. 1934 Lah. 211. In a proper case an order under this section may be set aside and enquiry may be cotinued. A. I. R. 1934 Lah. 195=35 Cr. L. J. 1504. Where a complaint in warrant case has been dismissed the dismissal operates as discharge under s. 259 and not acquittal and hence a fresh trial is not barred. A. I. R. 1934 All. 340. An order dismissing the complaint for default amounts to acquittal under s. 247 and cannot be set aside by the District Magistrate under s. 435. 25 Cr. L. J. 359=77 Ind. Cas. 295. Order cannot be set aside except by a Superior Court. 38 C. L. J. 196=24 Cr. L. J. 716=A. I. R. 1924 Cal. 96=73 Ind. Cas. 940 ; see also A. I. R. 1927 Mad. 473. High Court will interfere in revision when acquittal under s. 247 is improper. 26 O. C. 282= 25 Cr. L. J. 794=81 Ind. Cas. 314 ; see also 28 Cr. L. J. 118=A. I. R. 1927 Mad. 172=99 Ind. Cas. 326. But the High Court will not interfere in revision when there is no error of law on the face of the record. 52 M. L. J. 173=28 Cr. L. J. 270=1927 M. W. N. 274=A. I. R. 1927 Mad. 473. Party appearing at 11 A. M. but not waiting till Court commenced cannot be said to have failed to appear. 25 M. L. W. 358=28 Cr. L. J. 208 ; A. I. R. 1927 Mad. 393=99 Ind. cas. 944. Where the case is not taken up at all, the accused cannot be acquitted. 26 Cr. L. J. 1050=A. I. R. 1926 Cal. 102=87 Ind. Cas. 970. In non-cognizable offencess, death of complainant does not end the prosecution. 28 Bom. 288=27 Cr. L. J. 491=A. I. R. 1926 Bom 178. Absence of complaint in a summons case does not automatically result in the acquittal of the accused. 25 Cr. L. J. 492=77 Ind. Cas. 892.

248. If a complaint, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting

Withdrawal of complaint.

him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Notes.—This section does not apply to offences punishable with imprisonment exceeding six months. The complainant in such case cannot withdraw his complaint. Rat. Un. Cr. C. 17. Withdrawal of complaint against one of the accused, amounts to withdrawal against the other accused. 20 Cr. L. J. 824=1 P. L. T. 32=53 Ind. Cas. 824 ; but see 9 O. L. J. 54=23 Cr. L. J. 271=A. I. R. 1922 Oudh. 145=66 Ind. Cas. 335. Magistrate must examine whether the petition is one of compromise or withdrawal. 20 C. W. N. 1209=1 Pat. L. W. 21=18 Cr. L. J. 107=37 Ind. Cas. 315. Magistrate accepting compromise becomes *functus officio*. 2 Pat. L. T. 584=22 Cr. L. J. 675=63 Ind. Cas. 611. Complainant has no absolute power of withdrawal. Sufficient grounds must be established. 53 C. 631=30 C. W. N. 598=27 Cr. L. J. 934=96 Ind. Cas. 648. Section 248 has not been affected or abrogated by s. 537 of the Calcutta Municipal Act. *Ibid.* This does not contemplate a partial withdrawal nor withdrawal against one of several alleged offenders. 5 Lah. 239=25 Cr. L. J. 629=21 Ind. Cas. 117. Withdrawal of case by prosecution can be done with permission of Court. A. I. R. 1933 Lah. 884=146 Ind. Cas. 387. Order permitting withdrawal of case must contain material showing good ground for permitting withdrawal. A. I. R. 1933 Sind. 357.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused.

Notes.—This section is only applicable to a summons case where it is not instituted upon complaint. 5 Pat. 243=7 P. L. T. 449=27 Cr. L. J. 698 ; see also 1913 P. R. 9 ; 1 Pat. L. T. 28. This section does not apply to warrant cases. 5 Pat. 243=7 P. L. T. 449=27 Cr. L. J. 698. An order under this section is neither one of dismissal of a complaint nor is it an order of discharge. A. I. R. 1934 All. 17.

Frivolous Accusation in Summons and Warrant Cases.

False, frivolous or vexatious accusations.

250.* [(1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.]

*[(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious, may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.]

*[(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment,

*These sub-sections were substituted for sub-sections (1) and (2) by s. 69 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.]

*[(2B) When any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Indian Penal Code † shall, so far as may be, apply.]

*[(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him;

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.]

(3) A complainant or informant who has been ordered under ‡[sub-section (2)] by a Magistrate of the second or third class to pay compensation § [or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees] may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided ‖ [and where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.]¶

Scope.—Powers under s. 250 are to be exercised in a fit and proper case. A. I. R. 1932 Sind. 156=26 S. L. R. 299=33 Cr. L. J. 644. Section 250 does not apply to case instituted at the instance of police. 26 S. L. R. 299=A. I. R. 1932 Sind. 156. While making order under section 250 court should see that complaint was false, etc. 26 S. L. R. 299=33 C. L. J. 644=A. I. R. 1932 Sind. 156; see also A. I. R. 1933 Sind. 226=34 Cr. L. J. 767=27 S. L. R. 788=144 Ind. Cas. 412. Section 250, clause (2) requires the Magistrate to be satisfied that the accusation was first false, and second either frivolous or vexatious. He has then to record his reasons and after that follows the final order. An order awarding compensation is bad, where by order discharging accused finding is given that complaint was false and frivolous or vexatious before hearing complainant's explanation. A. I. R. 1934 Sind. 18=35 Cr. L. J. 1038. Opportunity to show cause must be given to complainant or informant. Order for compensation without such opportunity is bad. A. I. R. 1933 Oudh. 37=34 Cr. L. J. 44=9 O. W. N. 943=1933 Cr. C. 70. It is doubtful whether order awarding compensation under s. 250 is order "consequential" or "incidental" to order of discharge or acquittal. A. I. R. 1933 Rang. 288 (F. B.)=11 Rang. 361. Magistrate discharging and acquitting accused can take action under s. 250. Complainant is then entitled to show that complaint is neither false nor vexatious or frivolous. A. I. R. 1933 All. 814=1933 A. L. J. 1369. Section 250 does not apply to cases exclusively triable by court of Sessions 1931 A. L. J. 898=32 Cr. L. J. 670=53 A. 461; see also A. I. R. 1230 Lah. 482; 20 Cr. L. J. 141. There is nothing in the language of s. 250 to make the section non-applicable to the case of the crown. 1930 A. L. J. 209=31 Cr. L. J. 485=A. I. R. 1930 All. 206=123 Ind. Cas. 330. Order to pay compensation to Government is illegal. A. I. R. 1933 Nag. 296=146 Ind. Cas. 14. Section 250 does not apply to proceedings under s. 107. 49 A. 750=25 A. L. J. 493=28 Cr. L. J. 604; see also 20 A. L. J. 624=23 Cr. L. J. 474=67 Ind. Cas. 826; 21 A. L. J. 207=24

* These sub-sections were substituted for sub-section (1) and (2) by s. 69 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923).

† XLV of 1860.

‡ This word and figure were substituted for the word and figure "sub-section (1)" by s. 69 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ These words were substituted for the words "to an accused person" by *ibid.*

‖ These words were added by *ibid.*

¶ Sub-section (5) was omitted by *ibid.*

Cr. L. J. 228=45 A. 363. If A tells B and B tells C and C tells the police some information, A cannot be fined under s. 250. 1929 M. W. N. 785=A. I. R. 1929 Mad. 846. Under this section Magistrate must act on its own initiative. Order for showing cause must be contained in the order of discharge or acquittal itself. A. I. R. 1933 Nag. 296 ; see also 32 Cr. L. J. 206=59 M. L. J. 319.

Frivolous or vexatious etc.—Before passing order of fine finding that accusation was false should be arrived at. A. I. R. 1932 Lah. 554=33 P. L. R. 670=34 Cr. L. J. 30=140 Ind. Cas. 680 ; see also 41 P. L. R. 1919. To pass an order under s. 250 Court's final opinion should be that the case was false and frivolous or vexatious. A. I. R. 1929 Sind. 113=115 Ind. Cas. 334. Because a complaint is frivolous and vexatious it is necessarily false. 19 S. L. R. 66=26 Cr. L. J. 1295= A. I. R. 1926 Sind. 19=89 Ind. Cas. 159. An order for compensation is not justified merely because complaint filed was vexatious in one particular. Compensation can be ordered only where there has been a complete discharge or acquittal of the accused on all the heads of charges against him. 12 S. L. R. 87=20 Cr. L. J. 106=48 Ind. Cas. 986. Where criminal proceedings were brought not *bona fide* but to bring pressure on opponent in civil suit, complainant can be proceeded against under s. 250. A. I. R. 1933 Bom. 233=35 Bom. L. R. 484=34 Cr. L. J. 1878. False complaint or false information on mere suspicion is false and vexatious within s. 250. A. I. R. 1932 Bom. 177=34 Bom L. R. 289. There is no reason why a case in which the accusation is found to be false. 19 Cr. L. J. 172=11 Ber. L. T. 201=43 Ind. Cas. 588.

Person upon whose complaint or information.—The liability to pay compensation extends only to the actual complainant or person who gives the information on which the case is instituted. 13 S. L. R. 166=21 Cr. L. J. 49=54 Ind. Cas. 401 ; see also 21 A. L. J. 221=27 Cr. L. J. 702=94 Ind. Cas. 894=A. I. R. 1926 All. 295. A person responsible for the false accusation can be made to pay compensation even though he does not himself make the complaint. 12 S. L. R. 76=48 Ind. Cas. 980 ; see also 48 Ind. Cas. 108=40 A. 79. If criminal proceedings are instituted against a person as a result of police enquiry at which a statement is made by another such statement is not a complaint. 1 Pat. L. J. 106=17 Cr. L. J. 836. A complainant does not in any way escape a liability for prosecution under s. 211 I. P. Code, by reason of the order passed by the Magistrate under s. 250, directing payment of compensation to the accused. 26 Cr. L. J. 527=A. I. R. 1925 Oudh 558=85 Ind. Cas. 367. An order of compensation under s. 250 without giving the complainant an opportunity to show cause against it is illegal and must be set aside. 24 A. L. J. 170=27 Cr. L. J. 128=A. I. R. 1926 All. 241=91 Ind. Cas. 704. see also 28 Bom. L R. 98=27 Cr. L. J. 430=A. I. R. 1926 Bom. 225=93 Ind. Cas; 158. The section only requires any objection which is argued to be recorded and considered and is intended to be applied in a summary manner. 21 A. L. J. 369=45 A. 474=21 Cr. L. J. 719=73 Ind. Cas. 943 ; see also 24 Bom. L R. 805=23 Cr. L. J. 574=A. I. R. 1922 Bom. 409=68 Ind. Cas. 414. If the complainant is present in Court he is bound to show cause immediately. If, however, an adjournment is granted or if the complainant is not present and a summons is issued to him, the Court can pass an order at the adjourned hearing after recording and considering the cause if any shown by the complainant or informant. 3 Bom. L. R. 591=A. I. R. 1929 Bom. 387=119 Ind. Cas. 774 ; see 33 C. W. N. 861=A. I. R. 1929 Cal 762. Order of Magistrate dismissing and ordering the complainant to pay a fine under s 250 without recording and considering his objections is illegal. 24 O. C. 26 ; see also 30 Cr. L. J. 458=A. I. R. 1929 Sind. 113=115 Ind. Cas. 334. The expression "person" includes not only a natural person but also a juristic person. 24 Cr. L. J. 463=A. I. R. 1923 Lah. 31=72 Ind. Cas. 623. Information given to village Magistrate is information given to Police. 45 M. L. J. 255=18 M. L. W. 32=24 Cr. L. J. 717=73 Ind. Cas. 941. The report of a Sub-Inspector of Excise to a Magistrate is for the purposes of section 250, either a complaint, as defined in s. 4 (h) or information given to Magistrate and the Excise Officer is the person giving such complaint or information. 54 C. 371=28 Cr. L. J. 316=A. I. R. 1927 Cal. 405=100 Ind. Cas. 540.

Compensation.—Under s. 250 a Magistrate can when discharging the accused order compensation to be paid to him by the informant. 32 M. L. J 78=5 L. W. 290=18 Cr. L. J. 11=36 Ind. Cas. 843 ; see also 17 Cr. L. J. 505=36 Ind. Cas. 471. Where a charge is specific and serious an order for compensation under s. 250 is not justified unless it is in fact false. 18 Cr. L. J. 834=41 Ind. Cas. 661=2 Pat. L. W. 116. It is only the trying Magistrate who can order compensation to be paid. 46 A. 80=21 A. L. J. 831=A. I. R. 1924 All. 224 ; see also A. I. R. 1929 Cal.

762=33 C. W. N. 861=1929 Cr. C. 474 ; A. I. R. 1930 Lah. 482=126 Ind. Cas. 792. Where a case is not wilfully false compensation should not be awarded. A. I. R. 1929 Rang. 14=115 Ind. Cas. 900. Awarding compensation under s. 250 without hearing all the evidence that the complainant wants to adduce is illegal. This can be done only in exceptional cases. 51 M. 337=54 M. L. J. 641=A. I. R. 1928 Mad. 169=106 Ind. Cas. 706 ; see also 25 Cr. L. J. 1312=A. I. R. 1923 Lah. 451=82 Ind. Cas. 480 ; 3 Bur. L. J. 26=25 Cr. L. J. 1280=A. I. R. 1924 Rang. 293=82 Ind. Cas. 288 ; 94 Ind. Cas. 138=27 P. L. R. 330=A. I. R. 1926 Lah. 427 ; 46 A. 80=21 A. L. J. 834=81 Ind. Cas. 615 ; 24 Cr. L J. 251=A. I. R. 1923 Lah. 194=71 Ind. Cas. 795 ; 59 Ind. Cas. 913=22 Cr. L. J. 161=44 M. 51. Compensation can also be awarded in a case instituted upon information given to a Police officer. 26 Cr. L. J. 527=A. I. R. 1925 Oudh. 558=85 Ind. Cas. 367. Two elements one of falsity and the other of either frivolousness or vexatiousness are essentially necessary to base an order for compensation to the accused. 26 Cr. L. J. 1033=A. I. R. 1926 Nag. 31=87 Ind. Cas. 921 ; see also 41 P. L. R. 1919. 23 A. L. J. 1054=27 Cr. L. J. 35=A. I. R. 1926 All. 165=91 Ind. Cas. 67. No objection can be taken if the proceedings taken by the Magistrate to award compensation is a continuation of the original proceeding against the accused who was tried for the offence. 23 A. L. J. 1054=27 Cr. L. J. 35=91 Ind. Cas. 67. Section 250 (2) does not mean that if there are a number of accused persons the total amount awarded to all must not exceed the maximum. 24 A. L. J. 221=26 Cr. L. J. 702.

Jurisdiction.—Proceedings under s. 250 is not continuation of original trial. 27 A. L. J. 896=21 Cr. L. J. 767=58 Ind. Cas. 351. Where case ordinarily triable only by a Court of Sessions is tried by Magistrate empowered under s. 30, the Magistrate is not competent to award compensation. 23 Cr. L. J. 289=A. I. R. 1923 Rang. 15 ; see also 20 A. L. J. 433=66 Ind. Cas. 513 ; 20 A. L. J. 433=23 Cr. L. J. 319=66 Ind. Cas 671. Under s. 250 a Magistrate has jurisdiction to direct a complainant to pay compensation only in such cases as are triable by a Magistrate. 25 A. L. J. 818=28 Cr. L. J. 983=A. I. R. 1927 All. 744=105 Ind. Cas. 807 ; see also 28 Cr. L. J. 450=A. I. R. 1927 Oudh. 175=101 Ind. Cas. 482. It seems doubtful whether High Court can pass an order for compensation in revision. 26 A. L. J. 328=29 Cr. L. J. 274=A. I. R. 1928 All. 95=107 Ind. Cas. 690. Magistrate acting under s. 250 must record reasons thereunder. 59 M. L. J. 319=32 Cr. L. J. 207=A. I. R. 1930 Mad. 929=129 Ind. Cas. 37. To restrict the operation of s. 250 to an offence triable by a Magistrate would seriously diminish the usefulness of the section. In filing a complaint the complainant must be deemed to make an accusation which includes not only the offence specifically referred to but also any offence which the facts disclosed in the complaint. 26 Cr. L. J. 265=16 S. L. R. 205=84 Ind. Cas. 329. Where some of the offences charged are exclusively triable by Sessions Court, the Magistrate cannot order for compensation to accused after discharging him of all offences. 48 A. 166=23 A. L. J. 1066=27 Cr. L. J. 6=A. I. R. 1926 All. 159=91 Ind. Cas. 38 ; but see 23 Cr. L. J. 232=41 M. L. J. 398=A. I. R. 1932 Mad. 223=66 Ind. Cas. 72.

Notice.—Under this section the complainant should be given an opportunity to object to the order awarding compensation. 1 Pat. L. T. 558=58 Ind. Cas. 255 ; see also 44 M. 51=39 M. L. J. 484=22 Cr. L. J. 161=59 Ind. Cas. 913 ; 33 C. W. N. 861=A. I. R. 1929 Cal. 762. The accused person should have notice of any inttended interference with compensation made in his favour. 20 S. L. R. 41=27 Cr. L. J. 248=A. I. R. 1926 Sind. 143=92 Ind. Cas. 424.

Time for order.—The order of compensation must be an integral part, the order of acquittal. 22 Cr. L. J. 527=62 Ind. Cas 415 ; see also 20 Cr. L. J. 174 ; 35 Ind. Cas. 490 ; 53 Ind. Cas. 614 ; 22 Bom. L. R. 184=21 Cr. L. J. 371=55 Ind. Cas. 851 ; 125 Ind. Cas. 573=9 Pat. 100 ; A. I. R. 1929 Cal. 332. Order to show cause has only to be contained in order of discharge. Compensation order is necessarily subsequent. 7 Lah. 121=27 Cr. L. J. 752=27 P. L. R. 310=A. I. R. 1926 Lah. 298 ; see also 28 Bom. L. R. 89=27 Cr. L. J. 448=93 Ind. Cas. 240 ; 28 Cr. L. J. 592=A. I. R. 1927 Lah. 515. The order for compensation must be passed along with the order for discharge. 29 C. W. N. 127=26 Cr. L. J. 449=A. I. R. 1925 Cal. 264=85 Ind. Cas. 129. Section 250 does not cover proceedings under chapter 8. A. I. R. 1935 Lah. 29.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant cases.

251. The following procedure shall be observed by Magistrate in the trial of warrant-cases.

Notes.—The provisions of Chapter 21 are mandatory. L. R. J. A. Cr. 185. Even in cases of mandatory provisions their application must vary according to the circumstances of the case. 28 Cr. L. J. 785=A. R. 1927 All. 654=104 Ind. Cas. 225. The procedure of spliting up an offence triable exclusively as a warrant case into two component parts of the said offence is an illegality. 22 Cr. L. J. 146=19 A. L. J. 6=59 Ind. Cas. 850. In a warrant case tried under Chapter 21, when the accused leads evidence of good character by way of defence the prosecution cannot as a matter of right claim to lead refuting evidence, for the Code gives the prosecution no such privilege. A. I. R. 1930 Mad. 448=127 Ind. Cas. 304.

Evidence for prosecution.

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution :

* [Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.]

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon † to give evidence before himself such of them as he thinks necessary.

Notes.—When a complainant files a list of witnesses to be summoned for proving his case, the Magistrate should see which of the persons desired to be summoned are necessary witness. 14 Cr. L. J. 682=21 Ind. Cas. 1002=12 A. L. J. 15. In a prosecution for breach of trust, the complainant withdrew the prosecution and the Magistrate discharged the accused. *Held*, that the withdrawal of the complainant did not by itself end the case or acquit the accused, the order of discharge was an order under s. 252 Cr. Pro. Code as the Magistrate finds no case has been made out. 115 Ind. Cas. 156=A. I. R. 1929 Mad. 7. Contravention of provisions of Chapter 21 vitiates proceeding. 19 A. L. J. 6=22 Cr. L. J. 146=59 Ind. Cas. 850. Once the Court is moved, the responsibility is with State who can arrest progress of the case. 5 Rang. 136=28 Cr. L. J. 649=103 Ind. Cas. 105=A. I. R. 1927 Rang. 174. Where a witness is examined as a prosecution witness after the whole of the defence evidence, has been recorded, the procedure is contrary to the provisions of s. 252. 29 P. L. R. 613=29 Cr. L. J. 844=A. I. R. 1928 Lah. 653=111 Ind. Cas. 396. Trial without the examination of the complainant on oath is not irregular. A. I. R. 1922 Mad. 126=23 Cr. L. J. 203=65 Ind. Cas. 859. The duty of seeing that all the evidence essential to the prosecution case is before the Court is thrown upon the Magistrate himself. It is not open to a Magistrate to acquit on ground that the prosecution has failed to produce a necessary witness. 12 O. L. J. 632=2 O. W. N. 584 =28 Cr. L. J. 1266=88 Ind. Cas. 1042. When the Magistrate trying the case is of opinion that it is unneceseary to summon a certain witness to the prosecution, the Sessions Judge should not compel the Magistrate, except for most cogent and exceptional reasons, to summon the witness. 30 Cr. L. J. 631=A. I. R. 1928 All. 684= 116 Ind. Cas. 494. In a non-cognizable warrant case the Court is not bound to summon witnesses for the prosecution or the defence under ss. 252 and 257, if the party at whose instance the process is issued does not pay process fees are required by Regs. 17 and 18 of the Process Fees Rules made under the Burma Process Fees Act, 1910. 4 Rang. 146=27 Cr. L. J. 1396=A. I. R. 1926 Rang. 164=98 Ind. Cas. 708. Where complainant produces more witnesses after the original witnesses, Magistrate should not ordinarily refuse. 49 M. 978=51 M. L. J. 328=27 Cr. L. J. 1123=97 Ind. Cas. 643. Accused has no absolute right of cross-examination before charge. 1932 A. L. J. 5=54 A. 212=33 Cr. L. J. 310 ; but see A. I. R. 1932 Oudh

* This proviso was added by s. 70 *ibid.*

† *See* Sch. V. Form XXXI, *infra.*

298=34 Cr. L. J. 58. Chapter 21 applies to Presidency Magistrates also. 36 C. W. N. 791=55 C. L. J. 448=A. I. R. 1932 Cal. 865. Evidence includes examination, cross-examination and re-examination. A. I. R. 1935 Sind. 13.

Discharge of accused.

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate, shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Notes.—It is competent to a Magistrate to discharge the accused after examining some only of the prosecution witnesses. 12 Cr. L. J. 105=9 M. L. T. 302=12 Cr. L. J. 158=1911 M. W. N. 149. A discharge under this section does not amount to an acquittal. 4 N. W. P. 3; 31 Bom. L. R. 146. So there is nothing to prevent a Magistrate, after he has discharged an accused under this section from inquiring again into the case against him. Rat. Un. Cr. C. 350=Cr. Rg. 40 of 1887; see also Rat. Un. Cr. C. 45. But where the accused was discharged under this section an order directing further enquiry, passed by a District Magistrate, without giving notice to the accused is irregular. 16 M. L. T. 285=15 Cr. L. J. 619=25 Ind. Cas. 627. Failure to examine complainant before discharging accused is an error of law. Magistrate's personal knowledge that the complainant's witnesses were untrustworthy is no adequate reason for discharging the accused. A. I. R. 1929 Cal. 479. The order refusing to summon accused is equivalent to an order of discharge. A. I. R. 1921 Pat. 474. Discharge of an accused in complainant's absence cannot be made under s. 253. 20 C. W. N. 69=17 Cr. L. J. 193=34 Ind. Cas. 305. Discharge before regarding all evidence is not illegal. 24 A. L. J. 512=27 Cr. L. J. 541=A. I. R. 1926 All. 461=93 Ind. Cas. 1037. "Discharge" means absolute discharge. 13 O. L. J. 490=A. I. R. 1926 Oudh. 194. Under s. 253 (2) a Magistrate can discharge an accused even before the date for hearing if he is satisfied that the accused cannot be convicted. 25 Cr. L. J. 69=A. I. R. 1925 Pat. 154=81 Ind. Cas. 184. Where an accused is discharged by a Magistrate under s. 253, Cr. P. Code the Dt. Magistrate's jurisdiction to hold further enquiry by himself or to direct a further enquiry by the subordinate Magistrate. 18 Cr. L. J. 706=40 Ind. Cas. 706. To say that no case is made out is not tantamount to saying that the charge is groundless. 51 M. 185=28 Cr. L. J. 995=53 M. L. J. 757=A. I. R. 1928 Mad. 129=105 Ind. Cas. 819. An order of discharge should precede the framing of a charge though there might be cases in which an accused can be discharged otherwise than under the specific provisions of the code. 18 Cr. L. J. 83=41 Ind. Cas. 655. A Magistrate can discharge an accused at any stage before recording any evidence or in the course of recording evidence if he is of opinion that the charge is groundless. A. I. R. 1930 Cal. 515=126 Ind. Cas. 553. Failure to examine complainant before discharging accused is an error of law. 51 C. L. J. 44=31 Cr. L. J. 128=A. I. R. 1929 Cal. 479=120 Ind. Cas. 458. No question of an illegal joint trial arises when the accused persons are discharged under s. 253. 30 Cr. L. J. 404=A. I. R. 1929 Nag. 237=115 Ind. Cas. 164. Groundless evidence means evidence on which no conviction could stand. 52 M. 987=1929 M. W. N. 575=31 Cr. L. J. 275=A. I. R. 1929 Mad. 754. Where the Magistrate does not examine each accused separately, but records their statements collectively it is an illegality which vitiates the proceedings. 6 Lah. 554=27 Cr. L. J. 406=27 P. L. R. 85=A. I. R. 1926 Lah. 155=93 Ind. Cas. 72. Where after a discharge, a new complaint is filed alleging a discovery of further evidence, the Magistrate should postpone issue of process till the former proceedings have been examined and a preliminary enquiry has been made regarding the alleged new evidence. 18 Cr. L. J. 1006=42 Ind. Cas. 734. There is no warrant for saying that Magistrate is bound to examine all witnesses that may be offered. 52 M. 987=57 M. L. J. 490=31 Cr. L. J. 275=A. I. R. 1929 Mad. 754=121 Ind. Cas. 619. Magistrate can discharge accused before entire case is complete. But District Magistrate is justified in directing further inquiry when it is incomplete. 31 Cr. L. J. 239=A. I. R. 1930 Lah. 158=121 Ind. Cas. 289. An order of discharge should only be set aside very sparingly and only when it can be said either to be perverse or *prima facie* incorrect and when there is a suggestion that any further evidence might be forthcoming. 1930 A. L. J. 521=A. I. R. 1930 All. 257=126 Ind. Cas. 253. Where after a full trial, the accused persons were discharged, that discharge is, for all practical

purposes, as good as an acquittal and the Magistrate is not justified in ordering further enquiry. 4 L. L. J. 331=A. I. R. 1921 Lah. 283. Order of discharge should not be lightly set aside in revision. A. I. R. 1933 Bom. 158=57 B. 430=35 Bom. L. R. 245. Charge of lesser offence implies and connotes discharge regarding more serious offence. A. I. R. 1931 Lah. 402=32 Cr. L. J. 1029; see also 139 Ind. Cas. 852=36 M. L. W. 623=33 Cr. L. J. 825=1932 M. W. N. 1218=A. I. R. 1933 Mad. 65. There is no distinction between order of discharge passed under s. 209 and that passed under s. 253. A. I. R. 1933 Bom. 158=57 B. 430=34 Cr. L. J. 564=35 Bom. L. R. 245=143 Ind. Cas. 289. Where a complaint is dismissed after summoning the accused, the order is one of discharge under s. 253 (2) and not under s. 203. 56 A. 285=35 Cr. L. J. 418=1934 A. L. J. 69=A. I. R. 1934 All. 51. Court has two alternatives under s, 253, it cannot act under both clauses. A. I. R. 1935 Pesh. 23.

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Notes.—This section requires a charge to be framed when a Magistrate after taking evidence, is of opinion that there is ground for presuming that the accused has committed the offence. 2 P. R. 1906=36 P. L. R. 1906. Section 254 is mandatory and is applicable even to Presidency Magistrates. 55 C. L. J. 448=33 Cr. L. J. 828=A. I. R. 1932 Cal. 865=36 C. W. N. 791. Where the complaint's under certain section, charge under different section amounts to discharge under sections complained against. A. I. R. 1933 Mad. 65=36 M. L. W. 623=33 Cr. L. J. 825=139 Ind. Cas. 852. Where Magistrate does not dispose a case, although competent to do so himself, he is guilty of failure to comply with provisions of s. 254. 33 Cr. L. J. 680=33 P. L. R. 185=A. I. R. 1932 Lah. 263. Court can call any material witness at any time. Such evidence must be considered while passing order under s. 254. 34 P. L. R. 719=34 Cr. L. J. 735=A. I. R. 1933 Lah. 561. Where no objection as to absence of charge is not taken and there is no failure of justice, conviction cannot be setaside. 36 C. W. N. 791=55 C. L. J. 448=A. I. R. 1932 Cal. 865=33 Cr. L. J. 828. Magistrate is not bound to frame charge unless it is warrant case. A. I. R. 1931 All. 7=32 Cr. L. J. 313. A Magistrate ought not to commit an accused to the Court of Sessions in a case, which he can try and in which he can pass an adequate sentence. 41 A. 454=17 A. L. J. 456=20 Cr. L. J. 273=50 Ind. Cas. 161. When once trial has begun in warrant cases, it is not open to the Magistrate to alter the section and to convict the accused without framing a charge. 28 Cr. L. J. 227=A. I. R. 1927 All. 270=99 Ind. Cas. 1027. In a warrant case it is imperative on the Magistrate to draw up a formal charge against the accused in manner indicated in s. 254 and to comply strictly with s. 342. 43 C. L. J. 100=27 Cr. L. J. 406=A. I. R. 1926 Cal. 537=93 Ind. Cas. 70. In a petty case commitment to Sessions is not right. 21 A. L. J. 420=A. I. R. 1924 All. 185=81 Ind. Cas. 153. Where charge is framed in warrant case and defence evidence is unsatisfactory, Magistrate need not necessarily convict. 26 Cr. L. J. 1348=23 N. L. R. 99=A. I. R. 1926 Nag. 115=89 Ind. Cas. 388. In a warrant case, accused is entitled to cross-examine after examination-in-chief of prosecution witnesses. The Magistrate must adopt the procedure laid down in Chapter XXI except that he has not to frame a charge as laid down in s. 254 and is not bound to record the evidence of the witnesses. 1 Pat. L. T. 652=21 Cr. L. J. 630=57 Ind. Cas. 454. At any stage of the prosecution the Magistrate, if he is satisfied that there is a *Prima facie* case against the accused, may interrupt the proceedings for asking him whether he pleads guilty or whether he has any defence to make. When that stage is reached the accused must be allowed an opportunity of cross-examining any witnesses whom he desires to cross-examine. 28 Cr. L. J. 792=A. I. R. 1927 All. 660=104 Ind. Cas. 232. Magistrate is not bound to frame charge unless it is warrant case. Omission to frame charge is however no ground for setting aside a conviction. 1930 A. L. J. 1314=A. I. R. 1931 All. 7=129 Ind. Cas. 369.

Plea.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Notes.—This section requires a Magistrate to record the accused's plea immediately after the charge is framed. 4 Cr. L. J. 471. Where the accused pleads guilty, accused need not be convicted on the plea. A. I. R. 1933 Oudh. 86=8 Luck. 286=34 Cr. L. J. 124=9 O. W. N. 1136=1933 Cr. C. 168. If after the charge is framed the accused pleads guilty, the Magistrate can take further evidence either of his own motive or at the suggestion of the crown. 25 C. W. N. 212=22 Cr. L. J. 574=62 Ind. Cas. 590.

Procedure in case of previous conviction.

*[**255A.** In a case where a previous conviction is charged under the provisions of section 221, sub-section (7) and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused under section 255, sub-section (2), or section 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.]

Defence.

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state †[at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith], whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be re-called and, after cross-examination and re-examination if any, they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

Notes.—The provisions of this section do not relate to the mode of trial, and non-compliance with them strictly amounts to no more than an irregularity in procedure. 49 A. 316=25 A. L. J. 111=99 Ind. Cas. 1029. This section does not prohibit cross-examination before a charge. 21 C. 642. The word "re-call" does not mean "re-summon." 8 A. L. J. 707=11 Ind. Cas. 1007. It would depend on the facts of each case whether the section to comply with the mandatory provisions of s. 256 amounts to a mere irregularity of procedure or to an illegality vitiating the trial. 53 B. 578=31 Bom. L. R. 593. Section 256 does not apply before a charge is framed. 5 Pat. 110=7 P. L. T. 304=27 Cr. L. J. 499=A. I. R. 1926 Pat. 214=93 Ind. Cas. 963. Where Magistrate infringes this section, without giving reason, and the accused is prejudiced, re-trial must be ordered. 7 L. L. J. 114=26 Cr. L. J. 1158=26 P. L. R. 460=A. I. R. 1925 Lah. 339=88 Ind. Cas. 518. The obligation imposed by s. 256 on the Magistrate to ask the accused whether he wishes to cross-examine the prosecution witness is quite distinct from obligation imposed by s. 342 to question the accused generally for the purposes mentioned therein. 50 B. 42=27 Bom. L. R. 105=26 Cr. L. J. 690=A. I. R. 1925 Bom. 170=86 Ind. Cas. 66. Section 256 refers to cases in which the charge is framed before all the witnesses for the prosecution have been examined in chief and s. 257 refers to a stage when the prosecution closes its case after examining all its witnesses. 25 Cr. L. J. 1158=A. I. R. 1925 Nag. 147=81 Ind. Cas. 976; see also 81 Ind. Cas. 448=25 Cr. L. J. 912=A. I. R. 1924 Nag. 114=7 N. L. J. 57. The words inserted by the amendments indicate the intention of the Legislature that sufficient time should be given to an accused to consider whether he wishes to cross-examine any of the prosecution witnesses after the framing of the charge, and it is only in special cases that the Magistrate can require him to state forthwith if he so wishes. 5 Pat. 110=7 P. L. T. 304=27 Cr. L. J. 499=A. I. R. 1926 Pat. 214=93 Ind. Cas. 963; see also 24 Cr. L. J. 371=A. I. R. 1924 Lah.

* Section 255A was inserted by s. 71 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Inserted by Act 18 of 1923.

216=72 Ind. Cas. 371. The accused has under s. 256 an absolute right to re-call prosecution witness for cross-examination at the expense of the prosecution and it is not open to the Magistrate to order the accused to pay the costs for recalling those witnesses. 22 Cr. L. J. 112=59 Ind. Cas. 416; see also, 5 Pat. L. J. 94=1 Pat. L. T. 112=21 Cr. L. J. 814=58 Ind. Cas. 686. Where the witnesses are not in court the accused can only apply under s. 257 for the process to issue to the witnesses and the Magistrate has a discretion to refuse process. 43 M. 411=38 M. L. J. 209=27 M. L. T. 289=21 Cr. L. J. 297=55 Ind. Cas. 345; see also 26 Cr. L. J. 958=A. I. R. 1925 Sind. 315=87 Ind. Cas. 110. Even before charge is framed an accused is entitled to cross-examine the witnesses for the prosecution. Refusal to allow such cros-examination is illegal. 25 Cr. L. J. 556=A. I. R. 1924 Mad. 735=81 Ind. Cas. 44. In a warrant case the prosecution witnesses can be re-called under s. 256 for cross-examination after the charge; but in cases triable by the Sessions Court, the accused has no right to cross-examination after charge. 19 O. C. 239=18 Cr. L. J. 105=37 Ind Cas. 313. A magistrate should grant an accused an adjournment of the case to enable him to secure assistance of a council for examining the prosecution witness. 14 P. W. R. Cr. 1916=17 Cr. L. J. 278=34 Ind Cas. 998; see also 16 Cr. L. J. 786=31 Ind. Cas. 642. A person against whom proceedings under s. 110 of the Cr. Pro. Code are taken is not entitled to recall witnesses, for futher cross-examination in spite of s. 117(2). 1 P. R. Cr. 1916=58 P. W. R. Cr. 1915=17 Cr. L. J. 84=32 Ind. Cas. 676; see also 28 Cr. L. J. 239; but see 1930 A. L. J. 389=31 Cr. L. J. 627. Whether accused is tried under chapter 21 or chapter 22 and whatever form the charge may take he must be called upon to plead, and section 256, is applicable to either sort of trial. 50 M. 740=51 M. L. J. 187=24 M. L. W. 649=28 Cr. L. J. 12=A. I. R. 1927 Mad. 78=99 Ind. Cas. 44. A Magistrate cannot impose a condition upon the accused to deposit costs for recalling prosecution witnesses for cross-examination. 5 Pat. 110=7 P. L. T. 304=27 Cr. L. J. 499=A. I. R. 1926 Pat. 214=93 Ind. Cas. 963. Where prosecution witnesses come from a native state and it would have been difficult to secure their attendance again it is an excellent reason for asking the accused forthwith whether they wish to cross-examine any of them. 27 Cr. L. J. 720=A. I. R. 1926 Lah. 434=94 Ind. Cas. 912. The word "re-call" in s. 256 does not mean re-summon. A. I. R. 1930 All. 495=125 Ind. Cas. 32. Even if a warrant case is tried summarily, the provisions of s. 256 apply and after the prosecution case is closed, the accused is entitled to have further time for producing his evidence. 1930 Cr. c. 529=A. I. R. 1930 Sind. 146=124 Ind. Cas. 370. Magistrate cannot refuse recalling of prosecution witnesses after charge. L. R. 1 A. Cr. 55. The provision that the accused should be asked whether he wishes to cross-examine the prosecution witnesses on a date subsequent to that upon which he is called upon to plead to the charge, inserted in section 256 by the Amending Act of 1923 by words "at the commencement of the next hearing" is intended to give the accused an interval of time and an omission of this new procedure is an irregularity which vitiates the whole trial. A. I. R. 1930 Nag. 255=124 Ind. Cas. 619. Even on the date the charge is framed it is permissible for a Magistrate to call upon the accused to state whether they wish to cross-examine any of the prosecution witnesses. He has to record his reasons in writing for the procedure. 53 Bom. 578=31 Bom. L. R. 593=A. I. R. 1929 Bom. 309. Omission to record reasons under s. 256, for questioning the accused forthwith after the framing of the charge, as to whether he wishes to recall any of the prosecution witnesses for further examination, amounts to no more than an irregularity in procedure covered by s. 537, and would not be a ground for setting aside the conviction unless it has occasioned a failure of justice. 32 Bom. L. R. 596=A. I. R. 1930 Bom. 241=124 Ind. Cas 810; see also 6 Lah. 554=27 Cr. L. J. 408=27 P. L. R. 85=A. I. R. 1926 Lah. 155=93 Ind. Cas. 72. But if an accused is not represented by a Vakil reason must be shown for not postponing the question of cross-examination of witnesses to the next hearing by which time he can have consulted a Vakil and the omission to give reasons is an irregularity not curable under s 537. 50 M. 740=51 M. L. J. 687=24 M. L. W. 649=28 Cr. L. J. 12=A. I. R. 1927 Mad. 78=99 Ind. Cas. 44. Where a Magistrate does not comply with the provisions of s. 256, and the procedure results in a miscarriage of justice, the order for retrial should be made. A. I. R. 1928 Nag. 135=108 Ind. Cas. 439. Failure of a Magistrate to act in accordance with the express provision of s. 256 is not a mere irregularity but an illegality. 30 Cr. L. J. 880=A. I. R. 1929 Sind. 151=118 Ind. Cas. 200; see also 31 Cr. L. J. 14=1929 Cr. C. L. 96=A. I. R. 1929 All. 904=129 Ind. Cas 208. Mere recording of reasons, if no good reasons are forthcoming, would not save trial from incurable irregularity if it results in prejudice to accused. A. I. R.

1930 Nag. 255=124 Ind. Cas. 619 ; see also 53 B. 578=31 Bom. L. R. 593=A. I. R. 1929 Bom. 309 ; but see 1930 M. W. N. 985=3 M. Cr. C. 333=32 Cr. L. J. 221=A. I. R. 1930 Mad. 977=129 Ind. Cas. 74 ; 52 M. 355=56 M. L. J. 216=30 Cr. L. J. 908=A. I. R. 1929 Mad. 201 ; 25 A. L. J. 846=28 Cr. L. J. 785=A. I. R. 1927 All. 654=104 Ind. Cas. 225 Order of Magistrate directing complainant to pay costs to accused after charges have been framed for failing to produce prosecution witnesses for re-examination is not legal. 30 Cr. L. J. 664=A. I. R. 1929 Lah. 766=116 Ind. Cas. 710 ; see also 29 Cr. L. J. 20=A. I. R. 1928 Lah. 175=106 Ind. Cas. 436. The evidence of witnesses given before framing of the charge is not admissible under s. 33, Indian Evidence Act. A. I. R. 1929 Cal. 872. Persons taking no part in proceedings, cannot take exception to procedure of the Code, unless they can produce very clear evidence that the Court did commit any omission. 7 O. W. N. 1048=A. I. R. 1931 Oudh. 73=129 Ind. Cas. 166. Section 256 gives an accused the right to cross-examine the prosecution witnesses after the charge and Chapter XL of the Code does not take away this right. In a warrant case the accused is competent to put in any cross-interrogatories at the time of the first issue of the commission and to apply at a later stage for the re-issue of the Commission together with his cross-interrogatories. 61 C. 824=38 C. W. N. 673=A. I. R. 1934 Cal. 698. No adjournment need be given to the accused for considering whether witnesses should be further cross-examined. A. I. R. 1934 Nag. 209=152 Ind. Cas. 236=A. L. R. 1934 Nag. 248. Accused is allowed to cross-examine witnesses for prosecution after framing of charge because he is not informed of exact case that he has to meet until charge is framed. A. I. R. 1933 Rang. 29=34 Cr. L. J. 468. Section 256 does not apply to proceedings under s. 110 ; see also A. I. R. 1933 Sind. 8. 34 Cr. L. J. 468=A. I. R. 1933 Rang. 29. Where there is possibility of prejudice to accused, conviction should be set-aside for non-compliance of provisions by trying Magistrate. A. I. R. 1933 Sind. 118 ; see also A. I R. 1932 Mad. 559. Otherwise non-compliance does not vitiate trial and can be cured by s. 537. A. I. R. 1932 Oudh 242=7 Luck. 699=33 Cr. L. J. 506=9 O. W. N. 334. In deciding right of defence to cross-examine prosecution witnesses in the order it wishes, discretion of Court should be exercised in favour of defence. 34 C. L. J. 347=A. I. R. 1933 Cal. 189=37 C. W. N. 288. Scope of section 256 is restricted to cases where charge is framed before all prosecution witnesses are examined. 33 Cr. L. J. 738=37 M. L. W. 134=1932 M. W. N. 857=A. I. R. 1932. Mad. 559. Court cannot refuse to allow accused to cross-examine prosecution witness before charge is framed. A I. R. 1932 Mad. 554=33 Cr. L. J. 738=37 M. L. W. 134. Where summary trial is held in warrant case, and no charge is framed, further cross-examination cannot be claimed as of right. 33 Cr. L. J. 506=A. I. R. 1932 Oudh. 242. Accused has right to cross-examine prosecution witness before charge, hence if such witness cannot be found for further cross-examination his evidence cannot be used under s. 33, Evidence Act. A. I. R. 1935 Nag. 8.

Process for compelling production of evidence at instance of accused.

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examing any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Notes.— The section is imperative. A Magistrate has no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or defeating the ends of justice. 26 B. 418=4 Bom. L. R. 38 ; 11 C. W.

N. 789=6 Cr. L.J. 1; 2 L. B. R. 270; 10 Cr. L. J. 207= 2 S. L. R. 5 Cr. An accused has a right to have the prosecution witnesses re-summoned even though they had been summoned previously and had not attended. 28 P. R. 1884 Cr. It is open to a Magistrate even after a case has been closed and at any time before judgment has been pronounced to give an opportunity to the accused to cross-examine the witness for the prosecution and to examine witness in defence, even if the accused has failed to avail himself of such opportunity which he had at an earlier stage of the proceeding. 21 M. L. J. 283=9 Ind. Cas. 897. It is not competent to a Magistrate to decline to examine witnesses cited for the defence, on the ground that their evidence is unnecessary. 14 Bom. L. R. 360=15 Ind. Cas. 795=13 Cr. L. J. 523. Under this section, the accused has the right to summon witnesses for cross-examination even after the charge has been framed. 115 Ind. Cas. 76=A. I. R. 1929 Lah 578. In warrant cases the ordinary procedure is that the costs of the witnesses of the accused are to be borne by the Government. 117 Ind. Cas. 667=30 Cr. L.J. 814. The Magistrate must issue summons for attendance of defence witnesses or he must record his ground for refusing. 31 P. L. R. 949; see also A. I. R. 1935 Sind. 69. Section 257 does not control or impose limitation of Court's powers to exercise its discretion in using machinery provided by s. 94. A. I. R. 1935 Sind. 13. Court's jurisdiction to order production of documents includes right to allow inspection. *Ibid.* Order refusing to summon witness can be justified for reasons in Ch. 1 provided order states them. A. I. R. 1933 Lah. 1020. Where Magistrate does not consider application to be made for vexation or delay or for defeating ends of justice, he cannot refuse to summon witnesses even though number of witnesses may be inconveniently large. A. I. R. 1932 All. 125=1932 A. L. J. 39=33 Cr. L. J. 528=54 A. 331; see also A. I. R. 1931 Oudh. 386=32 Cr. L. J. 1176=8 O. W. N. 791=1931 Cr. C. 818; 30 Cr. L. J. 1155. Prosecution witnesses, if present can be allowed to be cross-examined at defence stage. A. I. R. 1932 Nag. 137=28 N. L. R. 254=33 Cr. L. J. 940. Magistrate has discretion to grant or refuse application under s. 257. 34 Cr. L. J. 468=A. I. R. 1933 Rang. 29; see also A. I. R. 1933 Pat. 598. When Magistrate once issues process he must compel attendance of witness subject only to s. 257 (2). A. I. R. 1931 Pat. 207=32 Cr. L. J. 613=12 P. L. T. 372. Magistrate should not refuse adjournment for cross-examination of prosecution witness when defence counsel is absent. A. I. R. 1932 Nag. 71=33 Cr. L. J. 731; see also A. I. R. 1930 Mad. 632=124 Ind. Cas. 606. While the Court is fully justified in declining to accede to request which would amount to an abuse of process of the Court, it should be at the same time be careful not to do any act which might hamper the accused in his defence. 29 Cr. L. J. 459=108 Ind. Cas. 907; see also 29 Cr. L. J. 725=A. I. R. 1928 Mad 652; 29 Cr. L. J. 235=A. I. R. 1928 Lah. 294=107 Ind. Cas. 285; 27 Cr. L. J. 353=6 P. L. T. 626=A. I. R. 1925 Pat. 696=92 Ind. Cas. 865. Section 257 is neither imperative nor exhaustive. 25 Cr. L. J. 401=A. I. R. 1925 Mad. 106=77 Ind. Cas. 481. Trial Court can restrict scope of cross-examination of witnesses. 17 Cr. L. J. 353=1 Pat. L. J. 317=2 Pat. L. W. 348. Refusal without complying with the requirements of the section to summon witnesses for cross-examination is illegal. 22 Cr. L. J. 572=62 Ind. Cas. 588; see also 21 Cr. L. J. 340=55 Ind. Cas. 676; 24 Cr. L. J. 686=A. I. R. 1923 Lah. 420=73 Ind. Cas. 782; 25 Cr. L. J. 310=A. I. R. 1925 Cal. 80=76 Ind. Cas. 1030; 51 C. 1044=26 Cr. L. J. 381=84 Ind. Cas. 864. Once a summons has been issued and the witness is before the Court, even in a summons case there is no jurisdiction in the Court to dictate to the accused the terms upon which the examination of the witness shall be conducted. 29 Cr. L. J. 308=A. I. R. 1928 Pat. 258=107 Ind. Cas. 846. Where accused calls prosecution witness for cross-examination, he should pay the expense. 29 Cr. L. J. 20=A. I. R. 1928 Lah. 175=106 Ind. Cas. 436. Where witness for prosecution after examination and cross-examination left for England and the accused requires him for cross-examination again, the Magistrate may act under the provisions of s. 33, Evidence Act. 6 Bur. L. J. 114=28 Cr. L. J. 861=A. I. R. 1927 Rang. 248=104 Ind. Cas. 637. Where case was closed without granting adjournment to accused to cross-examine prosecution witnesses through his pleader, the order should be set-aside subject to accused paying the expense. 28 Cr. L. J. 425=A. I. R. 1927 Nag. 240=101 Ind. Cas. 457. Accused need not state in the application that the witnesses are to be summoned for cross-examination. Magistrate may enquire into the accused's purpose if he thinks the application is vexatious. 24 M. L. W. 751=28 Cr. L. J. 32=A. I. R. 1927 Mad. 129. Court ordering party to deposit travelling allowances of witness should state the amount of travelling allowance to be deposited. 6 P. L. T. 215=26 Cr. L. J. 965=87 Ind. Cas. 421. Magistrate deciding to call a witness should take steps to produce him but he can dispense with his presence if

he finds it unnecessary. 26 Cr. L. J. 1627=A. I. R. 1927 Pat. 169=90 Ind. Cas. 923. If a good case is made out that the Magistrate's refusal was outside the limits of reasonable discretion, the High Court should interfere. But it must appear that there was matter to be obtained from witnesses sought to be called for cross-examination which would have materially affected the result of the trial. 6 P. L. T. 626=27 Cr. L. J. 353=A. I. R. 1925 Pat. 696=92 Ind. Cas. 865. Magistrate cannot arbitrarily limit number of witnesses though he can refuse to summon on the ground of delay or vexation. 27 Cr. L. J. 543=A. I. R. 1926 Lah. 454=93 Ind. Cas. 1039. Where order for issue of summons on the accused's witnesses were not carried out through some mistake, accused has good ground for complaint. 27 Cr. L. J. 841=A. I. R. 1926 Cal. 1088=95 Ind. Cas. 761. Where accused or his muktear did not apply for further process but did not expressly give up witnesses nor argued the case, High Court in revision ordered further opportunity to be given. 38 C. L. J. 285=25 Cr. L. J. 293=A. I. R. 1924 Cal. 196=76 Ind. Cas 965. In serious cases in convenience of removal of convicts from one jail to another about 300 miles off the Rail does not justify examination of the convicts on commission though the accused also sent interrogatories. Application for the attendance of these witnesses should not be deemed to be made for the purpose of vexation or delay or defeating the ends of justice. 45 M. L. J. 305=24 Cr. L. J. 840=A. I. R 1921 Mad. 213=74 Ind. Cas. 952. Magistrate shall, save in exceptional circumstances, issue prosess on the defence witnesses. Special ground of refusal must be recorded in writing. Inability or even refusal to pay the costs of the witnesses, would not be adequate ground in a warrant case. 5 P. L. T. 112=24 Cr. L. J. 831=2 Pat. L. R. Cr. 73=A. I. R. 1924 Pat. 142=74 Ind. Cas. 863. If witness summoned by accused is reported ill, Court must issue fresh summons and grant adjournment. Medical certificate need not be produced. 24 Cr. L. J. 370=A. I. R. 1924 Cal. 534=72 Ind. Cas. 370. Where prosecution witness is recalled as defence witness, accused is entitled to cross-examination. 1922 M. W. N. 120= 23 Cr. L. J. 192=A. I. R. 1922 Mad. 32=65 Ind. Cas. 768. It is the business of the Court to enforce the attendance of witnesses cited by an accused and a conviction without doing so, is not proper. 19 A. L. J. 945=23 Cr. L. J. 124=A. I. R. 1921 All. 142=65 Ind. Cas. 556. Magistrate can refuse to issue process for defence witness, if application is vexatious, or made too late or made for the purposes of defeating the ends of justice unless expenses are deposited by accused. 22 Cr. L. J. 711=63 Ind. Cas. 871. Where witness for defence is summoned, the Court cannot dispense with him afterwards on the grounds that at the most, he would support accused in his statement. 5 P. L. R. 1922=22 Cr. L. J. 501=A. I. R. 1922 Lah. 113=62 Ind. Cas. 325 ; see also 22 Cr. L. J. 497=6 P. L. R. 1922=A. I. R. 1922 Lah. 71=62 Ind. Cas. 321. Where the witness is summoned to cause vexation and delay, the application may be rejected. A. I. R. 1934 Lah. 136.

Acquittal.

258. (1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

* [(2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.]†

Notes.—To apply sub-section (1) the Magistrate must found the accused "not guilty." 26 Cr. L. J. 400=A. I. R. 1925 Oudh. 314=84 Ind. Cas. 944. Finding "not guilty" is technical expression not necessarily equivalent to finding accused not guilty who did not commit acts charged. A. I. R. 1930 All. 795=129 Ind. Cas. 262. Order of acquittal in warrant case can be passed only on finding accused not guilty. Accused cannot be acquitted merely because complainant is absent. 26 Cr. L. J. 264=84 Ind. Cas. 328. Where charge is framed but complainant and his witnesses are absent on the day fixed for their cross-examination, the Magistrate should either adjourn the case or acquit accused under s. 258 (1). A. I. R. 1930 All. 795=129 Ind. Cas. 262. Acquittal amounts to honourable acquittal. 61 C. 168. Procedure directing accused to be acquitted without writing judgment is irregular. But defect is cured by s. 537 if failure of justice is not caused owing to such irregularity. 34 Cr. L. J. 1036=

* This sub-section was substituted by s. 73 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† *See* Sch. V. Form. XXIX, *infra*.

1933 A. L. J. 1244=A. I. R. 1933 All. 660. In a warrant case, where charge is framed but parties do not appear on adjourned hearing, the Magistrate cannot act under s. 258. A. I. R. 1933 Cal. 358=37 C. W. N. 712=34 Cr. L. J. 498=143 Ind. Cas. 83 ; see also 34 Cr. L. J. 718=A. I. R. 1933 Lah. 323.

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded,* [or is not a cognizable offence,] the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Absence of complainant.

Notes.—Where a Magistrate has passed an order discharging the accused under s. 259, his order is no bar to a re-trial of the case on a fresh complaint. 28 M. 310. In a warrant case, when the Magistrate arrives at the stage to which s. 254 applies it is his duty to frame a charge, and he should not discharge the accused under s. 259 merely because the complainant was absent on the day of hearing. Rat. Un. Cr. C. 847=Cr. Rg. 14. of 1896. If a magistrate discharges the accused for the non-appearance of the complainant under s. 259, Cr. Pro. Code. and subsequently excuse the non-appearance he must proceed *de novo*. Now of the evidence recorded in the first case can be carried over to the second case. 115 Ind. Cas. 64=1929 M. W. N. 184. After charge is framed the provisions of s. 259 will not apply. 26 Cr. L. J. 400=A. I. R. 1925 Oudh. 314=84 Ind. Cas. 944 ; see also 27 O. C. 316=26 Cr. L. J. 264=A. I. R. 1925 Oudh. 306=64 Ind. Cas. 328 ; 1933 Cr. C. 1311=A. I. R. 1933 Pesh. 78 ; 76 Ind. Cas. 23=25 Cr. L. J. 87=A. I. R. 1924 Lah. 627 ; 55 M. 795=A. I. R. 1932 Mad. 505. After charge is framed, trial Court must proceed with trial even in absence of complainant and convict or acquit accused. 34 P. L. R. Lah. 39=22 Cr. L. J. 312=60 Ind. Cas. 1000. After framing of charge in non-compoundable warrant case, position of complainant is that of witness ; he cannot be ordered to pay the costs of an adojurnment on his failure to attend. 25 Cr. L. J. 87=A. I. R. 1924 Lah. 627=76 Ind. Cas. 23. Only in conpoundable case Magistrate can under s. 259 order discharge of accused person for want of prosecution. In non-compoundable cases, only the Public Prosecutor can withdraw the prosecution. 13 Bur. L. T. 244=22 Cr. L. J. 753=10 L. B. R 375=64 Ind. Cas. 273 ; 20 C. W. N. 698=17 Cr. L. J. 193. Section 259 does not empower a Court to dismiss a warrant case in default, after a charge. Such dismissal of case on default does not amount to an acquittal. 20 Cr. L. J. 703=53 Ind. Cas, 491. Where summons case and warrant case tried together procedure should be that of warrant case. Court passed an order complainant absent, accused discharged, held, order did not amount to an acquittal in respect of summons case. 41 Mad. 727=7 L. W. 520=34 M L. J. 369=19 Cr. L. J. 613=(1918) M. W. N. 827. Discharge of accused under s. 259 owing to absence of complaint does not bar fresh trial on fresh complaint by complainant. A. I. R. 1933 Pesh. 78=1933 Cr. C. 1311. Dismissal of complaint or application is discretionary. A. I. R. 1933 Oudh. 430=10 O. W. N. 1037=1933 Cr. C. 1315. Where complainant is absent and accused is discharged, fresh complaint on same facts is not barred. A I. R. 1934 Nag. 215=1934 Cr. C 986 ; see also 152 Ind. Cas. 249=1934 Cr. C. 418=A. I. R 1934 All. 340 ; 87 Ind. Cas. 928. In case of non-cognizable offence instituted upon complaint, axiom of *actio personalis moritur cum persona*, does not apply. Trying Magistrate can allow the complaint to continue by a proper and fit complaint. 28 Bom. L. R. 288=27 Cr. L. J. 491=A. I. R. 1926 Bom. 178=93 Ind. Cas. 891. Where complainant dies before hearing and offence is non-compoundable though non-cognizable, Magistrate can still proceed with the case. 6 Rang. 664=A. I. R 1929 Rang. 14=114 Ind. Cas. 681. Where a person is prosecuted by police for non-compoundable offence the case should not be dismissed on ground of want of prosecution. 28 Cr. J. J. 816=A. I. R. 1927 Oudh. 352=104 Ind. Cas 256. Where case was fixed at 7 A. M. after the prosecution had been closed and pleader for complainant was present but complainant arrived a little late, order of Magistrate dismissing complaint was revisable. 27 Cr. L. J. 1391=A. I. R 1927 Mad. 139=98 Ind. Cas. 607.

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* These words were inserted by s. 74 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

260. Notwithstanding anything contained in this Code,—

(*a*) the District Magistrate,

(*b*) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(*c*) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the Local Government,

may, if he or they think fit, try in a summary way all or any of the following offences:—

(*a*) offences not punishable with death, transportation or imprisonment for a term exceeding six months ;

(*b*) offences relating to weights and measures under sections 264, 265 and 266 of the Indian Penal Code ;

(*c*) hurt, under section 323 of the same code ;

(*d*) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

(*e*) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed fifty rupees ;

(*f*) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed fifty rupees ;

(*g*) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees :

(*h*) mischief, under section 427 of the same Code ;

(*i*) house-trespass, under section 448, and offences under sections 451, *[453, 454], 456 and 457of the same Code ;

(*j*) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code ;

(*k*) abetment of any of the foregoing offences ;

(*l*) an attemept to commit any of the foregoing offences, when such attempt is an offence ;

(*m*) offence under section 20 of the Cattle-trespass Act, 1871 ;

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(2) when in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.

Notes.—An accused person cannot be convicted in a summary trial of an offence which cannot be tried summarily. U. B. R. (1897—1901) Vol I, 75. An offence under s. 121 of the Indian Railways Act, is an offence which is summarily triable under this section. A. W. N. 1902, 24. The offence of cattle lifting is a serious one and ought not to be tried summarily. 6 S. L. R. 101=17 Ind. Cas. 412=13 Cr. L. J. 780. This section gives the Magistrate a power to try summarily all cases not punishable with death, transportation or imprisonment for a term, exceeding six

* These figures were inserted by the Repealing and Amending Act, 1903 (I of 1903), see Part II of the Second Schedule.

months, and there is nothing in law to restrict the Magistrate exercising such powers in cases under the Companies Act. 11 A. L. J. 196=18 Ind. Cas. 665=14 Cr. L. J. 105 =35 A. 173. It is manifest that a summary trial is intended to be directed towards the offences which are appropriate for such form of trial. While it may be legal to use that procedure in a particular case, it does not follow that it is desirable. An offence which may seem very grave when regarded only from the point of view of the section applicable may really be, in the light of its particular circumstances of a trivial nature. 30 Cr. L. J. 505=A. I. R 1929 All. 267. Jurisdiction to try summarily is derived from nature of charge. 1930 A. L. J. 1490= 32 Cr. L. J. 556=53 A. 218=A. I. R. 1931 All. 51. Summary procedure is inappropriate in case of Government servants. 33 Cr. L. J. 108=33 P. L. R. 177= A. I. R. 1932 Lah. 188. Where Sub-Judge with powers of 1st Class Magistrate and power to try cases under s. 260 is transferred, he cannot exercise such powers unless he is empowered by fresh notification. A. I. R. 1933 Sind. 93=1933 Cr. C. 1438. Where the case is of a petty character, powers under this section can be properly exercised. A. I. R. 1933 Oudh. 50=34 C. L. J. 547=9 O. W. N. 1196. In a summary trial where a non-appealable sentence is passed the Magistrate need only record a finding and his reasons for it. 21 Cr. L. J. 442=56 Ind. Cas. 234. The mere fact of there being a large number of accused is not a conclusive reason against trying a case in the summary method. 28 Cr. L. J. 140=A. I. R. 1927 All. 116=99 Ind. Cas. 348. A summary trial in a case involving complicated questions of right and title is improper, as it would prejudice the accused. 55 Ind. Cas. 854. Summary procedure in case of serious offences, though legal, is inappropriate. 14 N. L. R. 90=19 Cr. L. J. 1003=48 Ind. Cas. 343. Summary trial by Magistrate not empowered to try European subject summarily is void. 39 M. 942=29 M L. J. 758=16 Cr. L. J. 773. A summary trial would be improper where there is a large number of accused and the number of witnesses is also very large. 3 Lah. L. J. 34=22 Cr. L. J. 145=59 Ind. C. 849 ; but see 28 Cr. L. J. 140=A. I. R. 1927 All. 136. There is nothing in the Code which requires a Magistrate in a summary case to place upon the record, the notes of the evidence or a full statement of the examination of the accused persons. 3 O. W. N. 946=A. I. R. 1927 Oudh. 42=99 Ind. Cas. 108. In a case tried summarily the mere fact that there is an omission on the Magistrate's part to ask the accused, whether he wants any of the prosecution witnesses for further cross-examination, is not sufficient to make the trial illegal. 28 B. L. R. 96=27 Cr. L. J. 431=A. I. R. 1926 Bom. 226. There is nothing improper if the Magistrate is influenced by the police report in directing a summary trial. 28 Cr. L. J. 140=A. I. R. 1927 All. 132=99 Ind. Cas. 348. Where a Magistrate after partly trying a case as a warrant case charged the accused and tried the case as a summary one, the trial is illegal and a *de novo* trial was necessary. 21 Cr. L. J. 157=37 C. L. J. 105. The Magistrate should ordinarily restrict summary trial to simple cases ; but the mere fact that the case involves a question of title or is trial of a public servant is not itself a reason for not doing so. 26 Cr. L. J. 1452=A. I. R. 1926 Oudh. 63=89 Ind. Cas. 972. Where accused is charged and convicted of offence triable summarily, any exaggeration as to nature of offence does not affect jurisdiction to try summarily. A. I. R. 1931 All. 51=1930 A. L. J. 1490. Where an offence as disclosed was not summarily triable and the Court adopted the summary procedure the High Court set aside the conviction and remanded the case for retrial. A. I. R. 1930 Cal. 711=128 Ind. Cas. 208. It is not right for a Court to minimise an offence by shutting its eyes to a graver offence, disclosed by the facts found, in order to justify itself in trying the case summarily. 51 A. 520=1929 A. L. J. 340=30 Cr. L. J. 686=A. I. R. 1929 All. 349 ; see also 52 B. 254=30 Bom. L. R. 371=A. I. R. 1928 Bom. 142=109 Ind. Cas. 220. But where the charge is under ss. 457 and 354 and the Magistrate during trial disbelieving evidence gives up charge under s. 354, the trial can be held summarily. 31 C. W. N. 583=28 Cr. L. J. 697=A. I. R. 1927 Cal. 505. An offence falling under s. 211 Penal Code cannot be tried summarily. A. I. R. 1930 Cal. 711=128 Ind. Cas. 208. In Sind, where cattle thieving is so prevalent and so often goes unpunished, it is necessary that deterent sentences should be imposed, and a Court should not try such a case summarily. 28 Cr. L. J. 959=A. I. R. 1927 Sind. 257=105 Ind. Cas. 671. Though offence may be light or technical summary procedure should not be adopted, if there is great volume of evidence or very complicated issues arise and where taking exhaustive notes of evidence is necessary. 19 S. L. R. 136=26 Cr. L. J. 1026=A. I. R. 1925 Sind. 284=87 Ind. Cas. 914. In a case of theft in which value of property does not exceed Rs. 50, the procedure at the trial is regulated by section 355 and not by section 356. 21 A. L. J. 176=A. L. J. 179=A. I. R. 1923 All. 432=69 Ind. Cas.

57. Where there are several accused and charge against one is not summary, the case cannot be tried summarily. 27 C. W. N. 148=25 Cr. L. J. 528=77 Ind. Cas. 992. Before a Magistrate can try the accused in a summary form, he has to satisfy himself, that the property involved is less than Rs. 50 in value. 6 P. L. T. 114=25 Cr. L. J. 545=A. I. R. 1922 Pat. 227=81 Ind. Cas. 33. An offence under s. 60 of the Excise Act being punishable with imprisonment for one year cannot be tried summarily, and if it is so tried, the proceedings are void. 28 O. C. 123=28 Cr. L. J. 800=86 Ind. Cas. 432. Where a person is prosecuted under s. 130 read with s. 126 (a) of the Railways Act, the offence is not one exclusively triable by a Court of Sessions. 21 Bom. L. R. 768=20 Cr. L. J. 699. Where a charge of of theft the value of property is over Rs. 50. summary trial is improper. 20 C. W. N. 1212=17 Cr. L. J. 473=36 Ind. Cas. 153. The High Court as a Court of Record has jurisdiction to deal summarily with contempts of Courts. 6 Lah. 528=26 M. L. R. 772=A. I. R. 1926 Lah. 1=89 Ind. Cas. 833. A Magistrate acts without jurisdiction if he reduces a grave offence to a minor one with a view to give himself jurisdiction to try case summarily. 15 Lah. 610=A. I. R. 1934 Lah. 243. A summary trial is not proper in a contentious and complicated case which requires a lengthy enquiry extending over several months. 35 P. L. R. 126=35 Cr. L. J. 1094. Judgment in a summary trial in a single sentence is improper. A. I. R. 1934 Oudh. 177=35 Cr. L. J. 677=11 O. W. N. N. 487. Where more than one offence of receiving and retaining stolen property are tried together, aggregate value of the property is not to be taken. A. I. R. 1934 Sind. 185. A trial under Child Marriage Act, 1929 may be summary. A. I. R. 1934 All. 331.

Power to invest Bench of Magistrate invested with less power.

261. The local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class, power to try summarily all or any of the following offences :—

(*a*) offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, *[477 and 504] ;

(*b*) offences against Municipal Acts and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month† [with or without fine] ;

(*c*) abetment of any of the foregoing offences,

(*d*) an attempt to commit any of the foregoing offences, when such attempt is an offence.

Notes.—Section 355 does not apply to offences coming under s. 261 cl. (b). 29 Bom. L. R. 710=28 Cr. L. J. 537=A. I. R. 1927 Bom. 426. In a case falling under s. 261 (b) in which an appeal lies, even if rough notes of evidence are taken by the Magistrate, they need not favour part of the record under cl. (2) of s. 264. 29 Bom. L. R. 710=28 Cr. L. J. 537=A. I. R. 1927 Bom. 426=102 Ind. Cas. 345.

Procedure for summons and warrant cases applicable.

262. (1) In trials under this Chapter, the procedure prescribed for summon cases, shall be followed in summons cases, and the procedure prescribed for warrant-cases, shall be followed in warrant cases, except as hereinafter mentioned.

Limit of imprisonment.

(2) No sentence of imprisonment for a term exceeding three months shell be passed in the case of any conviction under this Chapter.

Notes.—In summary trial the procedure laid down for warrant cases, should be followed in warrant cases. Vide 21 Cr. L. J. 630=1 P. L. T. 652 ; 22 Cr. L. J. 271. Four months imprisonment in default of fine cannot be awarded. 3 Lah. L. J. 346=22 Cr. L. J. 145. Under section 262, in summary trials the maximum imprisonment is three months in the case of any conviction. 25 Cr. L. J. 240=2 Bur.

* These figures and word were substituted for the word and figures "and 447" by s. 75 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

† These words were added by *ibid*,

L. J. 150=76 Ind. Cas. 704. A separate sentence to the extent of three months may be passed for each separate conviction. A. I. R. 1934 Sind. 185 ; but see A. I. R. 1934 Rang. 116=12 Rang 122, where it has been held that in a summary trial two sentences of three months for two offences cannot be passed to run consecutively. There is no difference between summary trials of summons cases and the ordinary trials of summons cases. 46 M. 766=45 M. L. J. 230=24 Cr. L. J. 847=74 Ind. Cas. 959. Where in a summary trial of warrant case, no charge is framed, further cross-examination cannot be claimed as of right. 137 Ind. Cas. 614=9 O. W. N. 334=23 Cr. L. J. 506=A. I. R. 1932 Oudh. 242.

Record in cases where there is no appeal.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrate need not record the evidence of witnesses or frame a formal charge ; but he or they shall enter, in such form as the Local Government may direct, the following particulars :—

(*a*) the serial number ;
(*b*) the date of the commission of the offence ;
(*c*) the date of the report or complaint ;
(*d*) the name of the complainant (if any) ;
(*e*) the name, parentage and residence of the accused ;
(*f*) the offence complained of and the offence (if any) proved and in cases coming under clause (*d*), clause (*e*), clause (*f*) or clause (*g*) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed.
(*g*) the plea of the accused and his examination (if any) :
(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefore ;
(*i*) the sentence or other final order ; and
(*j*) the date on which the proceedings terminated.

Notes.—In the case of a summary trial, the provisions of this section must be fully and strictly complied with, in this sense, that the record must be sufficiently exact and sufficiently full to enable the Judges of the Revisional Court to say whether the law has been complied with or nor on the points to be recorded. 2 C. L. J. 565=10 C. W. N. 79=3 Cr. L. J. 178. A summary trial applies only to short and simple cases where little evidence is needed. 25 W. R. Cr. 65. This section excuses a Magistrate trying a criminal case according to the summary procedure from recording evidence of any of the witnesses, but not from hearing the evidence of all the witnesses. 16 C. W. N. 984=39 C. 931=17 Ind. Cas. 71=13 Cr. L. J. 759. This section does not give the Magistrate any discretion whether he will examine the accused or not. 15 Cr. L. J. 759. 190=22 Ind. Cas. 766=18 C. W. N. 1247=41 C. 743. Under section 263 (b), a brief statement of the reasons for conviction must be given. The reasons should amount to showing that there is evidence to prove the existence of the ingredients necessary to complete the offence. 10 A. L. J. 251=16 Ind. Cas. 516=13 Cr. L. J. 708. A Magistrate or a Bench in a summary trial should give a brief statement of the reasons for their finding and not a judgment in a single line. 20 Cr. L. J. 431=51 Ind. Cas. 207 ; see also 1 Pat. L. T. 716=21 Cr. L. J. 656=57 Ind. Cas. 672. In a summary trial the judgment need not be very long and detailed one but it is duty of the Magistrate to give a brief summary of the evidence and a concise statement of the reasons, if the trial ends in a conviction. 31 P. L. R. 317 ; see also A. I. R. 1930 Lah. 481=127 Ind. Cas. 849 ; 29 Cr. L. J. 584=A. I. R. 1928 Mad. 928=109 Ind. Cas. 600. Section 263 requires that the Magistrate's record shall state the offence complained of, and the offence if any, proved, the plea of the accused and his examination, if any, the finding and in case of a conviction a brief statement of the reasons therefor. The practice of lumping together in one column of the register all the particulars required by s. 263 cl. (g) to (j) is unwarranted. 23 Cr. L. J. 16=65 Ind. Cas. 625. The finding and reasons required by s. 263 (h) Cr. P. Code should be so stated that the High Court in revision may be able to judge whether there was sufficient material before the Magistrate to support the conviction. 19 Cr. L. J. 716=46 Ind. Cas. 303 ; see also 3 P. L. T. 499=23 Cr. L. J. 94=A. I. R. 1923 Pat. 56=65 Ind. Cas. 446 ; 24 O. C. 293=23 Cr. L. J. 427=67 Ind. Cas. 587. In appealable summary cases the Magistrate shall record a judgment embodying the substance of the evidence and also the particulars men-

tioned in s. 263 ; but framing of a charge and notes of evidence are not necessary. 26 Cr. L. J. 1334=A. I. R. 1925 Oudh. 722=89 Ind. Cas. 310. S. 263 must be read with section 355. Where it is difficult for a Magistrate to determine at the initial stage whether he will or will not pass an appealable sentence, the course he has to adopt is to make a memorandum of the substance of the evidence. But if, at the initial stage, he can make up his mind that in any event the sentence to be passed by him will not be appealable, he need not record the evidence. The record of the evidence becomes part of the record of the case and must not be destroyed. Where the evidence was recorded and was subsequently destroyed, the conviction must be set-aside. 48 C. 280=22 Cr. L. J. 462=A. I. R. 1921 Cal. 165=61 Ind. Cas. 846 ; see also 44 M. L. J. 84=17 M. L. W. 18=32 M. L. T. 100=46 M. 253=24 Cr. L. J. 84=71 Ind. Cas. 212 ; 26 Cr. L. J. 1454=89 Ind. Cas. 974. Magistrate must record reasons for conviction. A. I. R 1932 Oudh. 98=8 O. W. N. 1376=7 Luck. 498=33 Cr. L. J. 342 ; see also 20 M. L. W. 330=25 Cr. L. J. 1084=81 Ind. Cas. 908 ; 28 Cr. L. J. 495=A. I. R. 1929 Nag. 250=101 Ind. Cas. 671. But omission to briefly record reasons for finding is a merere irregularity curable under s. 537. Where in a non-appealable case, it appears that there is clear evidence justifying the conviction. 26 Bom. L. R. 1236=26 Cr. L. J. 466=A. I. R. 1925 Bom. 138=85 Ind. Cas. 146. The facts found by a Magistrate in a summary trial must clearly show that the offence had been committed and that his record, however meagre ought to be sufficient to establish the necessary ingredients of the offence of which the accused had been found guilty. 10 Lah. 231=29 P. L. R. 647=29 Cr. L. J. 877=A. I. R. 1929 Lah. 378=111 Ind. Cas. 461 ; see also 26 A. L. J. 100=29 Cr. L. J. 265=A. I. R. 1928 All. 266=107 Ind. Cas. 592 ; 32 P. L. R. 53=A. I. R. 1931 Lah. 33 ; A. I. R. 1934 Lah. 596=35 Cr. L. J. 1464=36 P. L. R. 310=A. L. R. 1934 Lah. 182. In summary cases the recording of evidence is governed by ss. 263 and 264 and s. 355 has no application at all to summary cases. In such cases it is not incumbent on the trying Magistrate to record any notes of the evidence. 58 B. 298=A. I. R. 1934 Bom. 157=36 Bom. L. R. 212 ; see also 25 A. L. J. 140=49 A. 261=28 Cr. L. J. 97 ; 49 A. 131. In a summary trial likely to be adjourned for a long date, Magistrates should make sufficient memorandum to enable them to write proper judgment. A. I. R. 1931 Bom. 142=32 Cr. L J. 276=32 Cr. L. J. 276=32 Bom. L. R 1499. Where examination of an accused person is a proper examination it is not necessary in a summary trial in a warrant case for the Magistrate to record examination in detail. 6 Pat. 504=8 P. L. T. 757=A. I. R. 1927 Pat. 369=106 Ind. Cas. 221 In a summary trial under s. 263, when no charge is framed the accused has no right as such to recall the witnesses for the prosecution. 28 Bom. L. R. 95=27 Cr. L. J. 431 =A. I. R. 1926 Bom. 226=93 Ind. Cas. 159. The words "if any" in s. 263 do not limit the obligation imposed on Courts by s. 342, or render it inapplicable to summary trials ; they merely have reference to those cases in which owing to the admission and plea of the accused, or owing to the weakness of the evidence called in support of the prosecution, the accused can be convicted on his own plea, without taking of evidence or acquited on the evidence without the exmination referred to in section 342. 20 S. L. R. 34=26 Cr. L. J. 1554=A. I. R. 1926 Sind. 1 (F.B.) Where an appealable case in a summary trial, the procedure as laid down in ss. 262 to 264 was exactly carried out, except that a formal charge was not framed, it does not vitiate the conviction. There is considerable doubt whether the framing of a charge under s. 264 in a summary trial is essential whether an appealable sentence is passed or not. 53 C. 738=27 Cr. L. J. 1295=A. I. R. 1526. Cal. 1202=98 Ind. Cas. 191. Magistrate should record not only plea of accused but also his examination though not in full. A. I. R. 1935 All. 217.

Record in appealable cases.

264. (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

(2) Such judgment shall be the only record in cases coming within this section.

Notes.—Under this section Magistrates need not record the substance of depositions ; but may state generally the substance of the witnesse's evidence. 25 W. R. Cr. 6. The substance of the evidence is required by s. 264 is a matter distinct from the facts which may be considered as proved by the evidence and it should be recorded in such a manner that a Superior Court acting in appeal or revision may be in a

position to Judge that there were sufficient material before the magistrate to support the conviction. *Jamna Prasad* v. *Emperor* 6 O. W. N. 45=116 Ind. Cas. 57=30 Cr. L. J. 557. Court has discretion in the mode of recording evidence and may record a complete summary of evidence or only the substance. A. I. R. 1931 Mad. 238=1931 M. W. N. 118=118=1631 Cr. C. 329. Where the accused is tried summarily and sentenced to an appealable sentence, the Magistrate must write a judgment embodying the substance of the evidence on both sides. 24 Cr. L. J. 484=72 Ind. Cas. 984. Where evidence is recorded by pencil on scraps of paper, the pencil record should not be destroyed and replaced by fair copy. 1 Pat. L. T. 63=21 Cr. L. J. 229=55 Ind. Cas. 101 ; but see 25 A. L. J. 346=49A. 562=A. I. R. 1927 All. 480=101 Ind. Cas. 474. In a summary trials it is important that there should be clear findings on questions of facts because it is only through such findings that the Court of revision can form its own judgment, with regard to the legality of the proceedings of the trial Court. A. I. R. 1924 Oudh. 297=75 Ind. Cas. 292. Where the accused is tried summarily and sentenced to an appealable sentence, the Magistrate must write a judgment embodying the substance of the evidence on both sides. 24 Cr. L. J. 484=A. I. R. 1924 Oudh. 167=72 Ind. Cas. 948. Where a Magistrate tries a case summarily, takes rough notes, those rough notes should not be transcribed and attached to the record. 19 S. L. R. 136=26 Cr. L. J. 1026=A. I. R. 1925 Sind. 284=87 Ind. Cas. 914. The substance of evidence should be plainly stated. The appellate Court should not be driven to inference in order to find out the substance of the evidence. 30 Bom. L. R. 954=29 Cr. L. J. 1005=A. I. R. 1928 Bom. 433=112 Ind. Cas. 221. In summarry trial, no formal charge need be framed whether the case is appealable or not. 7 Lah. 303=8 L. L J. 140=27 Cr. L. J. 639=27 P. L. R. 265=A. I. R. 1926 Lah. 301=94 Ind. Cas. 415. Notes of evidence by Presiding Magistrate of other material not part of the record cannot be called for by Appellate Court to test substance of evidence in judgment. 52 M. L. J. 32=25 M. L. W. 43=1927 M. W. N. 40=28 Cr. L. J. 138=A. I. R. 1927 Mad. 298=98 Ind. Cas. 346 ; see also 55 M. L. J. 117=29 Cr. L. J. 625=28 M. L. W. 394=A. I. R. 1921 Mad. 267=109 Ind. Cas. 897. Evidence for and against must be fairly stated. Finding must be justified by evidence. A. I. R. 1933 All. 31=34 Cr. L. J. 489=55 A. 91=1932 A. L. J. 1125. Where a case is hotly contested Magistrate should not try it summarily. A. I. R. 1931 Mad. 233=33 M. L. W. 311=32 Cr. L. J. 689=131 Ind. Cas. 174.

Language of record and judgment.

265. (1) Records made under section 263, and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorized to employ clerk.

(2) The Local Government may authorise any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

Notes.—The intention of this section is that by whomsover the judgment and record may have been written they shall be signed by all the members present. S. 367 of the Code does not afford any assistance in the construction of this section. 57 M. L. J. 763. If the record is prepared by a member of the Bench and not by the presiding officer, it is to be signed by each member of the Bench. But where a judgment of a Bench is prepared by the presiding officer it is sufficient if he alone signs it. 21 M. L. W. 498=1928 M. W. N. 785=55 M. L. J. 576=29 Cr. L. J. 973=52 M. 237=A. I. R. 1928 Mad. 1172. A judgment of a Bench of Magistrates has to be signed by the writing of the full names of the Magistrate and not the mere putting in of initials. A. I. R. 1930 Mad. 897=129 Ind. Cas. 633. All the Magistrate should sign. *Ibid.*

CHAPTER XXXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSIONS.

A—Preliminary.

"High Court" defined.

266. In this Chapter, except in sections 276 and 307, and in Chapter XVIII the expressions "High Court" means a High Court of Judicature established* under the Indian High Courts Act, 1861, † ‡ [or the Government of India Act, 191-], and includes § [the Chief (Courts of Oudh and Sind) ‖] [the ¶ "Court of the Judicial Commissioners of the Central Provinces,"** and †† ‡‡ such other Courts as the Governor-General in Council may, by notification in the Gazette of India, declare to be High Courts for the purposes of this Chapter §§ [and of Chapter XVIII].

Notes.—An appeal lies from the decision of a Judge of the Court of the Judicial Commissioner of Sind holding a sessions trial. For purposes of appeal, such trial is a sessions trial. 19 S. L. R. 308=26 Cr. L. J. 562=A. I. R. 1925 Sind. 249=85 Ind. Cas. 706 When the only offence with which the accused is charged was one under s. 396 which is not triable by a Jury, the accused should not have been tried by the Jury at all. 22 O. C. 130=20 Cr. L. J. 691=52 Ind. Cas. 659.

Trials before High Court to be by jury.

267. All trials under this Chapter before a High Court shall be by jury,

and notwithstanding anything herein contained, in all criminal cases transferred to a [High Court under this Code or under the Letters Patent of any High Court established under the Indian High Courts Act, 1861, ‖‖ ¶¶ or the Government of India Act, 1915,] the trial may, if the High Court so directs, be by jury.

A case can be transferred by the High Court from a Jury District to a non-jury district. 10 S. L. R. 154=18 Cr. L. J. 51=37 Ind. Cas. 35.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Notes.—As regards difference between trial by jury and trial by assessors, vide, 27 C. 295 ; 24 M. 523 ; 43A. 125. Where the Judge after the assessors have been discharged takes further evidence, the trial is vitiated. 19 A. L. J. 1=43 A. 125=22 Cr. L. J. 127=A. I. R. 1921 All. 284 ; see L. R. 1A. 34 Cr. Where the Sessions Judge tried a case with the aid of a number of assessors less than that fixed by law, there has been no trial at all. 20 N. L. R. 129=25 Cr. L. J. 459=77 Ind. Cas. 811.

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* The words "or to be established" were omitted by s. 2 and Schedule of the Amending Act, 1916 (XIII of 1916).

† *See* now the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61).

‡ These words and figures were inserted by s. 2 and Schedule of the Amending Act, 1916 (XIII of 1916).

§ These words were inserted by s. 12 of the Criminal Law Amendment Act, 1923 (XII of 1923.)

‖ Inserted by Act XXXII of 1925.

¶ Substituted by Act 34 of 1926.

** The words "the Chief Court of the Punjab" were repealed by the Repealing and Amending Act, 1909 (XVIII of 1919).

†† The words "the Chief Court of Lower Burma and" were repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1913 (XI of 1923).

‡‡ Certain words here omitted by Act XXXII of 1925.

§§ These words and figures were added by s. 76 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‖‖ *See* now the Government of India Act. 1915 (5 & 6 Geo, 5, c. 61).

¶¶ These words and figures were inserted by s. 2 and (Schedule of the Amending Act. 1916), (XIII of 1916).

In case of translation of the charge to the jury who did not know English by the public prosecutor, accused's Advocate is allowed to object then and there to any mistake in translation. 29 Cr. L. J. 638=47 C. L. J. 449=A. I. R. 1928 Cal. 40=109 Ind. Cas. 910. Under this section all trials before a Sessions Court must be either with a jury or with the aid of assessors. In the case of trial with the aid of assessors, it is incumbent on the Sessions Judge to make a record of the opinion of the assessors on all the charges ; failure of which will make the trial void in *toto*. 150 Ind. Cas. 509=35 Cr. L. J. 1066=11 O. W. N. 831=A. I. R. 1934 Oudh. 354. In case of joint trial of offences triable with the aid of jury and with assessors, if jury disbelieve evidence as to minor charges, the Judge so as offences triable with assessors can still consider entire evidence. A. I. R. 1934 All. 61.

Local Government may order trials before Court of Session to be by jury.

269. (1) The Local Government may, * by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction, revoke or alter such order.

(2) The Local Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made to him or of his own motion so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors for such of them as are not triable by jury.

Notes.—As regards the meaning of "class of offences" vide, 23 M. 632. Trial by jury is more advantageous to accused than one by assessors. A. I. R. 1931 Bom. 313=32 Cr. L. J. 1147=55 B. 576=33 Bom. L. R. 675=124 Ind. Cas. 347. Where offence of rioting is excluded from jury and an offence under s. 325 is triable by jury, Charges under ss. 325 and 149 I. P. Code is not triable by jury but by Judge with assessors. A. I. R. 1933 All. 128=55 A. 68=34 Cr. L. J. 441=1932 A. L. J. 1103=142 Ind. Cas. 800. Local Government only and not High Court can decide whether a Sessions Court shall try a case with jury or assessors. A. I. R. 1931 Bom. 313 (S. B.)=32 Cr. L. J. 1147=55 B. 576=33 Bom. L. R. 675. In a case where a person is tried by a jury and there is another charge tried by the Judge, the right of appeal from the judgment of the Sessions Judge is retained inspite of the words "same trial" in the section. 18 Cr. L. J. 346=88 Ind. Cas. 730. Alteration of charge from s. 436 to s. 436 read with s. 149 does not make s. 436 offence triable by jury. 5 Pat, 238=7 P. L. T. 178=27 Cr. L. J. 512=A. I. R. 1926 Pat. 253=93 Ind. Cas. 976. An accused charged under s. 412 (triable by jury) can be convicted under s. 411 (triable by aid of assessors) though not separately charged. 27 Bom. L. R. 1416=27 Cr. L. J. 650=94 Ind. Cas 602=A. I. R. 1926 Bom. 134. An accused was tried by a jury with an offence punishable under s. 395. Penal Code, and was acquitted. In the same trial he was tried for an offence under s. 396, Penal Code with the same jury sitting as assessors. The Judges summing up covered both the charges. Failure to write a separate judgment in a case where the procedure laid down by s. 269 (3) is followed, does not vitiate the trial. 4 Luck. 721 =31 Cr. L. J. 599=6 O. W. N. 1007=A. I. R. 1930 Oudh. 57=123 Ind. Cas. 851. The accused was tried under s. 235 for several offences, some triable by jury and others triable with the aid of assessors. On the charges triable by the jury, the accused were acquitted but for offences triable with the aid of assessors the opinion of all the jurors as assessors was not taken and consequently on appeal, the case was remanded for retrial. *Held*, that retrial should be only for offences triable with assessors. 27 Cr. L. J. 1100=8 P. L. T. 12=6 Pat. 208=A. I. R. 1927 Pat. 13=97 Ind. Cas. 364.

Trial before Court of Session, to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

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* The words "with the previous sanction of the Governor-General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXIII of 1920).

Notes.—The provisions contained in this section is merely directory. 1887 P. R. 35.

B.—Commencement of Proceedings.

Commencement of trial.

271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Notes.—This section only says that "the plea shall be recorded, and he may be convicted thereon." A judge is quite at liberty to continue the trial even after such plea. 23 M. 151=2 Weir 335. Where an accused makes a long rambling statement more or less admitting guilt, it is safer for the Judge to record a plea of not guilty and to proceed to try the case in the ordinary way, recording the evidence. 5 A. L. J. 157=7 Cr. L. J. 295. An accused should never be called on to plead in the alternative, but separately to each of the heads of a charge, Rat. Un. Cr. C. 327. If the accused pleads guilty on a charge, the plea should be recorded. Where no such plea appears on record, the conviction is bad, and must be set aside and a new trial ordered on the charge. 5 M. L. T. 216=4 Ind. Cas. 1126=11 Cr. L. J. 193. A plea of guilty should not be accepted in capital cases. 169 P. L. R. 1905=54 P. R. 1905=3 Cr. L. J. 80. After plea of guilty or after conviction, person ceases to be accused person. A. I. R. 1931 Cal. 341=35 C. W. N. 490=1931 Cr. C. 405. In case of joint trial of accused person, the practice of refusing to accept plea of guilty of one accused in order that his confession may be taken into consideration against his co-accused is illegal and an abuse of the process of the Court. *Ibid.* Section 271 though it directs that the plea of guilty shall be recorded, does not direct that the accused shall be convicted thereon, but only that he may be so convicted. It is left to the discretion of the presiding judge. A. I. R. 1928 Cal. 775=30 Cr. L. J. 508 ; see also 24 A. L. J. 318=27 Cr. L. J. 449=A. I. R. 1926 All. 318=93 Ind. Cas. 241 ; A. I. R. 1923 Nag. 251=21 Cr. L. J. 570=73 Ind. Cas. 266. It must be clear to the accused what offences he is charged with. Every addition or alteration to the charge must be read over and explained to the accused. 18 A. L. J. 442=21 Cr. L. J. 410=56 Ind. Cas. 58. It is in the discretion of the Judge to continue trial, even after plea of guilty. The Judge must record reasons for doing so but an omission to do so is not illegal. 20 O. C. 136=18 Cr. L. J. 742=40 Ind. Cas. 742. It is not the practice to accept plea of guilty where the natural sequence would be a sentence of death. 19 Bom. L. R. 356=18 Cr. L. J. 699=40 Ind. Cas. 699 ; see also A. I. R. 1934 Sind. 204. An accused can plead guilty even at a latter stage of the trial. A. I. R. 1934 Pat. 330=35 Cr. L. J. 1322. The expression "Court" means the Judge. After exercise of discretion under sub-section (2) no consideration can be adduced to show that discretion was not properly exercised. *Ibid.* The plea of guilty is a statement, which if accepted by the Court, amounts to a waiver on the part of the accused of trial. It is not a confession such as is dealt with in the Evidence Act. *Ibid.* The Court should consider carefully whether the accused fully understands the nature of the charge to which he pleads guilty. 12 Rang. 616.

Refusal to plead or claim to be tried.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case :

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Notes.—When the accused who is asked to plead, keeps silent, an enquiry should be made as to whether he is obstinately so or *ex visitatione die.* In either case, a plea of not guilty is not to be recorded. Rat. Un. Cr. C. 19. See also 7 Lah. 359=8 L. L. J. 251=27 P. L. R. 551=A. I. R. 1926 Lah. 406. The Court has discretion when the accused pleads "guilty" to accept the plea or not. Where the

accused pleads guilty, the Court need not necessarily record a conviction against him; his plea shall be recorded and in a suitable case the Court may leave the matter there and discharge him. A. I. R. 1931 Cal. 341=35 C. W. N. 49 =1931 Cr. C. 405. Same jury can try any number of accused one after another but not simultaneously. 32 Cr. L. J. 1233=54 Cr. L. J. 146. Appeal on acquittal should not be allowed unless lower Court's judgement is perverse. A. I. R. 1931 All. 439.

Entry on unsustainable charges.

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of Entry.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Notes.—Under this section, in trials before the High Court, when it appears to the Court, at any time before the commencement of the trial of a person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make an entry to that effect. 21 C. 97. This is a special power given to the High Court. It has no reference to illegal commitment. The reference to portions of a charge and to the charge or portion thereof being clearly unsustainable" is sufficient to show that the section is intended to provide a short and an effective way by which charges which have no merit, may be disposed. A. I. R. 1929. Cal. 756 (F. B.)=50 C. L. J. 408=34 C. W. N. 13. The High Court is empowered to quash commitment to Sessions Court. 34 Cr. L. J. 14=A. I. R. 1932 Sind. 157.

C.—Choosing a Jury.

Number of jury.

274. (1) In trials before the High Court the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session the jury shall consist of such uneven number, not being less than *[five] or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct:

† [Provided that, where any accused person is charge with an offence punishable with death, the jury shall consist of not less than seven persons and, if practicable, of nine persons.]

Notes.—The number fixed by the Local Government must be adhered to. 26A. 21. In a murder case no less than 18 jurors should be summoned where only 14 were summoned and and 11 were present and seven jurors were empanelled. *Held*, that there was not proper compliance with s. 274 or 326 Cr. Pro. Code and the trial was therefore vitiated. *Dwarka Malo* v. *Emperor*, 33 C. W. N. 692. but see 34. C. W. N. 296=51 C. L. J. 171=31. Cr. L. J. 536=A. I. R. 1930. Cal. 212. (F. B.) by which 33 C. W. N. 692 was reversed. An objection as to the constitution of the jury raised for the first time at the hearing of an appeal against acquittal cannot be entertained. 34 C. W. N. 106=A. I. R. 1930 Cal. 291=125 Ind. Cas. 733. A trial is vitiated where this section is violated. 34 C. W. N. 735=51 C. L. J. 578. Where requisite number of jurors has not been summoned for trial, the whole trial is not vitiated. A. I. R. 1931 Pat. 152=32 Cr. L. J. 797=10 Pat. 107. Objection by prosecution as to the number and mode of selection of jurors cannot be allowed at the end of trial. 33 Cr. L. J. 869=A. I. R. 1932 Cal. 750; A. I. R. 1934 Cal. 10.

Jury for trial of European and Indian British subjects and others.

‡[**275.** (1) In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so

* This word was substituted for the word "three by s. 13 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† This proviso was added by *ibid.*

‡ Section 275 was substituted by s. 14, *ibid.*

requires, consist, in the case of an European British subject, of persons who are Europeans or Americans and, in the case of an Indian British subject, of Indians.

(2) In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans.

Notes.—European non-British subject can be tried in India. A. I. R. 1933 Nag. 136=34 Cr. L. J. 505=29 N. L. R. 251=1933 Cr. C. 610. Claim to be tried as Indian British subject is different from claim to be tried by majority of Indian jury, though it can only be put forward by a British Indian subject. An Indian British subject to be dealt with as such, must put in his claim before the Magistrate before whom he is brought for enquiry or trial. 51 C. 980=29 C. W. N. 384=26 Cr. L. J. 385=84 Ind. Cas. 929. European must satisfy that he is a European British subject. A. I. R. 1934 Pat. 200. Where in a trial of a European British subject under chapter 33, only two out of five jurors were Europeans or Americans, the conviction and sentence should be set aside. A. I. R. 1934 Pat. 200=15 P. L. T. 82=13 Pat. 177. European non-British subject can be tried in India. A. I. R. 1933 Nag. 136=34 Cr. L. J. 505. Trial merely in accordance with s. 275 does not make it one under chapter 33. A. I. R. 1933 Rang. 67 (S. B.)

Jurors to be chosen by lot.

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct:

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Existing practice maintained;

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present;

persons not summoned when eligible;

thirdly, *[in a trial before any High Court in the town which is the usual place of sitting of such High Court]—

trials before special jurors.

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed; and

fourthly, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

Notes.—The Legislature has taken special precautions to render impossible any intentional selection of jurors to try a particular case. In the first place, the persons who are to be summoned to act upon the jury are drawn by lot; and then again, when they appear, the jurors who are to try a particular case are chosen in the same manner from amongst the person summoned. 7 C. W. N. 188. Jurors are judges of fact, and in the absence of a properly constituted jury conviction is illegal. A violation of the imperative procedure laid down in s. 276 is such as cannot be cured by the provisions of s. 537 of the Code. 9 Ind. Cas. 278=8 A. L. J. 182=12 Cr. L. J. 46=33 A. 385. Jurors should be empanelled as required by ss. 276 and 279 of the Cr. Pro. Code. The selection should be made from jurors attending in obedience to summons and chosen and the manner provided by s. 276 or if there is no such

* These words were substituted for the words "in the Presidency-towns" by s. 77 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

other juror present than any other person present in Court whose name is in the list of jurors or whom the Court considers a proper person to serve on the jury may be selected. 36 C. 835=33 C. W. N. 722. "Jurors" mean actual juror's and not potential jurors. A. I. R. 1933 All. 941=1933 A. L. J. 1446. Deficiency refers to number required to form quorum. 1933 A. L. J. 1446=A. I. R. 1933 All. 941. Stage at which deficiency if any, in number of jurors is to be ascertained is when their names are called out for empanelling jury and not by ascertainment before hand. 1933 A. L. J. 1446=A. I. R. 1933 All. 941. "Chosen" in proviso 2 simply means selected. 1933 A. L. J. 1446=A. I. R. 1933 All. 941. Section 299 is general section and ss. 276 and 279 must be read together. *Ibid.* Procedure for making up deficiency in jurors applies to special as well as common jurors. A. I. R. 1933 Cal. 638=60 C. 725=145 Ind. Cas. 889. Where jury is found to be short at the end of ballot, Judge can choose such persons from by-standers as are of considerable education and fit to be jurors. 34 C. W. N. 1154=32 Cr. L. J. 190=128 Ind. Cas. 811=A. I. R. 1931 Cal. 178 (F. B.). "Present" means present within Court's precincts for any reason. They need not be present in the Court room itself. 55 C. L. J. 132=36 C. W. N. 377=59 C. 1123=33 Cr. L. J. 694=A. I. R. 1932 Cal. 536. Proviso 2 applies also to special jurors. 54 C. L. J. 307=35 C. W. N. 711=58 C. 1272=33 Cr. L. J. 129. Where 18 jurors are summoned in a murder case and only eight jurors are present in Court and Judge held trial by choosing seven out of them, the trial is not vitiated. A. I. R. 1934 Cal. 10. A jury having once been discharged should not be recalled to do duty as jurors in the same case. 56 C. 1032=A. I. R. 1929 Cal. 343. The word "deficiency" and "number of jurors required" in the second proviso to s. 276 mean deficiency in the number of jurors required to make up the jury and not to make up a sufficient number for the purpose of selection by lot. 54 C. 1026=131 C. W. N. 711=26 Cr. L. J. 615=102 Ind. Cas. 903. Deficiency of jurors cannot be filled up from persons not present in Court. 48 C. L. J. 479=30 Cr. L. J. 136; see also 30 Cr. L. J. 120=113 Ind. Cas. 280; 47 C. L. J. 43=32 C. W. N. 221=29 Cr. L. J. 437; 31 C. W. N. 1102=28 Cr. L. J. 889. The object of ss. 276-279 is to secure an impartial trial. The central idea is to have a jury chosen by lot from the persons summoned to act as jurors. 45 C. L. J. 160=28 Cr. L. J. 889. The first part of s. 276 is mandatory and governs the remainder. 7 Pat. 61=8 P. L. T. 800=28 Cr. L. J. 881=104 Ind. Cas. 897. Where of the jurors that were summoned to act only five were present and they were chosen as jurors the procedure was not illegal. 54 C. 1026=31 C. W. N. 711=28 Cr. L. J. 615, but see 7 Pat. 50=28 Cr. L. J. 843=9 P. L. T. 57. Where one of the jury men is a person who is not entitled to sit on the jury, verdict of the jury courts for nothing. 46 C. L. J. 241=28 Cr. L. J. 874=A. I. R. 1927 Cal. 820. The provisions of ss. 326 and 276 are imperative and their violation will render the constitution of the Court illegal even if the accused commits. 54 C. 1026; but see 7 Pat. 61=8 P. L. T. 800=28 Cr. L. J. 881. Where the accused fails to object to the irregularities in election of jurors, the defect is cured by s. 537. 18 Cr. L. J. 15. The provision of choosing jurors by lot is applicable only when the persons summoned to act as jurors are present in sufficient numbers. 31 C. W. N. 711=28 Cr. L. J. 615; see also 29 C. W. N. 652=26 Cr. L. J. 819; but see 44 C. L. J. 541. Where jurors are not chosen by lot, the irregularity is curable. A. I. R. 1927 Nag. 117.

277. (1) As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if the objects to be tried by such juror.

Names of jurors to be called.

(2) Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection to jurors.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Objection without ground stated.

Notes.—Where instead of choosing jurors by lot as required by s. 276 and when without hearing and deciding objections as provided by ss, 276, 279, the judge proceeded at once to exempt some of the persons present merely on their own representation and tried the accused with the rest, the procedure is very irregular and cannot be cured by s. 537, 7 C. W. N. 188. Where junior pleader does not challenge jurors but says that he is only a junior, constitution of jury cannot be assailed afterwards. 48 C. L. J. 307=30 Cr. L. J. 494.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed—

Grounds of objection.

(*a*) some presumed or actual partiality in the juror ;

(*b*) some personal grounds, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty one or above the age of sixty years ;

(*c*) his having, by habit or religious vows relinquished all care of worldly affairs ;

(*d*) his holding any office in or under the Court ;

(*e*) his executing any duties of police or being entrusted with police duties ;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury ;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted the language in which it is interpreted ;

(*h*) any other circumstances which, in the opinion of the Court, render him improper as a juror.

Notes.—Where the question is whether the juror is competent to understand proceedings, defect can be proved by evidence of juror himself. 38 M. L. W. 646=34 Cr. L. J. 843=1933 M. W. N. 1025=65 M. L. J. 513=1933 A. L. J. 893=A. I. R. 1933 P. C. 208 (P C) (over ruling A. I. R. 1932 Pat. 302). Provided there is lottery, the mere fact that jury was chosen from amongst those able to read English to which the accused's counsel consented where identity of handwriting was fact in issue does not vitiate constitution of jury. 51 C. L. J. 352=A. I. R. 1930 Cal. 437. Objection to juror on the ground of litigation pending between accused's master and juror's principal should be allowed on ground of presumed partiality. 7 Pat. 50=28 Cr. L. J. 843=9 P. L. T. 57=A. I. R. 1928 Pat. 31.

279. (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Decision of objections.

(2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury.

Supply of place of juror against whom objection allowed.

Provided that no objection to such juror or other person is taken under section 278 and allowed.

Sub-section (1)—29 C. W. N. 652.

Sub section (2)—As regards its scope, Vide 31 C. W. N. 1102.

280. (1) When the jurors have been chosen, they shall appoint one of their number to be foreman.

Foreman of jury.

(2) The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

281. When the foreman has been appointed, the jurous shall be sworn under the Indian Oaths Act, 1873.

Procedure when juror ceases to attend, etc.

282. (1) If, in the course of a trial by jury at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

(2) In each of such cases the trial shall commence anew.

Notes.—One of the jurors was discharged and another juror was appointed in his place. The Judge did not commence the trial afresh, but called the witnesses who had been examined, read out their statements to them and they admitted those statements. Other witnesses were then examined: *held*, that the trial was defective and it could not be validated by reading over the depositions of witnesses to them and getting their admissions. 12 A. L. J. 802=36A. 481. Court is competent to discharge a jury after verdict and order a new trial. A. I. R. 1934 Cal. 428=59 C. L. J. 516=38 C. W. N. 501. Judge has inherent power to discharge jury on suspicion of misconduct when satisfied that reasonable grounds exist for exercise of his discretion. 33 C. W. N. 425=56 C. 1032; see also 32 C. W. N. 945=56 C. 150=30 Cr. L. J. 435=A. I. R. 1929 Cal. 57=115 Ind. Cas. 258. Suspicion in the mind of the public prosecutor is not good or valid ground for discharging jury. Something more definite and tangible is necessary. 33 C. W. N. 425=56 C. 1032=A. I. R. 1929 Cal. 343. Section 282 gives discretion either to postpone trial or discharge jury. If a juror is going to attend in a very short time it is wrong exercise of discretion to discharge jury. 31 C. W. N. 144=28 Cr. L. J. 141=A. I. R. 1927 Cal. 199=99 Ind. Cas. 349.

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

Notes.—Though the Cr. Pro. Code has not specifically conferred any right on the judge to discharge a jury on the ground of misconduct every judge has an inherent power to discharge a jury when he is satisfied by such enquiry as in the circumstances he can adopt that reasonable grounds exist for exercising the discretion vested in him to discharge a jury on suspicion. *Abdur Rashid* v. *Emperor*, 56 C. 1032=33 C. W. N. 425=A. I. R. 1920 Cal. 343.

D.—Choosing Assessors.

Assessors how chosen.

284. When the trial is to be held with the aid of assessors, *not less than three and, if practicable, four shall be chosen from the persons summoned to act as such.

Notes.—This section refers, not to the illegality of a sentence, but to the invalidity of a conviction by reason of want of jurisdiction in the court to try the offence. 4 A. 366=A. W. N. 1882, 48. When a criminal trial is to be held with the aid of assessors only such person can be chosen by the Judge to act as assessors as have been summoned as such for the purposes of that trial. When one of the assessors only was an a assessor summoned for any particular case, ths trial of the accused was illegal. 11 A. L. J. 930=14 Cr. L. J. 654=21 Ind. Cas. 894. Trial commencing after coming into force of new Act is illegal by non-compliance with s 284. 11 O. L. J. 245=A. I. R. 1924 Oudh. 417. Trial with three assessors though no reasons given for not having four, is legal. 7 P. L. T. 13=26 Cr. L. J. 713=A. I. R. 1925 Pat. 381=86 Ind. Cas. 153. Trial with less than minimum assessors is illegal and s. 537 does not cure defect. 27 O. C. 213=26 Cr. L. J. 359=A. I. R. 1925 Oudh. 110=84 Ind. Cas. 711. A trial with only one qualified assessor and not with two qualified assessors, is utterly abortive and contrary to law; in such a case s. 285 has no application. 3 P. L. J. 141=5 P. L. W. 16=19 Cr. L. J. 363=44 Ind. Cas. 587. Assessors selected should be above suspicion; relation of landlord and tenant, or of master and servant creates incapacity in

* These words were substituted for the words "two or more shall be chosen, as the Judge thinks fit" by s. 18 of the Criminal Law Amendment Act, 1923 (XII of 1923).

person to sit as Judge or as assessors. A. I. R. 1923 Pat. 116=60 Ind. Cas. 602=3 Pat. L. T. 32.

*[284A. (1) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European or Indian British subject, if the European or Indian British subject accused, or, where there are several European British subjects accused or several Indian British subjects accused, all of them jointly, before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

Assessors for trial of European and Indian British subjects and others.

(2) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, all the assessors shall, if practicable and if such European or American before the first assessor is chosen so requires, be persons who are Europeans or Americans.]

285. (1) If in the course of a trial with the aid of assessors, at any time before the finding, any assessor is from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

Procedure when assessor is unable to attend.

(2) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of the fresh assessors.

Notes.—Where the incompetency of an assessor is discovered at the close of the trial, there should be a new trial. 2 Weir 340. Where the Sessions Judge allowed one of the assessors to absent himself for one of the days during which the trial proceeded, and to return on the following day, *held*, that the procedure was contrary to the intention of ss. 285, 295, Cr. Pro. Code. The Judge ought either not to have given leave or should have adjourned till a day when both the assessors could attend. Rat. Un. Cr. C. 695; see also 8 C. P. L. R. Cr. 9; but see 24 M. 523=2 Weir 340. Simultaneous hearing of two cases by one set of assessors, render trial invalid. 11 L. B. R. 73=23 Cr. L. J. 49=64 Ind. Cas. 833.

† [*DD—Joint trials.*]

†[285A. In any case in which an European or American is acccused jointly with a person not being a European or American, or an Indian British subject is accused jointly with a person not being an Indian, and such European, Indian British subject or American is committed for trial before a court of session, he and such other person may be tried together, but if he requires to be tried in accordance with the provision of section 275 or section 284 A and is so tried, and the other person accused requires to be tried separately, such other person shall be tried separately in accordance with the provisions of this Chapter].

Trial of European or Indian British subject or European or American jointly accused with others.

E.—Trial to Close of Cases for Prosecutions and Defence.

286. (1) When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

* Section 284A. was inserted by s. 16, *ibid*,

† This heading and section 285A were inserted by s. 17 of the Criminal Law Amendment Act, 1923 (XII of 1923).

Examination of witnesses.

(2) The prosecutor shall then examine his witnesses.

Notes.—It is extremely objectionable in a Sessions trial, to read to the prosecution witnesses their depositions before the committing Magistrate and to ask if what was there recorded was true or not. 2 Weir, 360 ; see also 9 M. 83. In a capital case it is undoubted duty of Public Prosecutor to place before trial Court, testimony of all available witnesses. Unless shown by facts and circumstances in the case, witnesses would not tell the truth, Court should have whole of the material evidence and of all eye witnesses. 10 P. L. J. 177=8 Pat. 625=30 Cr. L. J. 1136=A. I. R. 1929 Pat. 343=120 Ind. Cas. 37 ; see also 27 C. W. N. 820=25 Cr. L. J. 190=A. I. R. 1923 Cal. 717 =76 Ind. Cas. 430. Opening for the prosecution ought always to be confined to matters which are necessary to establish the jury to follow the evidence, when it is brought before them. At this stage no doubtful question of admissibility should be either raised or decided. Prosecution in opening the case to jury, can only state all that it is proposed or intended to prove in the case, so that the jury may see any discrepancy between the opening statement of the counsel and the evidence afterwards adduced. 50 C. L. J. 106=33 C. W. N. 1121=30 Cr. L. J. 993=A. I. R. 1929 Cal. 617.

Examination of accused before Magistrate to be evidence.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.*

Notes.—The phrase "committing Magistrate" in s. 287 and s. 288 is merely a compendious way of referring to the Magistrate or Magistrates, who held the preliminary inquiry on which the commitment was made. 3 M. L. T. 25=7 Cr. L. J. 29=31 M. 40. Previous statement of accused can be read as part of the prosecution case only so far as such statement refers to offence tried and not previous conviction. 22 Cr. L. J. 219=5 Pat. L. J. 706=60 Ind. Cas. 331. Whether statement of a confessional character made before a committing Magistrate is relevant under s. 287 or irrelevant under s. 24, Evidence Act, is a matter not free from difficulty. 40 B. 220=17 Bom. L. R. 1059=17 Cr. L. J. 133=33 Ind. Cas. 309. In a capital case it is the duty of the crown to place before the Court all materials irrespective as to whether they help the accused or go against him. This rule is not merely technical but found on common sense and humanity. 8 Pat. 28=10 P. L. T. 549=30 Cr. L. J. 675=A. I. R. 1929 Pat. 275.

Evidence given at preliminary inquiry—admissible.

288. The evidence of a witness † duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case ‡ for all purposes subject to the provisions of the Indian Evidence Act, 1872.

Notes.—This section does not extend to Courts of Magistrate nor to depositions not taken in the presence of the accused. It is a section requiring very careful use by Courts of Sessions, and its real scope is explained in 11 B. H. C. 281. Such statements may be recorded after cross-examination upon them of the witnesses who made them which would reveal discrepancies, or used under s. 145. Evidence Act, as a basis for cross-examination. Rat. Un. Cr. 728=Cr. Rg. 56 of 1894. This section does not limit the production of the evidence given before the committing Magistrate only for the purpose of contradicting the witness at the Sessions trial. 24 M. 414=2. Weir. 377. This section was never intended to be used so as to enable a Court trying a case to take a witness's deposition bodily from the Magistrate's record and treat it as evidence before itself. 21. A. 111=A. W. N. 1898, 196. Under s. 288 Cr. Pro. Code, the whole of the previous statement is to be treated as evidence and not only portions of it and therefore it is essential to put the whole of it to the witness and then after giving notice to the presecution and the defence it could be brought on record under s. 288. *Mussa* v. *Emperor*, 114 Ind. Cas. 609=A. I. R.

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* *See* Indian Evidence Act, 1872 (I of 1872), s. 80.

† These words and figures were substituted for the words "duly taken in the presence of the accused before the committing Magistrate" by s. 78 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words and figures were added by *ibid.*

1929 Nag. 233. Evidence given before Committing Magistrate is admissible in Sessions Court though retracted. 1929 Cr. C. 185=57 M. L. J. 681=A. I. R. 1929 Mad. 837=1929 M. W. N. 901. Under s. 288 the whole of the previous statement of witness should be filed. 27 Cr. L. J. 18=A. I. R. 1925 Mad. 879=91 Ind. Cas. 50. The deposition of witness before Committing Magistrate if admitted under s. 288 is substantive evidence. It cannot be put in if irrelevant under Evidence Act for any other reason. 42 C. L. J. 111=26 Cr. L. J. 1553=90 Ind. Cas. 433=A. I. R. 1926 Cal. 105 ; see also 106 Ind. Cas. 585=9 A. I. Cr. R. 301. "Subject to the provisions of the "Evidence Act" means so far as the previous evidence is evidence under the Evidence Act and not so far as it is admissible under the Act. 27 Cr. L. J. 594=94 Ind. Cas. 258. Statements before Committing Magistrate when admissible as evidence can be admitted for all purposes and not only for corroboration or contradiction. 49 A. 251=25 A. L. J. 12=27 Cr. L. J. 1365=A. I. R. 1927 All. 479 =98 Ind. Cas. 485 ; see also 6 Lah. 17=26 P. L. R. 304=27 Cr. L. J. 438=A. I. R. 1925 Lah. 399=93 Ind. Cas. 230 ; 53 C. 181=42 C. L. J. 205=26 Cr. L. J. 1577= A. I. R. 1926 Cal. 235 ; A. I. R. 1934 Oudh. 922 ; A. I. R. 1934 Lah. 743=35 Cr. L. J. 1005 ; 27 Bom. L. R. 113=26 Cr. L. J. 705=A. I. R. 1925 Bom. 266 ; 43 M. L. J. 22=24 Cr. L. J. 417=72 Ind. Cas. 529. "Subject to the provision etc." is meant to prevent irrelevant evidence. 19 S. L. R. 71=26 Cr. L. J. 1083=A. I. R. 1925 Sind. 289=88 Ind. Cas. 7. Section 288 does not prescribe the value of weight to be attached to such evidence when it is admitted by the Court of Sessions at the trial of the case. A. I. R. 1934 Oudh. 182=11 O. W. N. 508. The statement made by a person before a Committing Magistrate can be used by the Sessions Judge only when the person is examined before him. When he is incapable of giving evidence his statement may be used by him under s. 33 of the Evidence Act. A. I. R. 1934 Lah. 212=35 P. L. R. 75=35 Cr. L. J. 349 ; see also A. I. R. 1930 Pat. 338=129 Ind. Cas. 666 ; A. I. R. 1933 Rang. 57=34 Cr. L. J. 286 ; 29 Cr. L. J. 1047=A. I. R. 1929 Lah. 111=112 Ind. Cas. 471 ; 6 Lah. 199=26 P. L. R. 361=26 Cr. L. J. 1245= 88 Ind. Cas. 861 ; 16 N. L. R. 30=21 Cr. L. J. 486=56 Ind. Cas. 582 ; 3 Pat. L. T. 398=23 Cr. L. J. 218=65 Ind. Cas. 1002 ; 24 Cr. L. J. 641=2 Pat. 517 ; 25 Cr. L. J. 1201=82 Ind. Cas. 129. Conviction based solely on evidence given before Committing Magistrate retracted at trial is unsustainable. 17 P. R. Cr. 1919=20 Cr. L. J. 792=53 Ind. Cas. 686 ; see also 40 Ind. Cas. 703=18 Cr. L. J. 703=37 P. R. 1917 Cr. ; 84 Ind. Cas. 334=26 Cr. L. J. 270 ; 47 A. 276=22 A. L. J. 1075=85 Ind. Cas. 130. Deposition before Committing Magistrate can be used as substantive evidence if justice requires it, *e. g.* where there is conspiracy to suppress one part of evidence. Corroboration is necessary where both depositions are entirely conflicting and equally balanced. 47 M. 232=25 Cr. L. J. 715=81 Ind. Cas. 203 ; see also 3 Pat. 781=6 Pat. L. T. 53=26 Cr. L. J. 270=84 Ind. Cas. 334 ; 46 B. 97=23 Bom. L. R. 820=22 Cr. L. J. 636=68 Ind. Cas. 332 ; A. I. R. 1930 Pat. 545 ; but see A. I. R. 1930 All. 746=1930 A. L. J. 1105=128 Ind. Cas. 593. Statements of witnesses recorded in the presence of accused who did not then cross-examine them are duly recorded and can be treated as evidence at the trial. 28 Cr. L. J. 33=A. I. R. 1926 Lah. 590 ; but see 57 C. 940=A. I. R. 1930 Cal. 706 ; 68 Ind. Cas. 113=23 Cr. L. J. 513.

Procedure after examination of witnesses for prosecution.

289. (1) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(2) If he says that he does not, the prosecutor may sum up his case ; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(3) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

(4) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce

evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Scope—Where the Court considers there is no evidence to lay before the assessors, the usual procedure is for the Court itself to record a finding, under this section to that effect. But the section applies only where there is no evidence and would not cover a case where the Court considers that the charge was in itself improper. 12 A. 551= A. W. N. 1890, 173. The words "no evidence" in this section 289, Criminal Procedure Code must not be read as meaning "no satisfactory, trustworthy, or conclusive evidence". If there is evidence on which the jury can judge and not merely conjecture, the trial must go on to its close ; in trials by jury, the jury and, in other trials, the Judge, after considering the opinion of the assessors, have to record a finding on the facts. 16 B. 414. s. 289 has to be read with s. 342 A. I. R. 1933 All. 690=1933 A. L. J. 799=34 Cr. L. J. 967. Omission to call an accused to enter on his defence is only an irregularity when there is no prejudice. 19 Cr. L. J. 209=43 Ind. Cas. 785. It is only in those cases which fall under s. 189 (2) that the Judge can direct the jury to return a verdict of not guilty. Where there is some evidence in the case, it is for the jury to say whether or how far the evidence is to be belived and it is not correct to say that the matter can be left to the jury only if the evidence relating to it is satisfactory, trustworthy or conclusive. 10 Pat. 140 ; see also 27 Cr. L. J. 398=A. I. R. 1926 Cal. 728 ; 10 P. L. T. 101=A. I. R. 1929 Pat. 121=30 Cr. L. J. 519 ; 8 P. L. T. 691=28 Cr. L. J. 692=7 Pat. 15 ; 26 Cr. L. J. 111=A. I. R. 1925 Cal. 1056=86 Ind. Cas. 463. Where evidence is insufficient, failure to mention it to jury amounts to misdirection. 32 C. L. J. 8=22 Cr. L. J. 60=59 Ind. Cas. 204.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

Defence.

Notes.—If the defence does not produce any witness no adverse inference is to be drawn. 10 C. 140 ; 21 C. W. N. 1152 ; see also 10 C. 970 ; Rat. Un. Cr. C. 686. An accused cannot cross-examine his own witnesses. 20 A. 155. But he can cross-examine the witnesses of another co-accused if the latter's case is adverse. 21 C. 401. Where accused is more than one, counsel should be heard after conclusion of whole defence evidence. A. I. R. 1932 Lah. 103=33 Cr. L. J. 97=33 P. L. R. 891.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance ; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Right of accused as to examination and summoning of witnesses.

Notes.—All the witnesses named by an accused must be summoned. 47 C. 758 ; see also 12 W. R. 22 ; 2 W. R. 6 ; 3 W. R. 36 ; 15 W. R. 34. Extra witnesses may be summoned by the Judge. 8 A. 668 ; 7 Lah. L. J. 428 ; A. I. R. 1934 All. 372. There can be no refusal either to secure or to examine witness, already mentioned before committing Magistrate. A. I. R. 1931 Cal. 6=34 C. W. N. 1041=1931 Cr. C. 38 ; see also 23 A. L. J. 73=26 Cr. L. J. 703=A. I. R. 1925 All. 318=86 Ind. Cas. 79. Refusal to adjourn to summon a witness not mentioned in the list given is quite legal. 26 P. L. R. 767=27 Cr. L. J. 134=91 Ind. Cas. 806. Re-examination of a discharged witness may be allowed. 24 Cr. L. J. 518=73 Ind. Cas. 54. Prosecution is not bound to call or tender or cross-examine a court witness in the former trial, whom he believes to be false. 49 C. 277=23 Cr. L. J. 742=69 Ind. Cas. 630=A. I. R. 1922 Cal. 461. New witnesses for defence cannot be summoned as of right, but they should be summoned if there is time before conclusion of trial. A. I. R. 1933 Pat. 559. Sessions Judge has no right to refuse examining witness mentioned in list of witnesses under s. 211 on ground of adjournment causing inconvenience. 34 C. W. N. 1014=58 C. 412=A. I. R. 1931 Cal. 6.

Prosecutor's right of reply.

[*292. The prosecutor shall be entitled to reply—

(*a*) if the accused or any of the accused adduces any oral evidence ; or

(*b*) with the permission of the Court, on a point of law ; or

(*c*) with the permission of the Court, when any document which does not need to be proved is produced by any accused person after he enters on his defence :

Provided that, in the case referred to in clause (*c*) the reply shall, unless the Court otherwise permits, be restricted to comment on the document so produced.]

Notes.—Prosecutor has a right of reply when evidence is actually adduced. 10 C. 140 ; 30 B. 421 ; 9 Cr. L. J. 284. Tendering of documentary evidence after the close of the prosecution case is adducing evidence. 43. C. 426. But it is not so, where a document is put in cross-examination. 14 C. 245 ; 17 C. 930 ; 10 C. 1024 ; 43 C. 426 ; 15 Cr. L. J. 241 ; 14 A. 212 ; 30 B. 421 ; 16 A. 88. Ss. 289 and 292 are to be read together and the right of reply arises only if the accused gives evidence after the prosecution closed its case. 43 C. 426=20 C. W. N. 976=17 Cr. L. J. 428=35 Ind. Cas. 983. Erroneous decision as to right of reply is not such irregularity as to vitiate whole proceedings and order retrial. 13 Lah. 172=32 P. L. R. 435=A. I. R. 1931 Lah. 534.

View by jury or assessors.

293. (1) Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

Notes.—Examinations of witnesses on the spot is illegal. 5 W. R. 59. View of place must take place before trial is complete and on notice to all. 9 Bur L. T. 133 =17 Cr. L. J. 500=36 Ind. Cas. 468. The provisions of this section is imperative. A. I. R. 1934 Oudh. 499=35 Cr. L. J. 1496.

When juror or assessor may be examined.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Notes.—When defence witnesses are absent, though summoned, the Court should adjourn the case. 4 Bom. L. R. 939 ; see also 15 W. R. 34 ; 18 W. R. 20.

Locking up jury.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day ; and subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

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*Section 292 was substituted by s. 79 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Notes.—Where juror gives out his opinion outside court before conclusion of trial, retrial should be ordered. 33 C. L. J. 122=25 C. W. N. 240=22 Cr. L. J. 510.

F—Conclusion of Trial in Cases tried by Jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Charge to jury.

Charge to jury.—A clear and complete statement of facts should appear in the charge to the jury. 2 Weir. 285. Under this section the Judge is bound to sum up the evidence for the defence as well as for the prosecution, this being essential for a proper charge. Rat. Un. Cr. C. 720. It is highly important that in a charge of murder the judge should discuss evidence fully. 19 B. 741. Under this section the judge is bound to lay down the law by which the jury are to be guided. 6 C. W. N. 292=29 C. 379. So long as a Judge makes it clear that the jury are at liberty to regerd or disregard his opinion as they please, he ought to tell them his opinion; but a charge which avoids any expression of opinion is a colourless and unhelpful direction. To avoid misdirection or non-direction, it is the duty of the Judge to give the jury substantial help and guidance by properly shifting and weighing the evidence and marshalling the facts under distinct and separate heads. A. I. R. 1929 Cal. 742; see also 33 C. W. N. 1121=50 C. L. J. 106' Reference to the addmissible evidence renders the charge bad. 52 C. L. J. 423=A. I. R. 1931 Cal. 65. Judge need not explain law on a point which does not arise, upon materials placed by prosecution and defence. A. I. R. 1934 Cal. 142. The omission by the Judge in his charge to the jury to lay down the law by which the jury were to be guided as required by s. 297 is something more than a misdirection which vitiates the trial and is not curable by s. 537. 35 Cr. L. J. 507=11 O. W. N. 20=147 Ind. Cas. 976. The opinion of the Sessions Judge on points of law is conclusive but on points of fact he can only express his opinion and must leave the decision to jury. A. I. R. 1934 All. 1032=1934 A. L. J. 1160=1934 Cr. C. 1339. Judge must guide jury and direct attention of jury to essential points. A. I. R. 1934 Cal. 169. Judge need not explain law on a point which does not arise upon materials placed by prosecution and defence. A. I. K. 1934 Cal. 142. Judge need not repeal to jury every argument of defence. A. I. R. 1934 Cal. 124. What is actually said about law must be set out in charge. A. I. R. 1934 Cal. 77. Where charges are made by woman against man in cases arising out of sexual matters, Judge should warn jury that only in exceptional cases should uncorroborated testimony of woman be accepted. A. I. R. 1934 Cal. 7. Where there is change in complainants' case from time to time and there is improbabilities in his case, the facts must be brought to the notice of jury. A. I. R. 1934 Nag. 94=30 N. L. R. 262=35 Cr. L. J. 957. It is the duty of the Judge to inform the jury that an accomplice such as receiver of stolen property is a tainted witness and as such great caution should be exercised in receiving his evidence. A. I. R. 1934 Mad. 721=67 M. L. J. 693. Charge to jury should aim at impartial presentation of essentials of case. A. I. R. 1933 Pat. 481=34 Cr. L. J. 828=144 Ind. Cas. 872. Charge to jury should set out clearly all essentials but should not unnecessarily long. A. I. R. 1933 Pat. 496. Court should give indication of its opinion to jury, when convinced about insufficiency of evidence for conviction, telling jury that it might disregard his opinion and bring verdict of guilty. 54 C. L. J. 244=33 Cr. L. J. 85=A. I. R. 1931 Cal. 752; A. I. R. 1933 Cal. 190=34 Cr. L. J. 430. Judge is entitled not to express his view of facts to jury on disputable point. 33 Cr. L. J. 79=58 C. 1228=35 C. W. N. 573=A. I. R. 1931 Cal. 757 (S. B.) A judge should not lecture on abstract principles of law. His duty is to deal with specific pieces of evidence and tell the jury whether they should be considered or not and then to apply the law to concrete instances. A. I. R. 1933 Cal. 722=37 C. W. N. 1131=146 Ind. Cas. 237. Usual way of charging jury is to ask them to start with presumption of innocence of accused. A. I. R. 1931 Cal. 796 (S. B.)= 33 Cr. L. J. 196=58 C. 1095. Charge to jury in dogmatic and assertive fashion does not vitiate the trial, provided jury was made aware of there duty as to questions of facts and there right to disregard judge's remarks. 34 C. W. N. 1154=32 Cr. L. J. 190=A. I. R. 1931 Cal. 178 (F. B.). Where case depends on circumstancial evidence, failure to explain principles to be followed and to examine surrounding circumstances amount to misdirection. 35 C. W. N. 169=52 C. L. J. 417=32

Cr. L. J. 418=A. I. R. 1931 Cal. 11. Charge should contain the defence if there is evidence, even when it is not urged by defence pleader. 37 C. W. N. 261=A. I. R. 1933 Cal. 656. In a charge under s. 467 I. P. Code. conduct of complainant in delaying taking steps for recovery should be brought to notice of jury. 34 C. W. N. 954=129 Ind. Cas. 807. Where dying declaration is the very foundation for prosecution case, charge should caution jury as to wright and efficiency. A. I. R. 1230 Cal. 754=122 Ind. Cas. 364. Where accused is unrepresented, charge should bring to the notice of the jury all the points and arguments in favour of the accused. A. I. R. 1930 Sind. 308=128 Ind. Cas. 673. A charge if not written before, it must be written soon after the delivery. 49 C. L. J. 197=30 Cr. L. J. 580=56 C. 840=A. I. R. 1929 Cal. 182. Exposition of law must be exhaustive and correct. A. I. R. 1929 Cal. 269=116 Ind. Cas. 161. In a proper case benefit of doubt should be asked to be given to the accused. 1929 A. L. J. 126= A. I. R. 1930 All. 24=120 Ind. Cas. 264 A charge if not written before, it must be written soon after its delivery. 30 Cr. L. J, 1146=1930 A. L. J. 486=120 Ind. Cas. 114 ; see also 28 C. W. N. 170=28 C. W. N. 251. If the accused is represented, charge need not elaborate. A. I. R. 1930 Sind. 308=128 Ind. Cas. 673. Only the questions of law which do arise have to be explained. 45 C. L. J. 131= 31 C. W. N. 314=28 Cr. L. J. 278=A. I. R. 1927 Cal. 460=100 Ind. Cas. 358. In case of theft the word "dishonestly" must be explained. 28 M. L. W. 415=27 Cr. L. J. 1191=A. I. R. 1926 Mad. 1121=97 Ind. Cas. 958. Full statement of law and fact as to make a Court of appeal understand it is necessary. 31 C. W. N. 387=28 Cr. L. J. 478=A. I. R. 1927 Cal. 936=131 Ind. Cas. 606. Judge cannot say that the law has already been explained by the Public. Prosecutor. A. I. R. 1926 Nag. 53=88 Ind. Cas. 178. Mere record of the heads of charge with a reference to certain sections of the Penal Code is not sufficient. 21 Cr. L. J. 694=57 Ind. Cas. 934 ; see also 9 Pat. 148=A. I. R. 1930 Pat. 243=125=Ind. Cas. 131. Where evidence is equally balanced, direction as to benefit of doubt is quite necessary. 30 Cr. L. J. 1146=1930 A. L. J. 486=A. I. R. 1930 All. 28=120 Ind. Cas. 114. The charge should be accurate. 33 C. W. N. 55=48 C. L. J. 473=A. I. R. 1128 Cal. 769. It is enough if a judge places before jury in coherent manner salient points arising on evidence adduced 33 C. W. N. 918=A. I. R. 1929 Cal. 765. A charge which avoids any expression of opinion amounts to a most unhelpful direction. 57 C. 740 ; see also 43 C. L. J. 488=27 Cr. L. J, 1038=A. I. R. 1926 Cal. 996. It is sufficient if a Judge deals with the more important points in favour of the accused and does not unduly press on the jury his own view on the question of fact. 25 Cr. L. J. 761=A. I. R. 1025 Sind. 116=81 Ind. Cas. 249. Heads of charge should be understandable by the Appellate Court. 26 C. W. N. 996=71 Ind. Cas. 56. It is sufficient if the Judge deals with the more important points in favour of accused and does not unduly press on the jury his own views on questions of fact. 49 C. 573=35 C. L. J. 279= 23 Cr. L. J. 657. Elements of offence should be very carefully explained.. 9 Pat. 606=A. I. R. 1930 Pat. 513=128 Ind. Cas. 121. The charge should state the salient point in the case, the evidence adduced in it and the points for determination to the jury with reference to the law. 34 C. W. N. 365=A. I. R. 1930 Cal. 434= 128 Ind. Cas. 254. As regards the duty of a judge in case of discrepancy in the evidence of a child, vide. 34 C. W. N. 1154=A. I. R. 1931 Cal. 178=128 Ind. Cas. 811. If the judge does not know the vernacular his charge can be interpreted to jury. 25 A. L. J. 1077=28 Cr. L. J. 950=A. I. R. 1927 All. 721=105 Ind. Cas. 662. A charge is alright where law is correctly stated and case for or against the accused was explained. 4 O. W. N. 901=28 Cr. L. J. 937=A. I. R. 1927 Oudh. 519=105 Ind. Cas. 457. In case of failure to call important witneses, it must be specifically pointed to the jury. 7 Pat. 50=28 Cr. L. J. 843=9 P. L. T. 57= A. I. R. 1928 Pat. 31=104 Ind. Cas. 459. Reference to police diaries in the charge is injudicious. A. I. R. 1930 Pat. 513=128 Ind. Cas. 121. Opinion on facts can be given in charge. 126 Ind. Cas. 775. Judge can re-charge a jury on specific points if the verdict is unintelligible. A. I. R. 1930 Cal. 320=125 Ind. Cas. 97. Where the charge is for dacoity the Judge may mention in the charge the result of acquittal of one out of five. 53 M. L. J. 732=A. I. R. 1928 Mad. 144. Reading of passages from judgment is not improper. 28 Cr. L. J. 213=A. I. R. 1927 Rang. 68=99 Ind. Cas. 1013. A suspicion as to a person being an accomplice must be put to the jury and they should be asked to find on the point.. 28 Cr. L. J. 278=100 Ind. Cas. 358. Specific direction as to the benefit of doubt is necessary. 28 Cr. L. J. 177=A. I, C. 1927 Nag. 117=99 Ind. Cas. 849. Though exceptions are not

pleaded, the jury must be given directions regarding it. 30 C. W. N. 912=98 Ind. Cas. 714. Charge must indicate that the law has been perfectly explained to the jury. 53 C. 372=27 Cr. L. J. 266=92 Ind. Cas 442. Documents not proved need not be placed before the jury. *Ibid.* It is enough if charge as a whole fairly explained the cases. Statement not amounting to a confession should be specifically directed to jury's notice as not relevant as regards co-accused. 25 Cr. L. J. 761= A. I. R. 1925 Sind. 116=81 Ind. Cas. 249. Charge as a whole must set out the case of both sides fairly. 34 Cr. L. J. 512=23 Cr. L. J. 342=66 Ind. Cas. 998. The judge must be careful that he does not insert the functions of the advocate, and that the evidence is presented to the jury in a dispassionate manner. 25 C. W. N. 682=23 Cr. L. J. 244=66 Ind. Cas. 180. Where a charge to jury concluded this, "You will have to consider whether the absurdities, contradictions, and discrepancies in the prosecution evidence are such as would arise naturally or are due to the fact that, that story is a fabrication" held that the charge was not proper one. 25 C. W. N. 609=33 C. L. J. 503. Charge should help the jury to estimate evidence but suggestions that witnesses are screening the offender is improper. 53 C. 181=42 C. L. J. 205=26 Cr. L. J. 1021. In a charge for unlawful assembly, common object and charges in it if any should be pointed out. 25 Cr. L. J. 1386=A. I. R. 1925 Cal. 494=83 Ind. Cas. 346; see also 97 Ind. Cas. 748. For setting aside verdict error in charge should produce erroneous verdict. A. I. R. 1935 All. 103. Mere omission to mention in express terms that burden of proof lies on prosecution, does not amount to misdirection, where whole trend of charge shows that Judge has warned jury about it. A. I. R. 1933 All. 103.

Summing up.—The summing up must give a fair summary of evidence on both sides. 24 A. L. J. 506=27 Cr. L. J. 785=95 Ind. Cas. 385. The object of the summing up under s. 297 is to enable the Judge to place before the jury the facts and circumstances of the case both for or against the prosecution so as to help them in arriving at a right decision upon the points which arise for their consideration. 53 C 372=42 C. L. J. 504=27 Cr. L. J. 266=92 Ind. Cas. 442; see also 29 C. W. N. 326=26 Cr. L. J. 1009. Summing up by both sides does not relieve the judge of this duty to sum up. A. I. R. 1928 Cal. 269. Evidence must be sifted and analysed. Jury must be helped to weigh the evidence. Facts must be marshalled. 34 C. W. N. 164= 1929 Cr. C. 390=A. I. R. 1929 Cal. 742; see also A. I. R. 1930 Pat. 513=128 Ind. Cas. 121. A judge can tell the jury his opinion if any and so long as he makes it clear they are on liberty to regard or disregard it as they please, his charge is not defective 34 C. W. N. 164=A. I. R. 1929 Cal. 742=128 Ind. Cas. 121. There is no objecton if a Judge sums up strongly in favour of one and strongly against another accused. Decision of jury must be obtained on all points. 2 Luck. 597= 4 O. W. N. 616=28 Cr. L. J. 683=A. I. R. 1927 Oudh. 259=103 Ind. Cas. 411. A Judge may express his opinion in the charge to the jury but he should be careful to add that it is for the jury to form their opinion on the evidence. 25 Cr. L. J. 761=A. I. R. 1925 Sind. 126=81 Ind. Cas. 249. A Judge should not in his charge to the jury make an appeal or exportation to the jury. Where the summing up is calculated to leave a misleading impression on the mind of the jury, that amounts to misdirection. *Ibid*, see also, A. I. R. 1926. 135=26 Cr. L. J. 1553=90 Ind. Cas. 433. Judge must be careful that he does not assert the functions of the advocate and that the evidence in the case is presented to the jury in a dispassionate and impartial a manner as is expected of the presiding officer. 25 C. W. N. 682=A. I. R. 1921 252=66 Ind. Cas. 180. Where the Judge found the facts for himself and put the contested matters of fact to the jury without proper directions the summing up is improper. 45 C. L. J. 584=31 C. W. N. 171=28 Cr. L. J. 201=A. I. R. 1927 Cal. 200=99 Ind. Cas. 937. It is not improper for the Judge to indicate in cautious language his experience on the Bench that an explanation offered by prosecution on a certain point was one which deserved the consideration of the jury. 8 Pat. 344 =10 P. L. T. 409=30 Cr. L. J. 721=A. I. R. 1929 Pat. 313=117 Ind. Cas. 173. Distinction between man slaughter and murder should be pointed out 34 C. W. N. 599=A. I. R. 1930 P. C. 201=124 Ind. Cas. 578. The Judge is bound to draw the attention of the jury to the nature of the corroboration that the approver's evidence has from the other evidence in the case. 1930 Cr. C. 193=A. I. R. 1930 Cal. 481= 127 Ind. Cas. 767. The Judge should point out that there was a considerable lapse of time between the recovery of the state articles and the theft. 1929 M. W. N. 577. The law does not recognize intermediate verdicts of jurors. 33 C. W. N. 451=30 Cr. L. J. 434=115 Ind. Cas. 257. Where the Judge throughout his charge has

several times cautioned the jury and they are not to accept his view of the evidence as they were the sole judges of facts and the mere fact that the Judge gave expression to his opinion regarding certain evidence does not amount to misdirection. 53 Bom. 479=31 Bom. L. R. 545=31 Cr. L. J. 65=A. I. R. 1929 Bom. 296=120 Ind. Cas. 340. Merely telling the jury that there are material discrepancies without telling them about discrepancies is a clear misdirection. 25 A. L. J. 33=49A. 209=25 A. L. J. 33=28 Cr. L. J. 15=A. I. R. 1926 All. 762=99 Ind. Cas. 47. The Judge should explain to the jury what an accomplice was and that it is not safe or proper to convict upon his evidence without corroboration in material particulars. The Judge should also explain what was the nature of corroboration necessary in such a case. 24 C. W. N. 119=31 C L. J. 20=21 Cr. L. J. 802=58 Ind. Cas. 674. The Judge should inform the jury that non-production of certain witnesses who might be present at the time of occurrence leads to the legal presumption under s. 114 of the Evidence Act against the prosecution. 17 Cr. L. J. 92=32 Ind. Cas. 684. Omission to bring certain matters along with others to notice of jury bearing on some point is not misdirection enough to vitiate trial. 32 Cr. L. J. 1101=A. I. R. 1931 Cal. 533 (S. B.). The direction is insufficient where Court omitted to inform jury of their right of presumption against prosecution for failure to bring independent witnesses. 134 Ind. Cas. 1191=33 Cr. L. J. 85=54 C. L. J. 244=A. I. R. 1931 Cal. 752. The charge is not bad where there was no mention as to how sections were applicable if there is no difficulty in understanding the section. A. I. R. 1932 Cal. 786=34 Cr. L. J. 56; see also 34 Cr. L. J. 369=A. I. R. 1933 Cal. 187.

Defective direction.—Omission to refer to material evidence and to the unjustified non-examination of an eye-witness amounts to misdirection. 21 C. W. N. 1152 =19 Cr. L. J. 81=43 Ind. Cas. 241. An omission by the judge to explain difference between murder and culpable homicide not amounting to murder is not invariably misdirection. 8 Bur L. T. 220=8 L. B. R. 306=17 Cr. L. J. 49=32 Ind. Cas. 641. The case of both sides should be placed before the jury and law also should be explained. 29 C. L. J. 571=23 C. W. N. 833=52 Ind. Cas. 485. Merely reading the depositions in their serial order is not enough. More assistance will be derived by the jury from careful collocation of the evidence. 33 C. L. J. 340=25 C. W. N. 623=22 Cr. L. J. 606=A. I. R. 1921 Cal. 697=62 Ind. Cas. 878. Where a Judge's charge to a jury confuses or is calculated to confuse them, the accused must be tried anew. 21 Cr. L. J. 829=58 Ind. Cas. 829. Incomplete statement of law as regards private defence vitiates the charge. A. I. R. 1928 Cal. 269. Failure to warn against the acceptance of the uncorroborated testimony of an accomplice is defective direction. 8 Pat. 235=9 P. L. T. 672=30 Cr. L. J. 137=A. I. R. 1928 Pat. Where the jury were told that it was not difficult to come to the conclusion that the accused was guilty, there was a grave misdirection. 46 C. L. J. 3=28 Cr. L. J. 742= A. I. R. 1927 Cal. 631=103. Ind. Cas. 790. Asking the jury to decide which hypothesis suited the facts better is a misdirection. It is wrong to refer to the amendments of law proposed for legislation. 26 C. W. N. 972=36 C. L. J. 182=24 Cr. L. J. 76=71 Ind. Cas. 124. Where two of five accused in a case of alleged dacoity were acquitted, the Court should explain to the jury that the remaining three could not be convicted of dacoity unless they were satisfied that there were at least two other persons concerned in the offence. A. I. R. 1931 Mad. 216; see also 1929 M. W. N. 789. In cases of theft and robbery, ingredients should be clearly stated. A. I. R. 1931 Mad. 216. Charge is defective where collocation of evidence against each accused is absent. 34 C. W. N. 390=A. I. R. 1930 Cal. 481=A. I. R. 1930 Cal. 895=127 Ind. Cas. 767. Expression of opinion on facts too dogmatically and charge in the form of the special pleading is defective direction. 7 Pat. 50=28 Cr. L. J. 843=9 P. L. T. 57=A. I. R. 1928 Pat. 31=104 Ind. Cas. 459. A mistake in the direction as to the identity of the first information report justifies re-trial. A. I. R. 1928 Cal. 771=117 Ind. Cas. 601. It is not enough to merely read out the evidence to the jury, it is incumbent on the Judge to analyse that evidence and to present to the jury such points as could legitimately arise in favour of the accused. 46 C. L. J. 31=28 Cr. L. J. 742=A. I. R. 1927 Cal. 631=103 Ind. Cas. 790; see also 21 Cr. L. J. 670=57 Ind. Cas. 830; 24 C. W. N. 119=31 C. L. J. 20=21 Cr. L. J. 802=58 Ind. Cas. 674. Charge in case under s. 304, I. P. Code stating that person in possession of property about which fight took place is not guilty of any offence is incorrect. A. I. R. 1933 Cal. 242=34 Cr. L. J. 668=143 Ind. Cas. 899. Where persons are charged with dacoity, and the Judge in charging jury said: "When in committing theft or in carrying property a person voluntarily causes hurt and wrongful restraint, offence amounts to robbery" and further that "If five or more persons take part in the

offence, it amounts to dacoity," the direction to the jury is not proper. A. I. R. 1931 Mad. 481=60 M. L. J. 691=32 Cr. L. J. 973. Where inadmissible evidence was referred to by Judge in charging jury and also improbability of occurrence as related by prosecution evidence, conviction of accused was set aside. 32 Cr. L. J. 421=52 C. L. J. 423=A. I. R. 1931 Cal. 65.

Evidence.—Reference to inadmissible evidence vitiates the charge. 52 C. L. J. 423=A. I. R. 1931 Cal, 65. Witness must be grouped with a view to direct the attention of the jury to the evidence regarding each of the facts sought to be proved. 34 C. W. N. 390=A. I. R. 1930 Cal. 481=A. I. R. 1930 Cal. 895=127 Ind. Cas. 767. Ridiculing defence evidence at outset by the Judge is bad. 25 Cr. L J. 701=A. I. R. 1925 Sind. 116=81 Ind. Cas. 249. Judge should not suggest that a particular evidence is of no importance. 28 C. W. N. 947=40 C. L. J. 135=25 Cr. L. J. 1217=82 Ind. Cas. 145. Failure to warn against inadmissible evidence passed by the jury or failure to refer to an important evidence vitiates the conviction. 3 P. L. T. 101=A. I. R. 1923 Pat. 103=65 Ind. Cas. 443 ; see also 25 C. W. N. 788=22 Cr. L. J. 562 ; 46 C. 895=23 C. W. N. 661=29 C. L. J. 513=20 Cr. L. J. 324=50 Ind. Cas. 660 ; 3 P. L. T. 52=23 Cr. L. J. 141=65 Ind. Cas. 573 ; 52 C. 67=29 C. W. N. 300=26 Cr. L. J. 782=86 Ind. Cas. 414. Evidence should be analysed and sifted. 50 C. L. J. 576=34 C. W. N. 223=31 Cr. L J. 572=A. I. R. 1930 Cal. 136. Where important witnesses were not examined, jury should be directed to draw the necessary presumption. 34 C. W. N. 390=A. I. R. 1930 Cal. 481=127 Ind. Cas. 767. Judge need not refer to entire evidence in detail. It is enough if he emphasizes all important and essential features. A. I. R. 1935 All. 103. Even if witness is discredited on one point jury can give credit to him on another. 35 C. W. N. 731=53 C. L. J. 427=32 Cr. L. J. 768=A. I. R. 1931 Cal 401 (F. B). So where witness is dealt with under s. 154, Evidence Act and cross-examined as to credit, it is not proper direction to jury that they are bound in law to place no reliance on his evidence. *Ibid.* Charge to jury must be intelllgible and give direction in the matter of weighing and sifting evidence. 35 C. W. N. 404=33 Cr. L. J. 486 ; see also 53 C. L. J. 351=32 Cr. L. J. 1138 ; 32 Cr. L. J. 190=A. I. R. 1931 Cal. 178 (F. B.). Where Judge admits confession of accused caused by inducement, threat or promise, he must point out to jury that admissibility of evidence does not mean that it is true and that it is for jury to accept or reject it. A. I. R. 1933 Cal. 187=34 Cr. L. J. 369. Where prosecution does not call important witnesses who are alive it is the duty of Judge in charging jury to caution them that it was duty of prosecution and they may draw adverse inference. A. I. R. 1933 Pat. 481=34 Cr. L. J. 828=1923 Cr. 1010. Question of admissibility can be raised only when the particular evidence is sought to be proved. 50 C. L. J. 106=33 C. W. N. 1121=20 Cr. L. J. 993=A. I. R. 1929 Cal. 17=119 Ind. Cas. 193. In a case dependent upon circumstantial evidence the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of his guilt. A. I. R. 1933 Cal. 370=127 Ind. Cas. 657. Omission to examine witnesses mentioned in the first information should be brought to the notice of jury, but failure to so inform is not necessarily fatal. 27 Cr. L. J. 398=A. I. R. 1926 Cal. 728=93 Ind. Cas. 46. Credibility of a witness is a matter for the jury in spite of a suggested contrary inference. 32 C. W. N. 616=29 Cr. L. J. 497=A. I. R. 1928 Cal 500=109 Ind. Cas. 225. Jury should be told that police diaries are not legal evidence. 8 Pat. 279=30 Cr. L. J. 858=A. I. R. 1929 Pat. 268. Court must put before the Jury the earliest version of a witness. 53 C. 372=42 C. L. J. 504=27 Cr. L. J. 266=A. I. R. 1926 Cal. 139=92 Ind. Cas. 442. Corroboration need not be on all points. 52 C. 595=A. I. R. 1925 Cal. 872. Conviction on uncorroborated testimony of an approver is sustainable only when the judge had clearly explained to the jury the risk underlying such a course. 5 O. W. N. 33=29 Cr. L. J. 311=A. I. R. 1928 Oudh. 207=107 Ind. Cas. 876. Jury should be asked to ignore improper questions if and when admitted or at the time of charge by the Judge. 28 Bom. L. R. 281=27 Cr. L. J, 481=A. I. R. 1926 Bom. 238=93 Ind. Cas. 881. Evidence of persons arrested as accomplices but subsequently discharged, should be treated as practically accomplice evidence. 40 C. L. J. 313=26 Cr. L. J. 307=84 Ind. Cas. 451.

Duty of jury.—In a case of false document made by affirming thumb impression it was held to be the duty of the jury and not of the judge to say whether or not there was fraudulent intent. 22 C. W. N. 572=19 Cr. L. J. 649=45 Ind. Cas. 841. Jury are not bound by the fact that the first information report has been judicially found to be false. 7 Pat. 153=10 P. L. T. 297=30 Cr. L. J. 273=A. I. R. 1929 Pat. 34=114 Ind. Cas. 220.

Misdirection.—Omission to place matters which ought to have been placed before the jury amounts to misdirection. 34C. W. N. 954=A. I. R. 1931. Cal. 10=128. Ind. Cr. 807. Omission to state principles of appreciation of circumstantial evidence amounts to misdirection. 52 C. L. J. 417=35 C. W. N. 169=A. I. R. 1931 Cal. 11. Good and bad points of both sides are to be stated. Special pleading for the prosecution is grave misdirection. 1929 M. W. N. 946. Reference to evidedce not let in the Sessions Court is prejudicial to the accused. A. I. R. 1930 Cal. 706=57 C. 940 —128 Ind. Cas. 801. Where the judge's direction as to probabilities in favour of the prosecution too strongly before the jury and upon a mere assumption of facts which the jury are not asked to find for themselves there is misdirection which vitiates the trial. 26 Cr. L. J. 567=A. I. R. 1926 Cal. 439=85 Ind. Cas. 711. The omission to direct the jury upon an important point which may serve to help the defence of the accused amounts to misdirection. 44 C. L. J. 233=28 Cr. L. J. 19=99 Ind. Cas. 51. Application of a wrong provision of law was held to be a misdirection. 27 Cr. L. J. 1368=A. I. R. 1927 Mad. 243=98 Ind. Cas. 488. It is a misdirection to put before the jury matters which are not on the record and matters prejudicial, at all events on a certain view to the accused. 31 C. W. N. 171=A. I. R. 1927 Cal. 200=99 Ind. Cas. 937. Where a Judge while charging the jury dealt with a certain statement as a confession, while in reality it was not it was held to be a serious misdirection. 29 Cr. L. J. 527=32 C. W. N. 731=47 C. L. J. 526=A. I. R. 1928 Cal. 416=109 Ind. Cas. 351. Telling the jury that there is no evidence where opportunity to produce evidence is not given is misdirection. 30 C. W. N. 190=27 Cr. L. J. 125=A. I. R. 1925 Cal. 584=91 Ind. Cas. 701. A misdirection regarding one of the charges against the accused may have a bearing on the other charge as well. 1930 Cr. C. 1108=A. I. R. 1930 Cal. 708=129 Ind. Cas. 99. Advising jury to convict on uncorroborated evidence or to form their own opinion or to omit to warn suitably or to tell wrongly that corroboration is received is misdirection. 13 P. L. T. 802=34 Cr. L. J. 421=A. I. R. 1933 Pat. 96. Giving opinion and warning jury about evidence is not misdirection. 13 P. L. T. 802=34 Cr. L. J. 426=A. I. R. 1933 Pat. 96. Where Judge does not point out to jury that theft becomes robbery only when violence is used for committing theft this is misdirection. 54 M. 588=32 Cr. L. J. 1212=134 Ind. Cas. 801=A. I. R. 1931 Mad. 427. Where judge fails to bring to the notice of the jury certain vital facts, it is a clear misdirection. A. I. R. 1932 Oudh. 23=7 Luck. 390=33 Cr. L. J. 167=135 Ind. Cas. 392=8 O. W. N. 1215. There is no misdirection where the Judge tells to the jury that they are not bound by judgment passed in civil litigation between the parties. A. I. R. 1932 Cal. 293=59 C. 136=1932 Cr. C. 262. So also there is no misdirection where the Court warns the jury to be careful in accepting evidence of hostile prosecution witnesses and asks them to decide whether it is safe to accept it. A. I. R. 1932 Cal. 293=33 Cr. L. J. 441=59 C. 136. But there is misdirection where Court warns jury against rejecting testimony on legal presumptions in favour of veracity. 59 C. 1361=33 Cr. L. J. 854=55 C. L. J. 439 =A. I. R. 1932 Cal. 474. "Will" means will of girl and not of guardian. Where Judge directs the jury that marriage against guardian's consent is marriage against girl's will, it is misdirection and conviction cannot be sustained. 36 C. W. N. 49=33 Cr. L. J. 512=A. I. R. 1932 Cal. 442. In a charge of rape where there is no plea of consent, direction that age or consent of girl need not be considered is misdirection. 37 C. W. N. 484=145 Ind. Cas. 923=A. I. R. 1933 Cal. 606. Suggestion by Judge of fact of common occurrence without evidence of it on record is not misdirection if not prejudical to accused. 59 C. 1123=36 C. W. N. 377=55 C. L. J. 132 =A. I. R. 1932 Cal. 536. Where in a charge under s. 477 I. P. Code essential fact have not been properly marshalled the charge is misdirection vitiating trial. 35 C. W. N. 425=32 Cr. L. J. 836=58 C. 1051=A. I. R. 1931 Cal. 184 (F. B.). In an offence under s. 366, direction to jury that the fact of previous intimacy of accused with girl is wholly immaterial is misdirection. A. I. R. 1933 Cal. 718=1933 Cr. C. 1268. In case of intermeddling with estates of deceased, charge to jury under s. 406, Penal Code on doctrine of entrustment, amounts to misdirection vitiating trial. 35 C. W. N. 425=32 Cr. L. J. 836=58 C. 1051. Direction that because witness is declared hostile his evidence may not be considered is misdirection. 36 C. W. N. 356=33 Cr. L. J. 649=A. I. R. 1932 Cal. 523. Where statements made to police is brought on record by defence and the Judge refers to them in charge with caution not to take them as substantive evidence, there is no misdirection. 35 C. W. N. 164=32 Cr. L. J. 1245=A. I. R. 1931 Cal. 622.

Wrong explanation as to presumptions under s. 114, Evidence Act, amounts to misdirection vitiating trial. 35 C. W. N. 291=33 Cr. L. J. 40=A. I. R. 1931 Cal. 617.

Where the charge is under s. 373. I. P. Code and Judge pointing out unsatisfactory nature of prosecution evidence on question of age of girl tells jury to appeal to their experience and apply that experience to impression formed on seeing the girl and gives no caution that such impression is not sure guide, there is material misdirection. 35 C. W. N. 316=A. I. R. 1932 Cal. 417=33 Cr. L. J. 553. Where impressions about witnesses were not recorded but stated to the jury it is not misdirection. 26 Cr. L. J. 572=A. I. R. 1925 Cal. 580=85 Ind. Cas. 716. A direction to the jury that the presence of a reasonable presumption of the property being stolen property is enough to raise the presumption of guilt, is misdirection. 52 C. 223=26 Cr. L. J. 1155=A. I. R. 1925 Cal. 666=88 Ind. Cas. 515. In case of major and minor offences, direction for minor offence is not misdirection. 53 C. 599=44 C. L. J. 239=27 Cr. L. J. 1314=A. I. R. 1926 Cal. 1059=98 Ind. Cas. 386. Suggestion of an alternative case to be taken or not by the jury is not a misdirection. 6 Pat. 572=29 Cr. L. J. 626=A. I. R. 1928 Pat. 139=109 Ind. Cas. 898. Where the Judge directs the jury that there is a presumption of law that the witness who has spoken untruth must be believed in so far as he deposed to facts spoken to by other witnesses is a misdirection. 30 Cr. L. J. 120=A. I. R. 1928 Cal. 551=113 Ind. Cas. 280. Where the Judge has not put it to the jury that when a case is based on circumstantial evidence the circumstances should be such that there can be no reasonable possibilty of the innocence of the accused, it is a misdirection vitiating the trial. 30 Cr. L. J. 120=A. I. R. 1928 Cal. 551. Where in a charge of dacoity, presumption as to possession of stolen property was stated by the Judge, it was held to be a serious misdirection. 42 C. L. J. 212=26 Cr. L. J. 1582=53 C. 157=A. I. R. 1925 Cal. 1241=90 Ind. Cas. 542. In case of retreated confession of co-accused, suggestion that it is of some use as against co-accused individually was held to be misdirection. 42 C. L. J. 496=26 Cr. L. J. 1146=A. I. R. 1926 Cal. 374=88 Ind. Cas. 458. Miscarriage of justice through misdirection means that there must be a reasonable ground for apprehending that the misdirection may have affected the jury's verdict. 30 Cr. L. J. 1146=1930 A. L. J. 486=A. I. R. 1930 All. 28=120 Ind. Cas. 114. Where in a case not depending on expert evidence the rule as to expert evidence was stated by the Judge but its relation to the facts of the case was not stated, it was held to be misdirection. A. I. R. 1930 Cal. 370=127 Ind. Cas. 657. Heads of charges should indicate far more fully than mere enumeration of the numbers of the sections. A. I. R. 1930 Cal. 712=129 Ind. Cas. 109. Direction not to believe guilt or otherwise of accused alleged to be absent from scene of offence by approver is not misdirection. A. I. R. 1930 Pat. 513=128 Ind. Cas. 121. Where question of title is important in the case, direction to ignore that question is misdirection. 26 Cr. L. J. 946=13 C. L. J. 245=A. I. R. 1925 Cal. 1235=87 Ind. Cas. 98. Admission of a search list which was a statement within the meaning of s. 162 Cr. P. Code and hence inadmissible was held to be a misdirection. 31 Cr. L. J. 127=A. I. R. 1929 Cal. 448; 35 C. W. N. 317=A. I. R. 1931 Cal. 189. It is essential that the jury should be directed that theft only becomes robbery when it is shown that in the course of committing theft and for the purpose of committing theft violence is used. The omission to mention this essential point amounts to misdirection which vitiates the trial. 33 M. L. W. 414=A. I. R. 1931 Mad. 427. Where in a prosecution of offence under s. 373, I. P. Code the Judge told the jury that they might appeal to their own experience and apply that experience to the impression that they had formed on seeing the girl for three days and the Judge however omitted to say that such an impression would never be a sound guide, held that there was a material misdirection vitiating the trial. 35 C. W. N. 316. Where the Judge gave the following explanation of s. 304 I. P. Code to the jury, the first part relates to death which is caused without any intention of causing death or causing such bodily injury as is likely to cause death. The second part relates to death which is caused without any intention to cause death or to cause bodily injury as is likely to cause death, but with the knowledge that such injury may lead to death. *Held*, the mistake was so palpable that it was good ground for ordering retrial. 35 C. W. N. 456=A. I. R. 1931 Cal. 345=130 Ind. Cas. 884. Where plea of private right of defence could have been put forward as disclosed from cross-examination of prosecution witnesses but not put forward, charge of jury expressly calling upon jury not to consider plea of private right of defence amounts to misdirection. 51 C. L. J. 339=A. I. R. 1930 Cal. 442=127 Ind. Cas. 263. Failure to state defence case, and failure to draw the attention of jury to the conduct of complaint and accused held to have vitiated the trial. 34 C. W. N. 954=A. I. R. 1931 Cal. 10. Judge's reference, in the opening passage of his charge to the punishment provided for the offence of murder, and the consequent need for careful consideration is not itself a misdirection. 25 C. W.

N. 288=22 Cr. L. J. 562=62 Ind. Cas. 578. When the accused fail to prove an *alibi* if a Judge directs the jury that a presumption of their complicity in the crime arises from it, it is grave misdirection. 25 C. W. N. 682=A. I. R. 1921 Cal. 252=66 Ind. Cas. 180. Explanation as to common intention and act of one in furtherance of it making all equally liable is not misdirection. 28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=81 Ind. Cas. 353 (F. B.). The High Court, in case of misdirection vitiating the verdict can direct re-trial or enter into the merits and dispose of the case. 25 Cr. L. J. 761=A. I. R. 1925 Sind. 116=81 Ind. Cas. 249. For the purpose of proper and intelligent summing up it is necessary that the Judge appreciate the evidence properly. The prosecution and defence under s. 297 does not mean that a Judge should give merely a summary of the evidence. He must marshall the evidence so as to bring out the lights and the shades, the probabilities and improbabilities so as to give proper assistance to the jury who are required to decide which view of the facts is true. A. I. R. 1934 Cal. 847. Where Sessions Judge gives emphasis to his personal opinion, but warns jury that they are not bound by it, there is no misdirection. A. I. R. 1934 Oudh. 122. In case of double rape in broad day light and the fact that the husband and brothers of the prosecution were only 70 yard away from the place of occurrence and she called for help must be brought to the notice of jury and omission to do so amounts to misdirection. A. I. R. 1934 Nag. 94=35 Cr. L. J. 957=30 N. L. R. 262. Where all main points are placed before the jury the mere omission to place two minor details does not amount to such a misdirection as to vitiate trial. A. I. R. 1934 Cal. 142. Where Judge gives dogmatic and unqualified opinion on question of facts of cardinal importance it amounts to misdirection. A. I. R. 1934 All. 326. Where the Judge has entirely misconceived legal position with regard to a certain point and gives direction to the jury on that assumption, his charge amounts to misdirection vitiating the trial. A. I. R. 1934 Cal. 610=38 C. W. N. 854=35 Cr. L. J. 1367=59 C. L. J. 482. There was no direct evidence that the accused committed the house-breaking and theft. Yet the charge against them was framed solely under s. 457 and 380 I. P. Code with no alternative charge under s. 411. In his charge to the jury the Judge did not mention s. 411, nor inform the jury that it was open to them either to find on the facts that the accused committed the house-breaking and theft or that they were guilty under s. 411 I. P. Code, or tell them that they might convict them in the alternative. He left them no choice between a conviction under s. 457 and 380 I. P. Code, and an acquittal. *Held*, that the offence under s. 411 being punishable with a lesser sentence than offences under the two former sections, this was an omission which prejudiced the accused. A. I. R. 1934 Mad. 721=67 M. L. J. 693=40 L. W. 872. In considering whether there was a misdirection or not, expression of opinion must be taken as a whole. 59 C. L. J. 396=A. I. R. 1934 Cal. 257=35 Cr. L. J. 1487. Where the Judge in his charge to the jury left the question of voluntariness of the confession to them and acts in contravention of s. 152 Cr. Pro. Code, his charge is bad for misdirection. A. I.R. 1934 Cal. 717=152 Ind. Cas. 681. Where a statement made a person who has not been examined as a witness has been treated as evidence in the case for the prosecution and the Judge places before the jury with the warning that they are entitled to draw the presumption that if such person were examined in deposition would be against the prosecution there is no misdirection. A. I. R. 1934 Cal. 557=38 C. W. N. 446=1934 Cr. C. 789. Where test identification is defective, the judge should point it out to the jury. A. I. R. 1934 Pat. 537=15 P. L. T. 803=152 Ind. Cas. 126.

Non-direction.—Omission to direct jury as to burden of proof on prosecution vitiates verdict. A. I. R. 1933 P. C. 218 (P. C.)=1933 A. L. J. 1025=34 Cr. L. J. 886=38 M. L. W. 635=145 Ind. Cas. 209. Where in a trial of two persons under s. 368 and 368-109 I. P. Code, there is no direction to jury to contradictory statements of girl seduced and cases of both not dealt with separately, conviction should be set aside. A. I. R. 1933 Cal. 718=1933 Cr. C. 1268. Where circumstances under which conviction can be based on retracted confession of co-accused are not given, omission amounts to non-direction. 36 C. W. N. 874=34 Cr. L. J. 23=A. I. R. 1933 Cal. 6. Where evidence against all the accused is not the same, evidence against each should be dealt with separately. 37 C. W. N. 68=1933 Cr. C. 25=34 Cr. L. J. 622=A. I. R. 1933 Cal. 5. Where there is doubt whether jury really directed their minds to the question whether the accused carried deadly weapon in committing crime, conviction under Peneal Code s. 397, should be set aside. A. I. R. 1931 Pat. 49=32 Cr. L. J. 476=130 Ind. Cas. 267. Mere non-direction is not necessarily misdirection to the jury. 2 P. L. W. 348=1 P. L. J. 317=17 Cr. L. J. 353=35 Ind. Cas.

657 ; 28 C. W. N. 170=35 C. L. J. 411=25 Cr. L. J. 817=81 Ind. Cas. 353. Those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood. Non-direction when it consists in omission to put the material facts and to put the defence to the jury is sufficient to cause the Court to quash the conviction if the verdict of the jury was affected thereby. 28 C. W. N. 170=35 C. L. J. 411=25 Cr. L. J. 817 =81 Ind. Cas. 353 ; see also 44 C. 477=21 C. W. N. 33. Failure to address to every one of the suggestions of the defence is not non-direction. 9 Pat. 606=A. I. R. 1930 Pat. 513=128 Ind. Cas. 121. Where in case of fracture of the bones due to lathi blows the Judge explained to the jury the circumstances which would bring the case under s. 325 I. P. Code and also explained the ingredients of the offence under s. 34 I. P. Code, held that there was no non-direction or misdirection so as to vitiate the conviction. 52 C. L. J. 425. Where the charge to the jury contained no caution as as regards weight and the efficacy to be given to a dying declaration, *held* that the verdict of the jury and sentence must be set aside. 34 C. W. N. 792=A. I. R. 1930 Cal. 754=129 Ind. Cas. 364. In case of non-direction of material evidence by the prosecution, the omission to direct the jury as to the inference they were entitled to draw if they were not satisfied with the explanation suggested for the absence of material witness is a non-direction. 34 C. W. N. 1151=125 Ind. Cas. 99. Exclusion of question as to accuseds' infancy and immaturity of understanding from charge is non-direction amounting to misdirection. 26 Cr. L. J. 310=28 O. C. 69=A. I. R. 1925 Oude. 311=85 Ind. Cas. 454. If a defence is substantially put to the jury, a mere omission to refer to this or that circumstance or suggestion is not non-direction which amounts to misdirection. 28 C. W. N. 170=25 Cr. L. J. 817=A. I. R. 1924 Cal. 257 (F. B.)=81 Ind. Cas. 353. Failure to direct as to essence of abetment is mis-direction. 47C. 46=30 C. L. J. 29=58 Ind. Cas. 455. Omission to direct the jury that facts though not proving the offence charged, might go to prove a minor offence, is not a misdirection. 23 Cr. L. J. 47=A. I. R. 1922 Pat. 321=64 Ind. Cas. 671. Where the Sessions Judge did not explain in what the offence of theft with which the accused was charged consisted *held* that there was no want of direction. A. I. R. 1923 Mad. 329=75 Ind. Cas. 567=17 M. L. W. 236. The Judge must refer to all important points though counsel have addressed elaborately. Every non-direction in a charge to the jury does not necessarily amount to misdirection. 23 C. W. N. 426= 20 Cr. L. J. 300 (F. B.)=50 Ind. Cas. 348. The failure on the part of a Sessions Judge to record in his charge what actually his explanation of the law was, does not amount to a misdirection. 7 Pat. 361=10 P. L. T. 26=29 Cr. L. J. 804=A. I. R. 1928 Pat. 420=111 Ind. Cas. 308. Where only witness is directed by prosecution itself, failure of the judge to direct the jury that there was no evidence enough to vitiate the trial. 56 C. 115=32 C. W. N. 872. Where in a charge to the jury the explanation of the law bearing on the jury the explanation of the law bearing on the subject is drastically meagre and the summing up is no more than the barest possible skeleton of the evidence on the record and where important points have been omitted there is no non-direction. 33 C. W. N. 84=30 Cr. L. J. 912=A. I. R. 1929 Cal. 170=118 Ind. Cas. 351.

Omission.—Omission to state to the jury the defence evidence regarding each accused is a misdirection. 17 Cr. L. J. 19=32 Ind. Cas. 147. Omission by the Judge to warn the jury to pay no attention to the result of the previous proceedings amounts to misdirection. 21 Cr. L. J. 554=31 C. L. J. 305=56 Ind. Cas. 858. Omisssion to remark on the Village Magistrates' failure to send first occurence report to Police or Magistrate, is not a misdirection. if it did not prejudice the accused. 5 L. W. 327=18 Cr. L. J. 15=36 Ind. Cas. 847. Where in a trial under ss. 300, 302, and 326, the jury were not asked to consider the intention of the accused, the charge to the jury is defective. 8 L. B. R. 125=17 Cr. L. J. 154=33 Ind. Cas. 634. Where prosecution witness was suspected of complicity, omission to warn jury is a misdirection. 26 Cr. L. J. 1155=52 C. 224=A. I. R. 1925 Cal. 666=88 Ind. Cas. 515. Omission to state the law fully is a misdirection. 21 C. W. N. 585=39 C. L. J. 525=26 Cr. L. J. 48=83 Ind. Cas. 528 ; see also 25 Cr. L. J. 1129=11 O. L. J. 315=A. I. R. 1924 Oudh. 411=81 Ind. Cas. 953. An omission to direct the jury on a cardinal matter in the case, cannot be made good merely by counsels calling attention to it at the termination of the summoning up. 28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=A. I. R. 1924 Cal. 257 (F. B.)=81 Ind. Cas. 353. An omission of the Magistrate to give the jury a detailed definition the offence charged is not a misdirection. 25 Cr. L. J. 1032= A. I. R. 1925 Oudh. 69=81 Ind. Cas. 808. The omission to present the first

information report and its variation with the depositions of several witnesses, named therein, constitutes serious misdirection. 29 C. W. N. 526=26 Cr. L. J. 1009= A. I. R. 1925 Cal. 729=87 Ind. Cas. 833. Omision to point out vital points in the case may amount to such misdirection as vitiates the trial. 26 Cr. L. J. 567= A. I. R. 1926 Cal. 439=85 Ind. Cas. 711. Judge is not relieved, where counsel omits to take possible defence. 28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=81 Ind. Cas. 353. Omission to direct the jury to draw an adverse inference from the non-production of material witnesses by the prosecution and to point out discrepancies vitiate the trial. 33 C. L. J. 180=25 C. W. N. 142=22 Cr. L. J. 475=A. I. R. 1921 Cal. 257=61 Ind. Cas. 1003 ; see also A. I. R. 1930 Cal. 481= 127 Ind. Cas. 767. The omission to tell the jury that the accused is entitled to the benefit of any reasonable doubt is not misdirection. 7 N. L. J. 208=27 Cr. L. J. 217=A. I. R. 1927 Nag. 154=92 Ind. Cas. 169. Omission to place before the jury an important piece of evidence in favour of the defence vitiates the verdict. 53 C. 372=42 C. L. J. 501=27 Cr. L. J. 266=92 Ind. Cas. 442. Omission to state the law of private defence bearing on the facts of the case is a misdirection. 53 C. 980=28 Cr. L. J. 273=A. I. R. 1927 Cal. 257=100 Ind. Cas. 353. Omission of the Judge to say to the jury that certain matters placed before them, were not admitted in evidence, that it was irrelevant to the case and that it ought to be disregarded by them, is non-direction. 50 C. L. J. 106=33 C. W. N. 1121=30 Cr. L. J. 993=A. I. R. 1929 Cal. 617=119 Ind. Cas. 193. Omission to tell the jury that they need not take into account the coviction at all is enough to vitiate the verdict. 27 Cr. L. J. 398=A. I. R. 1926 Cal. 728=93 Ind. Cas .46. Where there are several accused, the omission by the the Court to ask the jury to consider the case as against each of the accused individually is very serious and is prejudicial to the accused. 53 C 372=42 C. L. J. 504=27 Cr. L. J. 266. Where the jury was not advised as to the attitude towards a retracted confession against co-accused, the omission amounts to misdirection. 21 Cr. L. J. 775=58 Ind. Cas. 455. Judge must not omit to tell the jury that the corroboration required is one binding to connect each accused with the offence. 34 C. W. N. 390=A. I. R. 1930 Cal. 481=127 Ind. Cas. 767. Mere misdirection on the part of the Judge to the jury is not sufficient to set aside the verdict. It should be such as to lead to an erroneous verdict. Then alone it can be set aside. 22 C. W. N. 572=19 Cr. L. J. 649=45 Ind. Cas. 841 ; see also 29 Cr. L. J. 325=A. I. R. 1921 Pat. 326.

Duty of Judge.

298. (1) In such cases it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties ; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties ;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial ;

(*c*) to decide upon all matters of facts which it may be necessary to prove in order to enable evidence of particular matters to be given ;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Notes.—It is the duty of the Judge under this section to see that evidence which is not admissible in itself should not be allowed to go in to the prejudice of the accused, though no objection is taken thereto by the accused. 26 C. 736=2 C. W. N. 484. Under this section it is not the duty of Judge to discuss in detail each and every item of evidence and any such discussion of the evidence by the Judge in his charge leads to a great risk of the Judge pressing his own view of the facts too positively. A. I. R. 1929 Nag. 295. Law applicable is to be explained by the Judge. But the Judge place before jury any legal treatise for finding out law. 30 C. W. N. 693=43 C. L. J. 537=27 Cr. L. J. 926=96 Ind. Cas. 270. Question as to what amounts to or does not amount to evidence is question of law to be decided by Judge. 32 C. W. N. 915=30 Cr. L. J. 435=A. I. R. 1929 Cal. 57 =115 Ind. Cas. 258. The heads of charge ought to show how the Judge explained the law to the jury. It is sufficient to say that such and such section of the Penal Code were read and explained. Mere explanation of the sections of the Penal Code in the words of the Judge without reading out the sections themselves is undesirable. The section must be read out to the jury and then explained to them. 10 P. L. T. 26=22 Cr. L. J. 801=A. I. R. 1928 Pat. 420=111 Ind. Cas. 308. Asking jury to take broad view of evidence ignoring immaterial discrepancies is not misdirection. 1 Pat. L. T. 708=22 Cr. L. J. 1250=59 Ind. Cas. 557. A matter on which there is no evidence should not be left to the jury at all. The ability of defence counsel does not relieve the Judge of the duty of fairly and fully charging the jury. 47 Ind. Cas. 82. Reference to statement not proved and not on record amounts to misdirection. 23 Cr. L. J. 406=67 Ind. Cas. 502. Formulating specific questions for the reply of jury is not required by law. The practice is however, advisible in complicated cases the Judge should not only explain the law, but should draw attention to the evidence and explain how the jury should apply the law to the facts of the case. 4 Pat. 626=7 P. L. T. 239=27 Cr. L. J. 49=A. I. R. 1925 Pat. 797=91 Ind. Cas. 225. Unproved statements of witness to police should be withheld from jury's knowledge. 30 C. W. N. 503=27 Cr. L. J. 641=A. I. R. 1926 Cal. 793 =94 Ind. Cas. 593. It is doubtful if judge has to determine whether there is any evidence as to corroborate the approver as to complicity of accused. 32 C. W. N. 915. Whether a confession is voluntary or not is a question of law and should be decided by the judge. A. I. R. 1934. 651=38 C. W. N. 586=152 Ind. Cas. 234. It is misdirection where the Judge states that a retracted confession without corroboration is sufficient for conviction. *Ibid.* Judge must make distinction between pure law and expression of his own opinion on question of fact or mixed law and fact. A. I. R. 1934 Pat. 309=15 Pat. L. T. 264=13 Pat. 529=35 Cr. L. J. 1104. Proper instruction should be given by the Judge as regards the evidence of an accomplice. A. I. R. 1934 Cal. 114=35 Cr. L. J. 551=147 Ind. Cas. 1172=1934 Cr. C. 165. The Judge should determine the admissibility of evidence and after its admission its credibility and weight are entirely questions for the jury. 39 C. W. N. 27=A. I. R. 1934 Cal. 853. Where the prosecution has stated a certain case but fails to prove the same, the Judge should point out to the jury the effect of such a finding. 35 Cr. L. J. 1216 =A. I. R. 1934 Cal. 622. Where according to the Judges' opinion the evidence is very weak and there is grave doubt as regards the guilt of the accused he should direct the jury to the accused benefit of doubt. 60 C. L. J. 45. Although the general rule is that the voluntariness of the confession should be decided by the Judge for considering its admissibility, yet the jury also is competent to consider the question of voluntariness in its bearing on the truth of the confession. 39 C. W. N. 27=A. I. R. 1934 Cal. 853 ; see also A. I. R. 1934 Cal. 636=38 C. W. N. 659=35 Cr. L. J. 1479=152 Ind. Cas. 44=61 C. 399. Question whether particular evidence is admissible or not should be decided before it is actually given. A. I. R. 1932 Sind. 201=1932 Cr. C. 810=26 S. L. R. 302=34 Cr. L. J. 147. In case of evidence of doubtful character, charge to jury by Judge should contain word of caution. 37 C. W. N. 595=34 Cr. L. J. 533=A. I. R. 1933 Cal. 426 (S. B.). A charge should give due weight to all outstanding facts in the case. *Ibid.* Judges saying to jury that prosecution story is corroborated or supported by certain prosecution witness is not misdirection. A. I. R. 1933 All. 941=1933 A. L. J. 1446. Where charge involves six different offences of fabrication, direction to jury that if one item is established against accused they could give general verdict of guilt is misdirection. 57 C. L. J. 177=34 Cr. L. J.

322=69 M. L. J. 465=35 Bom. L. R. 507=37 C. W. N. 514=1933 A. L. J. 645=A. I. R. 1933 P. C. 124 (P. C.). Conviction on uncorroborated evidence of accomplice alone is valid but jury should be informed that general presumption is that evidence of approver is unreliable and needs corroboration. A. I. R. 1933 Pat. 500; see also 137 Ind. Cas. 496=1932 Cr. C. 264=33 Cr. L. J. 477=A. I. R. 1932 Cal. 295; A. I. R. 1923 Cal. 509=34 Cr. L. J. 841=37 C. W. N. 290. In drawing presumptions or inferences from evidence the Judge should have regard to all known facts of case. 1932 M. W. N. 801=64 M. L. J. 88=56 M. 231=34 Cr. L. J. 481=A. I. R. 1933 Mad. 233. When the complainant has been raped, the jury should be warned, as a matter of practice, that the complainant's ovidence should not be accepted unless corroborated by independent evidence. A. I. R. 1933 Cal. 833. Where jury brings a verdict of guilty on charge under s. 395, I. P. Code, in respect of less than five persons, there is no duty cast upon Judge to consider whether the jury considered the point that at least five persons must be concerned in the offence if he has adequately explained in his charge what is unnecessary. 137 Ind. Cas. 497=A. I. R. 1932 Cal. 295. Omission to refer in the charge important points in accused's favour vitiates the trial. 17 Bom. L. R. 1059=40 B. 220=17 Cr. L. J. 133=33 Ind. Cas. 309. It is the duty of the Judge to analyse, sift and weight the evidence, marshal the facts properly, discover and arrange in some sort of order before the jury the facts which are really material and upon which they should concentrate their attention. The duty is all the more important in a lengthy trial. 35 C. W. N. 404. It is desirable to have a sufficiently full record of the charge on a question of law explained to the jury. 9 Pat. 606=A. I. R. 1930 Pat. 513=128 Ind. Cas. 121. In the charge to the jury the Judge should set out separately the case of every accused. 29 Cr. L. J. 325=A. I. R. 1928 Pat. 326. A mere omission or mis-statement though not by itself a misdirection, amounts to miscarriage of justice if it is likely to mislead the jury. 28 Cr. L. J. 177=A. I. R. 1937 Nag. 117=99 Ind. Cas. 849. Where the Judge stated in his charge that he was satisfied that certain confessions were voluntary and he held, accordingly adding that it was for the jury to decide whether or not they were true, *held*, the trial was vitiated. 26 Cr. L. J. 606=A. I. R. 1925 Cal. 887=85 Ind. Cas. 830. Where none of the accused was recognised, though there was opportunity to recognise, that fact should be pointed out to jury. 26 Cr. L. J. 606=A. I. R. 1925 Cal. 887=85 Ind. Cas. 830. The Judge should place facts, clearly explain the law and show how to apply the law to the facts found by the jury. Head-notes or portions of reports should not be read out to them. Merely indicating the argument but not pointing how to apply the law is a serious defect. 34 C. W. N. 365=A. I. R. 1930 Cal. 434=128 Ind. Cas. 254. Where the jury is made aware of their duty as to questions of facts, and their right to disregard Judge's remark, the charge is not vitiated, even when the charge to jury is in dogmatic and assertive fashion. A. I. R. 1931 Cal. 178=34 C. W. N. 1154=32 Cr. L. J. 190=128 Ind. Cas. 811. The Judge is not bound to address himself to every suggestion put forward by the defence. But he must fairly place the salient features of the case from the point of view of the precaution and of the defence respectively. 9 Pat. 606=A. I. R. 1930 Pat. 513=128 Ind. Cas. 121. Charge is defective where no direction is given as to weight to be attached to evidence of an accused against his co-accused. 50 C. L. J. 467=31 Cr. L. J. 610=A. I. R. 1930 Cal. 189=124 Ind. Cas. 66. Omission to point out what portions of the evidence are corroborative evidence in law is a non-direction. But pointing out such portions as corroborative as are not in fact so, is a misdirection. A. I. R. 1929 Cal 57 It is not duty of Judge to accept and interpret for himself an unintelligible verdict. A. I. R. 1930 Cal. 320=57 C. 61. The Judge ought not to put to the jury hypothetical cases unsupported by evidence. 30 Cr. L. J 799=49 C. L. J 138=32 C. W. N. 839=A. I. R. 1928 Cal. 700=127 Ind. Cas. 596 When a witness is declared hostile, Judge should explain to the jury how he is not witness of truth and tell them to reject his evidence altogether. Omission to do so amounts to misdirection. 51 C. L. J. 203=34 C. W. N. 526=A. I. R. 1930 Cal. 276=127 Ind. Cas. 270. Where Judge has properly addressed the jury or not must be determined by looking at his summing up as a whole to see that the case has been fairly laid. A. I. R. 1931 Oudh. 171=8 O. W. N. 344=1931 Cr. C. 443. Judge's telling the jury his view of facts is not only permissible but desirable. A. I R. 1928 Cal. 269. But the Judge should not discuss in detail each and every item of the evidence as any such discussion leads to a great risk of his pressing his own view of the facts too positively. A. I. R. 1929 Nag. 295. Whether the evidence has been adequately criticised by the Court must depend upon the special circumstances of each case such as the constitution of the jury, their intelligence and education, the elaboration with which the case has been conducted on

both sides, the skill of the defence and a variety of other circumstances. It is open to the Judge to express his own opinion of the evidence, provided he cautions the jury that they are not bound by it. 4 P. L. T. 265=24 Cr. L. J. 495=A. I. R. 1928 Pat. 238=72 Ind. Cas. 959 ; see also 110 Ind. Cas. 577=29 Cr. L. J. 721=5 O. W. N. 497. Under s. 298 it is the duty of the Judge to decide all questions of law, and especially all questions of relevancy of facts and of admissibility of evidence. 38 C. W. N. 659=35 Cr. L. J. 1479=A. I. R. 1934 Cal. 636. A Judge should instruct the jury as regards corroboration of accomplice evidence. 38 C. W. N. 586=A. I. R. 1934 Cal. 651. In summing up of evidence heads of charge should be recorded. Mere omission or misdirection are not sufficient to have verdict set-aside. A. I. R. 1935 Cal 31. Where evidence is so weak as to make guilt of accused doubtful, omission to direct jury to give benefit of doubt to accused may be misdirection prejudicing accused. A. I. R. 1935 Cal. 31.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned ;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not ;

(*c*) to decide all questions which according to law are to be deemed questions of fact ;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Notes.—A Judge is not entitled to ask the jury the reason for their verdict. 13 Cr. L. J. 586=15 Ind. Cas. 1002. Where in a joint trial it was alleged that the Judge had failed to direct the jury that the charges were multifarious and that the various transactions alleged had no connection with one another but it appeared that the jury were in no way misled. *Held*, that the charge to the jury was not vitiated on the ground of non-direction. *Emperor* v. *Ring*, 53 B. 479=31 Bom. L. R. 545. Practical abdication of their duty by the jury in favour of the Judge renders the conviction liable to be set-aside. 30 Cr. L. J. 54=48 C. L. J. 477=A. I. R. 1928. Cal. 827. There is no rule of law that if a jury thinks that witness has been discredited on one point, they may not give credit to him on another. The rule of law is that it is for the jury to say. 35 C. W. N. 731=A. I. R. 1931 Cal. 401 (F. B.) Jury is at liberty to believe the evidence of a witness in the lower Court, in spite of the Judge's opinion to the contrary. 50 C. L. J. 584=A. I. R. 1930 Cal. 228=125 Ind. Cas. 743. Opinion of the jury could be interpreted according to its terms. A. I. R. 1922 Pat. 224. When plea of insanity is set up by accused the jury should decide if at the moment he was incapable of distinguishing right from wrong or insensible to the nature of the act. 48 C.L.J. 307=33 C.W.N. 136=30 Cr. L. J. 491= A. I. R. 1929 Cal. 1. Where jury on proper direction thinks fit to act on evidence of approver no illegality whatever is committed and the High Court has no right to interfere with it. A. I. R. 1933 Cal. 509=37 C. W. N. 290=34 Cr. L. J. 841. In drawing presumption or inferences from evidence the jury must have regard to all

known facts. 34 Cr. L. J. 481=143 Ind. Cas. 46=1932 M. W. N. 801=64 M. L. J. 88=37 M. L. W. 220=56 M. 231=A. I. R. 1933 Mad. 233.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Notes—After the charge the jury should retire to consider their verdict. 26 Cr. L. J. 861 ; see also 44 C. 723=24 C. W. N. 167=18 C. L. J. 311. They should not be allowed to speak with outsiders. 44 C. 723 ; 46 C. 207 ; 10 L. W. 379 ; 25 C. W. N. 240 ; 26 Cr. L. J. 861=A. I. R, 1925 Pat. 595. All jurors must be in retiring room together during whole time of consultation. A. I. R. 1930 Cal. 446=126 Ind. Cas. 753.

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Notes—No specific form is necessary. 14 W. R. 49. The word "verdict" means the entire verdict. 22 C. 377. Verdict means the collective opinion of the jury. 26 M. 585. Verdict of not guilty means that offence of accused is not established. 23 S. L. R. 397=30 Cr. L. J. 877. Verdict of the jury that "they gave the accused person benefit of doubt" is not verdict according to law. 34 Cr. L. J. 608=37 C. W. N. 341=A. I. R. 1933 Cal. 404. Verdict of the jury should be given great weight. A. I. R. 1933 Pat. 273. In case of several accused verdict should be separate. 50C. 658. Verdict of the jury after discharge is not competent. A. I. R. 1934 P. C. 227=A. L. J. 1000=36 P. L. R. 247=40 L. W. 419=1934 M. W. N. 1020 (P. C.). Recommendation made by the jurors in their verdict is not a part of the verdict and should not be treated as such. A. I. R. 1934 Oudh. 34=10 O. W. N. 1270. Form of verdict is not laid down by statute law. 60 C. L. J. 45. Where jury adds to their verdict finding of fact this by itself does not make verdict bad in law. A. I. R. 1934 Cal. 31.

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Notes—Where the jury are not unanimous, the Judge can ask them to consider the verdict. But such requirement must be before the actual delivery of the verdict. 15 Cr. L. J. 678 ; 36 M. 585 ; 19 B. 735 ; 28 B. 412. The procedure of fresh charge after jury is unanimous is illegal. 32 C. W. N. 144=29 Cr. L. J. 228.

Verdict to be given on each charge.

Judge may question jury.

303. (1) Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Question and answers to be recorded.

(2) Such questions and the answers to them shall be recorded.

Notes—The verdict must be given on each charge. Vide 22 C. 377 ; 50 C. 651. Where the verdict of the jury is ambiguious the Judge can question them as regards the verdict. 20 B. 215 ; 15 B. 452 ; 21 C. 955 ; 32 C. 759. Questions as to reasons of verdict cannot be put to jury after their verdict. 35 C. W. N. 407=33 Cr. L. J. 29=A. I. R. 1931 Cal. 636. Where the verdict is not clear or definite the case can be sent back to the jurors for a clear verdict. 10 O. W. N. 1270=A. I. R. 1934 Oudh. 34 ; 50 C. 658 ; 29 C. W. N. 54 ; 30 C. W. N. 693. But a wrong verdict cannot be so corrected. 61 C. 256=35 Cr. L. J. 496=38 C. W. N. 254=A. I. R. 1934 Cal. 173 (F.C) ; see also 36 C. W. N. 373=33 Cr. L. J. 546=A. I. R. 1932 Cal. 297. Judge cannot question jury after verdict, nor examine them as to their reasons. 34 C. W. N. 283=A. I. R. 1930 Cal. 443=127 Ind. Cas. 79 ; 35 C. W. N. 407 ; 129 Ind. Cas. 359. Jury should not be asked to give reasons for their verdict. 7 Pat. 55=9 P. L. T. 567=29 Cr. L. J. 466=109 Ind. Cas. 114 ; see also 4 Pat. L. T. 425

=26 Cr. L. J. 856=A. I. R. 1923 Pat. 474=86 Ind. Cas. 912 ! 41 C. L. J. 36=36 Gr. L. J. 896 ; 21 Cr. L. J. 466. In case of disagreement among the jury the individual opinion of members should never be disclosed. 12 O. L. J. 643=2 O. W. N. 534=26 Cr. L. J. 1346. Charge should be specifically mentioned and verdict must be taken on every charge. 28 Cr. L. J. 1007=A. I. R. 1928 Mad. 207=105 Ind. Cas. 831. Where jury does not consider a part of the case and Judge sends back to consider that part, the procedure is not illegal. 25 A. L. J. 107J=28 Cr. L. J. 950=A. I. R. 1927 All. 721=105 Ind. Cas. 662 ; see also 4 Rang. 488=28 Cr. L. J. 213. A verdict on all charges should be elicited by the Judge by questions and the questions and answers should be recorded. 26 Cr, L. J. 1093=A. I. R. 1926. Nag. 53=88 Ind. Cas. 117. Where a jury's verdict is silent on one of the charges, jury must not be deemed to have negatived the charge and a re-trial on that charge can be ordered. 39 C. L. J. 264=81 Ind. Cas. 824=25 Cr. L. J. 1048.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Notes—As to when such amendment is allowed, vide. 22 M. L. J. 355=13 Cr. L. J. 285 ; 28 Bom. 412 ; 6 P. R. 1913 (F. B.). Application to amend verdict after it is recorded and jury left the bond cannot be heard. 35 C. W. N. 156=A. I. R. 1931 Cal. 345. Judge is not bound to accept absurd verdict. 57 C. 61=A. I. R. 1930 Cal. 320. After verdict is given a new trial on further evidence and fresh verdict thereon are void. 4 Lah. 382=25 Cr. L. J. 377=77 Ind. Cas. 425. This section is not applicable where mistake lies in misunderstanding law. 55 M. 256. Conviction based on second verdict is not illegal if first verdict was given under misconception of law. 33 Cr. L. J. 125=58 C. 1335.

Verdict in High Court when to prevail.

305. (1) When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

(2) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

(3) If the Judge disagrees with the majority, he shall at once discharge the Jury.

(4) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Notes—In case of unanimous verdict the Judge is bound by the verdict of the jury. 16 Cr. L. J. 676 ; 25 Cr. L. J, 421,

Verdict in Court of Session when to prevail,

306. (1) When in a case tried before the Court of Sessions the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall, *[unless he proceeds in accordance with the provisions of section 562], pass sentence on him according to law.

Notes.—Vide 18 C. W. N. 580=15 Cr. L. J. 402=41 C. 754 ; 33 C. W. N. 371 : 10 Pat. L. T. 409. The provisions of sections 306 and 307 are mandarory. A. I. R. 1932 Lah. 345=13 Lah. 373=33 P. L. R. 443=33 Cr. L. J. 220. In case of obvious and inconsistent verdict of jury, Judge can make further charge to jury without referring matter to High Court. A. I. R. 1933 Cal. 640=60 C. 729=1933 Cr. C. 1053. Where judge is doubtful about correctness of jury's verdict but accepts it must pass sentence as if he agreed with verdict. 8 Pat. 354=50 P. L. T. 409=30 Cr. L. J. 721 =117 Ind. Cas. 173

* These words and figures were inserted by s. 10 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1922).

Procedure where Sessions Judge disagrees with verdict.

307. (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which * [any accused person] has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case † [in respect of such accused person] to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, ‡ [and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction]

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which §[such accused] has been tried, but he may either remand § [such accused] to custody or admit him to bail.

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict § [such accused] of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

Scope.—In a case where the Sessions Judge thinks that the verdict of the jury is contrary to the weight of evidence, it is the duty of the Sessions Judge, in a reference to the High Court under this section to set out on what portions of the evidence or what facts disclosed by the evidence the accused should have been convicted. 7 C. W. N. 245; see also 29 M. 91=3 Cr. L. J. 371. The jurisdiction, which the High Court exercises in hearing a case submitted to it under this section is not original jurisdiction in any sense, the hearing not having any of the essentials of an original trial. 29 C. 286=6 C. W. N. 254. (F. B.) In a case under this section the High Court should give due weight to the opinion of the jury as well as that of the Judge. 17 C. W. N. 1077=14 Cr. L. J. 556=21 Ind. Cas. 156. Jury's opinion is not of higher value than the Judge's. 30 Cr. L. J. 310= A. I. R. 1929 Nag. 84=114 Ind. Cas. 453; see also A. I. R. 1229 Nag. 36. A Judge of Sind Judicial Commissioner's Court when trying a Sessions case has no power of reference. 22 S. L. R. 349=A. I. R. 1928 Sind. 149; see also 25 Cr. L. J. 428=A. I. R. 1925 Sind. 34. This section is a powerful weapon in the hands of the Judge in the Muffasil and it is not available to a Judge of the High Court sitting in Session to prevent miscarriage of justice on occount of wrong verdict on the part of the jury. A. I. R. 1934 Cal. 847. Disagreement with opinion of jury is condition precedent to making reference. 37 C. W. N. 591=34 Cr. L. J. 965= A. I. R. 1933 Cal. 472. Judge should be clearly of opinion that it is necessary for the ends of justice to submit case to High Court. 37 C. W. N. 341=1933 Cr. C. 582=34 Cr. L. J. 608=A. I. R. 1933 Cal. 404. "Necessity to submit the case" should depend on gravity of offence and its prevalance and considerations of similar nature. 37 C. W. N. 341=34 Cr. L. J. 608=A. I. R. 1933 Cal. 404. Where verdict of jury is justified on evidence, reference ought not to be made. A. I. R. 1953 1933 Pat. 481=34 Cr. L. J. 828=1935 Cr. C. 1010.

Reference for ends of justice.—The judge should refer only if he is clearly of opinion that the ends of justice require it. 6 Pat. 817=29 Cr. L. J. 81= 9 P. L. J. 191=A. I. R. 1928 Pat. 120=106 ind. Cas. 673; see also 50 C. 658= 24 Cr. L. J. 838=A. I. R. 1924 Cal. 47=74 Ind. Cas. 950; 47 C. L. J. 483=23 C. W. N. 673=29 Cr. L. J. 819=A. I. R. 1928 Cal. 444=111 Ind. Cas. 323; 56 C. 473=33 C. W. N. 371=30 Cr. L. J. 1336=A. I. R. 1929 Cal. 415; 30 C. W. N. 859=27 Cr. L. J. 1341=98 Ind. Cas. 413,

Other grounds of reference.—Only when the Court is of opinion that the verdict is perverse, the High Court can in reference place its own opinion on the

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* These words were substituted for the words "the accused" by s. 81 *ibid.*
† These words were inserted by *ibid.*
‡ These words and figures were added by *ibid.*
§ These words were substituted for the words "the accused" by *ibid.*

evidence against that of the jury. 26 Bom. L. R. 610=26 Cr. L. J. 711=83 Ind. Cas. 995 ; see also 6 O. W. N. 40=30 Cr. L. J. 570=A. I. R. 1929 Oudh. 280. In order to justify a reference it is not necessary that the Judge should be able to describe the jury's finding as perverse. 30 C. W. N. 942=45 C. L. J. 23=27 Cr. L. J. 1402=1926 Cal. 1107=98 Ind. Cas. 714. Where the verdict of the jury is such as would not be come to by reasonable man, reference is competent. 11 p. L. T. 452=A. I. R. 1930 Pat. 174=119 Ind. Cas. 898. Reference is not justified unless verdict of ury is manifestly wrong and definitely contrary to weight of evidence. A. I. R. 1929 Cal. 737. That a Judge had he been a member of jury might have given another verdict is no proper ground for reference. 57 C. 1183=A. I. R. 1931 Cal. 15. Where Judge warns the jury by pointing out grave defects in the prosecution case and warning is disregarded reference lies. A. I. R. 1928 Cal. 233. Different view of the evidence taken by the Sessions Judge is no ground for reference. 31 Cr. L. J. 5=A. I. R. 1930 Pat. 208=120 Ind. Cas. 290 ; see also A. I. R. 1929 Nag. 114=30 Cr. L. J. 793. Where facts alleged by prosecution does not constitute graver offence charged and the jury had acquitted, reference as to minor offence can still be made. 37 C. L. J. 34=A. I. R. 1923 Cal. 108=24 Cr. L. J. 674=73 Ind. Cas. 770. In making a reference the Judge is bound to state the grounds of his opinion and in the case of an acquittal the offences which he considers to have committed. 25 C. W. N. 682=A I. R. 1921 Cal. 252=66 Ind. Cas. 180. Where the Judge is of opinion that the sole prosecution witness is unreliable but the jury base their verdict on that evidence, a reference is not incompetent. 30 Cr. L. J. 1114=11 P. L. T. 452=A. I. R. 1930 Pat. 174=119 Ind. Cas. 898. Where Judge refers on the ground that jury having accepted evidence as regards one charge should accept evidence on other charges, the reason is not adequate for reference. 9 P. L. T. 649=30 Cr. L. J. 210=A. I. R. 1929 Pat. 16=113 Ind. Cas. 694. Reference is not obligatory unless conditions of s. 307 are satisfied. 8 Pat. 344=10 P. L. T. 409=30 Cr. L. J. 721=1929 Cr. C. 99=117 Ind. Cas. 173. Unless Judge dissents completely from opinion of jury case should not be referred. 33 Cr. L. J. 877=11 Pat. 669=A. I. R. 1932 Pat. 246=13 P. L. T. 418. Judge should state offence committed. 37 C. W. N. 341=34 Cr. L. J. 608=A. I. R. 1933 Cal. 404.

Interference by High Court.—High Court will not interfere with jury's unanimous verdict unless it is unreasonable. 57 C. 1183=A. I. R. 1931 Cal. 5=129 Ind. Cas. 798 ; see also 56 M. L. J. 109=1929 M. W. N. 194=30 Cr. L. J. 843=A. I. R. 1929 Mad. 135 ; 56 C. 132=32 C. W. N. 952=A. I. R. 1929 Cal. 287 ; 48 C. L. J. 541=30 Cr. L. J. 125=A. I. R. 1929 Nag. 996 ; 28 Cr. L. J. 895=A. I. R. 1925 Oudh. 607=104 Ind. Cas. 911 ; 37 C. L. J. 30=25 Cr. L. J. 748=A. I. R. 1923 Cal. 97=81 Ind. Cas. 236. High Court will not as a rule interfere with the verdict of a jury except when it is shown to be clearly and manifestly wrong. 58 B. 419=31 Bom. L. R. 545=31 Cr. L. J. 65=A. I. R. 1929 Bom. 296 ; see also 7 O. W. N. 376=A. I. R. 1930 Oudh 354=124 Ind. Cas. 661 ; 50 C. L. J. 518=A. I. R. 1930 Cal. 141=124 Ind. Cas. 486 ; 32 C. W. N. 783=117 Ind. Cas. 680 ; 8 Pat. 344=10 P. L. T. 409=30 Cr. L. J. 721=A. I. R. 1929 Pat. 313=117 Ind. Cas. 173 ; 5 O. W. N. 281=3 Luck. 494=29 Cr. L. J. 983=A. I. R. 1928 Oudh. 277=112 Ind. Cas. 103 ; 3 Luck 456=5 O. W. N. 216=29 Cr. L. J. 452=A. I. R. 1929 Oudh. 86 ; 51 C. 160=28 C. W. N. 53=25 Cr. L. J. 1000=81 Ind. Cas. 712. Verdict of jury will not be upset unless it could not be supported by evidence. 5 Pat. 573=8 P. L. T. 133=27 Cr. L. J. 1308=98 Ind. Cas. 252. The unanimous verdict of a jury should not be easily disturbed. High Court which has not the opportunity of seeing the witnesses must act with great caution. 51 C. 271=38 C. L. J. 379=25 Cr. L. J. 773=81 Ind. Cas. 261. For setting aside a verdict it is not enough to show that the High Court would on the evidence have come to a different conclusion, it must be shown that it was manifestly wrong. 38 C. L. J. 1=24 Cr. L. J. 897=75 Ind. Cas. 145. Verdict of jury should not be interfered with where on the evidence reasonable men would have taken the same view. 54 C. 708=28 Cr. L. J. 903=A. I. R. 1927 Cal. 848=105 Ind. Cas. 231. High Court can interfere with the verdict of the jury if it is perverse and patently erroneous amounting to a gross miscarriage of justice. 1929 A. L. J. 509=30 Cr. L. J. 1078=A. I. R. 1929 All. 338=119=Ind. Cas. 443 ; see also 30 Cr. L. J. 789=A. I. R. 1929 Nag. 113=117 Ind. Cas. 277 ; 29 Cr. L. J. 963=A. I. R. 1929 Nag. 36. The verdict of a jury should not be set aside unless no sensible man could have arrived at their verdict particularly in the case of a verdict of acquittal. 8 Pat. 74=9 P. L. T. 683=29 Cr. L. J. 1035=A. I. R. 1928 Pat. 497=112 Ind. Cas. 363. Where two inferences are possible on evidence the High Court will not inter-

fere. 7 P. L. T. 367=27 Cr. L. J. 1041=A. I. R. 1926 Pat. 566=97 Ind. Cas. 17. When the jury has by a majority acquitted, the High Court must not substitute a conviction unless upon the evidence, the verdict is shown to be plainly unreasonable. 30 Cr. L. J. 804=32 C. W. N. 894=117 Ind. Cas. 602. When a Judge makes a reference to the High Court, the High Court has not only to consider the entire evidence, but also to give due weight to the opinion of the Judge and the jury. 29 C. W. N. 802=26 Cr. L. J. 1298=89 Ind. Cas. 242 ; see also A. I, R. 1934 Pat. 533=152 Ind. Cas. 1021. High Court has power under s. 307 read with s. 428 to call further evidence. 33 C. W. N. 632=56 C. 566=50 C. L. J. 1=30 Cr. L. J. 1031=A. I. R. 1929 Cal. 244=119 Ind. Cas. 378. What weight is to be attached to the opinions of the Judge and jury depends on the circumstances of each case on facts. The jury's unanimous verdict has great weight. Want of unanimity would detract from the weight. If the Judge agrees with jury as to some accused and not as to others his opinion is correspondingly weakened. 51 C. 347=38 C. L. J. 384=25 Cr. L. J. 758=81 Ind. Cas. 246 ; see also 41 C. L. J. 35=26 Cr. L. J. 805=A. I. R. 1925 Cal. 525=86 Ind. Cas. 453. No undue preference is to be given to the jury's opinion over that of the Judge. 27 O. C. 29=11 O. L. J. 210=25 Cr. L. J. 785=81 Ind. Cas. 305. Between the opinions of Judge and jury due weight should be given to the Judge, for his opinion is supported by reasons. 55 C. 879=29 Cr. L. J. 823=A. I. R. 1928 Cal. 732=111 Ind. Cas. 327. Verdict of "guilty" cannot be sustained where there are indications in trial that jurors were biased in favour of prosecution and were influenced by their private knowledge obtained outside Court. A. I. R. 1934 Cal. 432=59 C. L. J. 15=35 Cr. L. J. 1311. Where the view taken by the jury is not impossible the verdict should not be reversed. 35 Cr. L. J. 285 ; see also A. I. R. 1934 Pat. 533. Where there are several charges against the accused, one of which is triable by jury and the rest with the aid of the assessors, a reference by the Sessions Judge without disposing of the charges triable with the aid of assessors and without delivering judgment without regard to them, is premature and has to be rejected, A. I. R. 1934 Pat. 424=15 P. L. T. 367=A. L. R. 1934 Pat. 264.

Procedure in reference.—Where the case is referred it should be referred as a whole and not merely those charges wherein there has been disagreement. A. I. R. 1930 All. 489=128 Ind. Cas. 2 ; see also 25 C. W. N. 682=A. I. R. 1921 Cal. 252=66 Ind. Cas 180 ; 27 Cr. L. J. 617=A. I. R. 1926 Cal. 925=94 Ind. Cas. 361 ; 21 C. W. N. 435. Referring Judge should set out his opinion regarding evidence especially that part on which he relies for conviction of accused. 9 P. L. T. 649=30 C. L. J. 210=A. I. R. 1929 Pat. 16=113 Ind. Cas. 694 see also 50 A. 540=26 A. L. J. 296=29 Cr. L. J. 342=A. I. R. 1928 All. 622=108 Ind. Cas. 154. If the Judge disagrees with the jury he shoutd ask for reasons for the verdict especially if there is a difference of opinion among them. In such a case the High Court in reference must consider not only the opinion of the mojority but also that of minority. 3 Pat. L. T. 410=23 Cr. L. J. 421=A. I. R. 1922 Pat. 348=67 Ind. Cas. 581. If the same body are to sit as jury men and assessors, reference cannot be based by the judge upon the answers of the persons who were in the jury in their capacity as assessors. 1929 M. W. N. 251 (F. B.) When the reference is made, the High Court has to examine the entire evidence for itself deriving such assistance as it can from the opinions of the judge and jury and decide the case in such view as it would take had it come to it as a trial Judge. 45 M. L. J. 406=18 M. L. W. 482=A. I. R. 1924 Mad. 232=25 Cr. L. J. 145. Reflection upon juror's motives in letter of reference is highly condemnable. 51 C. 418=38 C. L. J. 397=25 Cr. L. J. 776. Where case against accused are based on circumstantial evidence and Jurors are divided in opinion, Judge should obtain and record their for their verdict for information of High Court. 21 Cr. L. J. 271=55 Ind. Cas. 294. Judge must refer whole case to High Court and not individual charge. A. I. R. 1932 Pat. 156=33 Cr. L. J. 505=11 Pat. 395=13 P. L. T. 93. High Court has all powers of appellate court. 139 Ind. Cas. 885=33 Cr. L. J. 877=11 Pat. 669=13 P. L. T. 418=A. I. 1932 Pat. 246. Where there are several charges, one triable with aid of jury and others with aid of assessors, Judge has no jurisdiction to refer whole. A. I. R. 1932 Mad. 512=62 M. L. J. 571=35 M. L. W. 671=33 Cr. L. J. 533. That Judge had he been member of jury, might have given another verdict is no proper ground for reference. 57 C. 1183=32 Cr. L. J. 452=A. I. R. 1931 Cal. 15. Letters of reference should concisely state grounds why case is submitted to High Court. 57 C. 1183=32 Cr. L. J. 452=A. I. R. 1931 Cal. 15. Judge making reference under s. 307 in regard to offence triable by jury, should proceed under s. 309 with aid of assessors in respect of offences triable with aid of assessors. A. I. R. 1932 Bom. 61=33 Cr. L. J. 172=33 Bom. L. R. 1571=135 Ind. Cas. 495.

Powers of High Court—The High Court sitting under s. 307 is not siting as a Court of appeal but it is clothed with the powers of a court of appeal as regards procedure. 50 A. 625=29 Cr. L. J. 353=26 A. L. J. 321=A. I. R. 1928 All. 207=108 Ind. Cas. 225 (F.B.). The High Court is not bound to act in accordance with unanimous verdict of the jury, although it is shown not to be perverse or manifestly wrong. 3 Pat. L. T. 413=23 Cr. L. J. 421=A. I. R. 1922 Pat. 348=67 Ind. Cas. 581 ; see also 6 Lah. 98=26 P. L. R. 263=26 Cr. L. J. 1241=A. I. R. 1925 Lah. 401=88 Ind. Cas. 857 ; 50 A. 625=29 Cr. L. J. 353=26 A. L. J. 321 ; but see 26 Cr. L. J. 1576=90 Ind. Cas. 536. High Court cannot decline to interfere on the ground that no sanction was obtained under s. 195 if no failure of justice has been occasioned. 24 Bom. L. R. 184=25 Cr. L. J. 315=A. I. R. 1922 Bom. 368=76 Ind. Cas. 1035. Where the Judge agreeing with the jury on its verdict under certain section disagreed with its verdict under another section and referred the case to High Court the whole case is open to the High Court for consideration. 30 Cr. L. J. 393=9 P. L. T. 618=A. I. R. 1928 Pat. 596=115 Ind. Cas. 229. High Court should arrive at their own conclusion after considering the evidence and views of the Judge and jury. 28 C. W. N. 876=25 Cr. L. J. 1284=A. I. R. 1924 Cal. 956=82 Ind. Cas 356 ; see also 38 C. L. J. 379. The High Court is generally reluctant to interfere with the unanimous verdict of the jury unless it is manifestly wrong and unless it is necessary to do so in the interest of justice. 57 C. 1183=A. I. R. 1931 Cal. 15 ; see also 32 C. W. N. 673=47 C. L. J. 483 ; 22 C. W. N. 811=20 Cr. L. J. 20 ; 30 C. L. J. 503=21 Cr. L. J. 278 ; A. I. R. 1928 Cal. 579. Where Judge disagrees with Jury, he must obtain their reasons for verdict and record the same for information of High Court, who will interfere with the verdict, only when it is obviously perverse or manifestly unreasonable. 22 N. L. R 42=27 Cr. L. J. 773=A. I. R. 1926 Nag. 308=95 Ind. Cas. 309 ; see also 29 C. W. N. 738=42 C. L. J. 247=52 C. 987=26 Cr. L. J. 1256=88 Ind. Cas. 1000 ; 30 Cr. L. J. 310=A. I. R. 1929 Nag. 84=114 Ind. Cas. 453. Verdict contrary to or unjustified by evidence is unreasonable. 30 Cr. L. J. 570=A. I. R. 1929 Oudh. 280=116 Ind. Cas. 207. Where there is material for conviction under s. 366 I. P. Code, verdict under s. 363 I. P. Code is not perverse. 26 Cr. L. J. 310=28 O. C. 69=A. I. R. 1925 Oudh. 311=84 Ind. Cas. 454. In the case of misdirection. High Court need not consider what the verdict of the Jury would have been if directly directed, but only to consider the verdict as it is. 28 Cr. W. N. 947=40 C. L. J. 135=25 C. L. J. 1217=A. I. R. 1924 Cal. 960=82 Ind. Cas. 145. Where there was a gap in the chain of evidence in a case of murder by poisoning and the jury had not stated that fact as a reason for their verdict, the High Court refused to set aside the verdict which was unanimous. 25 Cr. L. J. 165=76 Ind. Cas. 389 ; see also 2 P. L. T. 655=23 Cr. L. J. 11=64 Ind. Cas. 279. Opinion of jury has no great value than decision of tribunal of fact. Principle that verdict must be perverse is erroneous. 33 Cr. L. J. 877=11 Pat. 669=13 P. L. T. 418=A. I. R. 1932 Pat. 246 ; but see 8 Luck. 439=34 Cr. L. J. 795=10 O. W. N. 234=A. I. R. 1933 Oudh. 181 ; 9 O. W. N. 301=33 Cr. L. J. 465=137 Ind. Cas. 346 ; A. I. R. 1932 Cal. 656 ; 34 Bom. L. R. 896=33 Cr. L. J. 745. High Court should not interfere with verdict of jury unless it is unreasonable. 10 O. W. N. 971 ; see also 10 O. W. N. 883 ; A. I. R. 1932 Mad. 21=33 Cr. L. J. 215=136 Ind. Cas 33 ; 32 Cr. L. J. 452=57 C. 1183=A. I. R. 1931 Cal. 15. Section 307 makes no discretion between cases of acquittal and convictions. In each case High Court has to see whether there was evidence justifying acquittal or conviction. 35 Bom. L. R. 183=34 Cr. L. J. 660=A. I. R. 1933 Bom. 144. Interference with verdict of jury, except in cases of flagrant and patent miscarriage of justice is dangerous. 37 C. W. N. 1180=34 Cr. L. J. 918=A. I. R. 1933 Cal. 663 (F. B) Judge making reference under Sub-section (1) should not record judgment of acquittal or of conviction in respect of any of charges. A. I. R. 1933 Cal. 665 (F. B.)=34 Cr. L. J. 918=37 C W. N. 1180. High Court is entitled to open the whole case. 37 C. W. N. 91=34 Cr. L. J. 164=60 C. 427=A. I. R. 1933 Cal. 47. High Court has ample power under s. 307 (3) to order retrial where there has been no proper or adequate trial. A. I. R. 1935 Cal. 184.

G.—Re-trial of Accused after Discharge of Jury.

Re-trial of accused after discharge of jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the Judge considers that he should not be re-tried, in

which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Notes.—It is not open to the judge in an order under s. 308, Cr. Pro. Code, to pass remarks implying the guilt of the accused. The section provides that an entry to the effect that there should be no re-trial on the charge operates as an acquittal. 118 Ind. Cas. 195=30 Cr. L. J. 877. Sessions Judge has inherent power to discharge jury for misconduct and empannel another. But the power to discharge a jury on such grounds is one not to be exercised lightly nor until the Judge has satisfied himself by such form of enquiry, as in the circumstances he can adopt that reasonable grounds for exercising such a right exist. 50 C. 872=37 C. L. J. 595=24 Cr. L. J. 677=A. I. R. 1923 Cal. 724=73 Ind. Cas. 773. Where misconduct of juror is alleged at end of trial, discharge of jury and fresh trial of accused should not be allowed. A. I. R. 1932 Cal. 750=33 Cr. L. J. 869=140 Ind. Cas. 18.

H.—Conclusion of Trial in Cases tried with Assessors.

309. (1) When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally* [on all the charges on which the accused has been tried], and shall record such opinion,* and for that purpose may ask the assessors such questions as are necessary to ascertain what their opinions are. All such questions and answers to them shall be recorded.

Delivery of opinions of assessors.

(2) The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

Judgment.

(3) If the accused is convicted, the Judge shall, *[unless he proceeds in accordance with the provisions of section 562,] pass sentence on him according to law.

Notes.—In long and intricate cases the Judge can sum up the evidence. 9 C 875. In a Sessions Case, the assessors are not Judges of questions of fact. 14 Bom. L. R. 710=16 Ind. Cas. 325=13 Cr. L. J. 677=1 Bom. Cr. C. 159. This section gives the Judge no power to question the assessors until they have delivered their opinions orally and he has recorded such opinions. 40 C. 163. Each assessors should be asked to give his opinion and reasons separately. 30 Cr. L. J. 378=A. I. R. 1929 Lah. 37=115 Ind. Cas. 66. In a criminal trial it is imperative to take the opinion of the assessors on the charge for the offence for which accused are convicted. A. I. R. 1924 Bom. 246=25 Bom. L. R. 1318. Assessor's opinion is not essential where accused is convicted of offence with which he is not charged. 30 Cr. L. J. 875 =A. I. R. 1929 Sind. 147. "On all charges" means that distinct opinion on each charge must be taken and recorded. 29 Cr. L. J. 561=A. I. R. 1928 Nag. 257=109 Ind. Cas. 497 ; see also 25 Bom. L. R. 1318=26 Cr. L. J. 394=A. I. R. 1924 Bom. 246=84 Ind. Cas. 938. The Judge ought to record at the time in writing, the opinion actually given in his own words by each of the assessors. 2 Pat. L. T. 288= 6 Pat. L. J. 147=22 Cr. L. J. 417=61 Ind. Cas. 705. Sessions Judge must give judgment after recording opinion of assessors. 36 M. L. J. 452=26 M. L. T. 45= 20 Cr. L. J. 352. It is the duty of Sessions Judge to assist assessors on points concerning facts upon which the law will turn. 3 Pat. L. J. 653=19 Cr. L. J. 983. In Sessions trial, evidence taken after assessors are discharged is illegal and vitiates trial. 43 A. 125=19 A. L. J. 1=22 Cr. L. J. 127. Sessions Judge is bound to give judgment after assessors have given opinions. 9 L. B. R. 88=19 Cr. L. J. 54=43 Ind. Cas. 86. The provisions of this section is imperative and the distinction of opinion of each assessor on each charge must be taken and recorded. 150 Ind. Cas. 509= 35 Cr. L. J. 1066=A. I. R. 1934 Oudh. 354. ; see also 28 S. L. R. 295. Trial is at end after taking of the opinion of the assessors. The Sessions Judge after recording of such opinion cannot re-open the trial and introduce fresh evidence. 35 P. L. R. 390=35 Cr. L. J. 1002. Omission to make reference in judgment to opinion of assessors can be cured by s. 537 unless it has occasioned failure of

* These words were inserted by s. 82 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

justice. A. I. R. 1933 Lah. 910=1933 Cr. C. 1297. Judge making reference under s. 307 in regard to offences triable by jury should proceed under s. 309 with aid of assessors in respect of offences triable with aid of assessors. A. I. R. 1932 Bom. 61=33 Cr. L. J. 172=33 Bom. L. R. 1571. In case of order of acquittal by lower court, High Court in appeal would not interfere unless it is unreasonable. A. I. R. 1931 Oudh. 116=32 Cr. L. J. 694=8 O. W. N. 101.

I.—Precedure in case of Previous Conviction.

Procedure in case of previous conviction.

* [**310.** In the case of a trial by a jury or with the aid of assessors, when the accused is charged with an offence and further charged that he is by reason of a previous conviction liable to enhanced punishment or to punishment of a different kind for such subsequent offence, the procedure prescribed by the foregoing provisions of this Chapter shall be modified as follows, namely :—

(*a*) Such further charge shall not be read out in Court and the accused shall not be asked to plead thereto, nor shall the same be referred to by the prosecution, or any evidence adduced thereon unless and until,

(*i*) he has been convicted of the subsequent offence, or

(*ii*) the jury have delivered their verdict, or the opinions of the assessors have been recorded, on the charge of the subsequent offence.

(*b*) In the case of a trial held with the aid of assessors, the Court may, in its discretion, proceed or refrain from proceeding with the trial of the accused on the charge of the previous conviction.]

Notes.—A Sessions Judge is justified under this section, in passing sentence on the accused on an admission by him of previous convictions. 28 C. 689=5 C. W. N. 670. When a Judge informed the jury, before he took their verdict on the substantive offence that the accused was charged as an old offender, *held* that he acted in direct violation of this section. 2 Weir 393 ; see also 12 C. L. R. 555 ; A. W N. 1890, 12. Previous conviction should not be made known to assessors and further charge of the same should not have been read, unless and until accused had been convicted or the opinions of the assessors had been recorded on the main charge. 28 Cr. L. J. 667=A. I. R. 1927 Lah. 774=103 Ind. Cas. 203. Admission of evidence of previous conviction before accused entered on his defence, vitiates trial. 1 Rang. 510=25 Cr. L. J. 618=81 Ind. Cas. 106. Section 310 lays down a special form of trial before the Court of Sessions only and does not apply to trial before Magistrate. 25 Cr. L. J. 527=A. I. R. 1923 Cal. 707=77 Ind. Cas. 991.

When evidence of previous conviction may be given.

311. Notwithstanding anything in the last foregoing section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.†

Notes.—In a trial of offence under ss. 395 and 402 of the Indian Penal Code, the evidence of previous conviction is not permissible under section 54 of the Evidence Act, no evidence having been previously offered of the accused's good character. Nor does sections 6 or 14 of the said Act make the evidence admissible. 5 P. L. J. 706 ; see also 14 C. 721 ; 27 C. 139. 1 C. W. N. 146.

J.—List of Jurors for High Court, and summoning Jurors for that Court.

Number of special juors.

‡**312.** The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors' list :

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* Section 310 was substituted by s. 83, *ibid.*

† 1 of 1872.

‡Section 312 was substituted by s. 18 of the Criminal Law Amendment Act, 1923 (XII of 1923).

Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed.]

List of common and special jurors.

313. (1) The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

(*a*) a list of all persons liable to serve as common jurors ; or

(*b*) a list of persons liable to serve as special jorors only.

(2) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

(4) The Governor-General in Council* [or the Local Government] in the case of the High Court at Fort William in Bengal, and in the case of other High Courts the Local Government, may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

(5) The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said list as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Publication of lists, preliminary and revised.

314. (1) Preliminary lists of persons liable to serve as common jurors and as special jurors respectively, signed by the Clerk of the Crown shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

(2) Revised lists of persons liable to serve as common jurors, and special jurors, respectively, signed, as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

(3) Copies of the said lists shall be affixed to some conspicuous part of the Court house.

Number of jurors to be summoned.

315. (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each session † [in the town which is the usual place of sitting of each High Court], ‡ [as many of those who are liable to serve on special or common juries respectively as the Clerk of the Crown considers necessary.]

(2) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the place of sitting of High Courts.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the § [town which is the usual place of sitting of such High Court for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject

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* These words were inserted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920.)

† These words were substituted for the words "in each presidency-town" by s, 14 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words were substituted for the words "at least twenty-seven of those who are liable to serve on special juries; and fifty-four of those who are liable to serve on common juries," by *ibid.*

§ These words substituted for the words "Presidency-towns" by s. 85, *ibid.*

to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner, hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. (1) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army "or Air force"* resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent "official" duty, or for any other special official † reason.

Failure of jurors to attend.

318. Any person summoned under section 315, section 316 or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Liability to serve as jurors or assessors.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside, or, if the Local Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

Notes—Residence is the factor governing liability to serve as jurors. Prolonged absence of assessors from district exempts him from being assessor under s. 319. A. I. R. 1931 Pat. 160=131 Ind. Cas. 540=12 P. L. T. 209.

Exemptions.

320. The following persons are exempt from liability to serve as jurors or assessors, namely:—

(*a*) officer in civil employ superior in rank to a District Magistrate;

"(*aa*) members of either chamber of the Indian Legistature and members of a Legislative Council constituted under the Government of India Act"‡

(*b*) salaried Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) police-officers and persons engaged in the preventive service in the Customs Department;

(*e*) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) persons actually officiating as priests or ministers of their respective religions;

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* Added by Act X of 1927. † Substituted by Act X of 1927.

‡ Added by Act 23 of 1925.

(*g*) persons in Her Majesty's Army "Navy"* "or Air Force",† except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors ;

(*h*) surgeons and others who openly and constantly practise the medical profession ;

(*i*) legal practitioners, (as defined by the Legal Practitioners Act 1879)‡ in actual practice :

(*j*) persons employed in the Post-Office and Telegraph Department :

(*k*) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641 ;§

(*l*) other persons exempted by the Local Government from liability to serve as Jurors or assessors.

List of jurors and assessors.

321. (1) The Sessions Judge, and the Collector of the the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge the Collector or other officer as aforesaid to serve as such, and not likely to be sucessfully objected to under section 278, clauses (*b*) to (*h*) both inclusive.

(2) The list shall contain the name, place of abode and quality or business of every such person ; and, if the person is an European or an American the list shall mention the race to which he belongs.

Notes.—As regards who should be chosen as jurors and assessors, *vide* 1897, A. W. N. 167 ; 23 W. R. 35 ; Ratanlal 304.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

Objections to list.

323. To every such copy or extract shall be subjoined a notice stating that the objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions court-house, and at a time to be mentioned in the notice.

Revision of list.

324. (1) For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror, or as an assessor, or who may establish his right to any exemption from service given by section 320 and insert the name of any person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

(4) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

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* Inserted by Act 35 of 1934.
† Inserted by Act X of 1927.
‡ XVIII of 1879.
§ *See* now the Code of Civil Procedure, 1908 (V of 1908).

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

(6) The list so prepared and revised shall be again revised once in every year.

(7) The list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Notes—Where names cancelled from list of jurors are restored, the order is not judicial one. A. I. R. 1934 Cal. 487=38 C. W. N. 363.

Preparation of list of special jurors.

325. In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge and the Collector of such district or other officer as aforesaid shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

District Magistrate to summon jurors and assessors.

326. (1) The Sessions Judge shall ordinarily, seven days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list* or the said special list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial †[and including, where any accused person is an European or an American, as many Europeans or Americans as may be required for the purpose of choosing jurors or assessors for the trial.]

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

‡[(3) Where the accused requires and is entitled to be tried under the provisions of section 275, there shall be chosen by lot, in the manner prescribed by or under section 276, from the whole number of persons returned the jurors who are to constitute the jury until a jury containing the proper number of Europeans or Europeans and Americans or of Indians, as the case may be, has been obtained:

Provided that, in any case in which the proper number of Europeans or Americans cannot otherwise be obtained, the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.]

‡[(4) Where, under the proviso to sub-section (3), the Court proposes to summon as a juror any person in His Majesty's Army, the provisions of section 317 shall apply in like manner as they apply for the purpose of the summoning of military jurors for a trial under section 316.]

Notes.—Jurors and assessors should be called on the first day of the session by the District Magistrate. Vide, 7 C. W. N. 188; 17 Cr. L. J. 17. The joint effect

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* *See* Sch V, Forms XXXII and XXXIII, respectively, *infra*.

† These words were added by s. 19 of the Criminal Law Amendment Act, 1923 (XII of 1923).

‡ These sub-sections were added by s. 19 of the Criminal Law Amendment Act, 1923 (XII of 1923).

of ss. 274 and 326. Cr. Pro. Code is that where the trial is for an offence punishable with death, eighteen persons should be summoned in the first instance. Since the jury is to consist of nine persons if practicable, at the time of summoning jurors, nine is to be regarded as the required number for such trial, within the meaning of s. 326 and the number summoned should not be less than double that number. Where less than eight persons were summoned and the jury of only seven persons were empanelled for the trial of a murder case, held that the trial was vitiated. *Amir Khan* v. *Emperor*, 33 C. W. N. 1053. See also 56 C. 1154=31 Cr. L. J. 377=A. I. R. 1930 Cal. 60=122 Ind. Cas. 219; 54 C. 1026=31 C. W. N. 711=28 Cr. L. J. 615=A. I. R. 1927 Cal. 593. Large are of selection so as to secure good jurors from persons attending on summons is not the intention of the Legislature. 1930 Cr. C. 212=34 C. W. N. 296=51 C. L. J. 171=31 Cr. L. J. 536=A. I. R. 1930 Cal. 212=123 Ind. Cas. 664. Where an unreasonably small number of jurors are summoned with the result that it is not possible to choose the requisite number of jurors in the manner provided by law, tribunal is illegally constituted and proceedings are illegal. 55 C. 794=29 Cr. L. J. 127=A. I. R. 1928 Cal. 645; see also A. I. R. 1931 Pat. 452=32 Cr. L. J. 797=12 P. L. T. 798=10 Pat. 107. But direction laid in s. 326 is not necessarily mandatory. 1933 A. L. J. 1446=A. I. R. 1933 All. 941. So neglect of strict provision of s. 326 does not make constitution of jury illegal or render trial nullity unless failure of justice is caused. 1933 A. L. J. 1446=A. I. R. 1933 All. 941.

Powers to summon another set of jurors or assessors.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive or whenever for other reasons such direction is found to be necessary.

Form and contents of summons.

328. Every summons* to a juror or assessor shall be in writing and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

When Government or Railway servant may be excused.

329. When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears on the representation of the head of the office in which he is employed that he cannot serve as a juror or assessor, as the case may be without inconvenience to the public.

Court may excuse attendance of juror or assessor.

330. (1) The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Court may relieve special jurors from liability to serve again as jurors for twelve months.

(2) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

List of jurors and assessors attending.

331. (1) At each session the said Court shall cause to be made a list of the names of those who have attended as jurors and as assessors at such session.

(2) Such list shall be kept with the list of the jurors and assessors as revised under section 324.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

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* *See* Sch. V, Forms XXXII and XXXIII, respectively, *infra*.

Penalty for non-attendance of juror or assessor.

332. (1) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any movable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

(3) For good cause shown, the Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale, such juror or assessor may by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

Notes.—When a summons is served properly, a juror can be convicted for non-attendance. Vide, 1 C. W. N. 116 (Notes) ; 6 C. W. N. 887.

L.—Special Provisions for High Courts.

Power of Advocate-General to stay prosecution.

333. At any stage of any trial before a High Court under this Code, before the return of verdict, the Advocate-General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge ; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Notes.—As regards the powers of Advocate-General under this section, Vide, 2 C. W. N. 481 ; 7 C. W. N. 31 (Notes) ; 8 C. W. N. 41 (Notes) ; 41 C. 1072. Though an order under s. 333 does not amount to acquittal, a *rolle prosequi* puts an end to indictment. The prisoner cannot subsequently be proceeded against on the same charge. 52 C. 990=26 Cr. L. J. 1397=A. I. R. 1925 Cal. 902=89 Ind. Cas. 709.

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

335. (1) The High Court shall hold its sittings at the place at which it now holds them, or (at such other place if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

(2) But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

(3) Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

336. [*Place of trial of European British subjects.*] *Omitted by s. 20 of Act XII of 1923.*

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Tender of pardon to accomplice.

337. * [(1) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, † namely sections 216A, 369, 401, 435 and 477A, the District Magistrate, a Presidency Magistrate, a Sud-divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof:

Provided that, where the offence is under inquiry or trial, no Magistrate of the first class other than the Magistrate shall excercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.]

*[(1A) Every Magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record:

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

(2) Every person accepting a tender under this section shall be examined as a witness in ‡ [the Court of the Magistrate taking cognizance of the offence and in subsequent trial, if any.]

§[(2A) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be.

(3) Such person, ‖ [unless he is already on bail], shall be detained in custody until the termination of the trial. ¶ **

Scope.—All that this section requires is that there should be an investigation in progress regarding an offence triable exclusively by the High Court or Court of Session and which is an offence punishable with imprisonment which may extend to ten years. 88 Ind. Cas. 283=26 Cr. L. J. 1115=1925 Nag. 337. Where a pardon is tendered with regard to an offence triable exclusively by the Sessions Court, the fact that there may be other offences alleged or charged which are not triable are immaterial or will not invalidate a pardongranted in respect of the offence exclusively triable by the Sessions

* Sub-section (1) and (1A) were substituted for sub-section (1) by s. 86 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† XLV of 1860.

‡ This words were substituted for the words "the case" by section 86 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ These sub-section was added by *ibid.*

‖ These words were substituted for the words "if not on bail" by *ibid.*

¶ The words "by the Court of Session or High Court, as the case may be" were omitted by *ibid.*

** Sub-section (4) of section 337 was omitted by s. 86 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Court. The approver is an approver with regard to the whole case and not as regards some of the accused only. 26 Cr. L. J. 1045=87 Ind. Cas. 965. This section does not require that a trial or an enquiry should be in progress when the pardon is tendered. Thus a Magistrate can tender pardon after adjourning the case. 7 L. R. 197. This section does not deprive the Magistrate of the power of granting bail to an approver. The Court has got power to grant bail, but the power must be sparingly exercised. 101 Ind. Cas. 439=A. I. R. 1927 Sind. 173. This section which is a special section dealing with approvers controls the general section 498, and consequently no power is given here to grant bail to an approver. *Ibid.*

This section of the Criminal Procedure Code does not suggest the idea that the only method of obtaining the evidence of a co-accused against another is by tendering him a pardon with all the safeguards mentioned in the section. 56 C. 1023=33 C. W. N. 468. No pardon is permissible for offence not triable exclusively by Sessions Court. 2 P. L. T. 125=A. I. R. 1921 Pat. 499. Real culprit should not be left out in the hope of obtaining evidence against other accused. 2 P. L. T. 125=A. I. R. 1921 Pat. 499. Tender of pardon can be made after a charge has been framed. 22 Cr. L. J. 265=60 Ind. Cas. 607. Pardon tendered for purposes of receiving evidence under s. 512. is valid. 46 B. 120=23 Bom. L. R. 839=22 Cr. L. J. 620. Tender of pardon can be made only during enquiry into an offence under the Code. 46 B. 61=23 Bom. L. R. 884=A. I. R. 1922 Bom. 138=64 Ind. Cas. 4. Approver's statement disclosing illegal possession of fire arms cannot be basis of subsequent trial under s. 20 of the Arms Act. 19 A. L. J. 717=22 Cr. L. J. 699=63 Ind. Cas, 827. An approver's statement requires material corroboration connecting each individual accused with the crime committed. 22 Cr. L. J. 676=63 Ind. Cas. 612. Corroboration regarding *corpus delicti* and identity of co-accused is necessary. A. I. R. 1933 All. 31=1932 A. L. J. 1125=55 A. 91=34 Cr. L. J. 489. Section 337 applies where there is a *bona fide* enquiry into what it is believed at the time, may prove to be an offence triable by the Court of Sessions. It applies even if, in subsequent proceedings, it is found that the offence was of a less serious nature and that a case under the section materialises and is committed to the Sessions. 22 Cr. L. J. 676=63 Ind. Cas. 612. Where pardon is tendered, not during an enquiry under the Criminal Procedure Code, and approver makes a statement under the pardon, such statement cannot form basis of an alternative charge under section 193 I. P. Code. 46 B. 61. "Inquiry" is meant to include every thing done by Magistrate whether case is challaned or not. 3 Lah. 431=24 Cr. L. J. 941=A. I. R. 1923 Lah. 270=75 Ind. Cas. 365. An accomplice witness against whom the case has been withdrawn under s. 494 of the Cr. Pro. Code is less reliable than one to whom a pardon has been tendered under s. 337 of the Code. A. I. R. 1924 Lah. 235=24 Cr. L. J. 696=73 Ind. Cas. 808. Persons to be tendered pardon need not have been charged, but should be supposed to have been concerned in or privy to offence, triable exclusively by Sessions Court, with which another is charged. 6. N. L. J. 144=24 Cr. L. J. 566=A. I. R. 1923 Nag. 248=73 Ind. Cas. 262. Section is only an empowering section. 21 A. L. J. 42=45 A. 226=25 Cr. L. J. 497=77 Ind. Cas. 961. Approvers against whom no proceedings are taken are not accused persons and their evidence was not therefore inadmissible. 25 Cr. L. J. 520=A. I. R. 1923 Lah. 666=77 Ind. Cas. 984. Admissions made previous to tender of pardon are admissible against the approver, 22 A. L. J. 85=46 A. 236=25 Cr. L. J. 956=A. I. R. 1924 All. 220=81 Ind. Cas. 604 (F. B.) Preliminary examination on oath after the extension of pardon to approver is not permitted. 26 Cr. L. J. 1396=3 Rang. 224=A. I. R. 1925 Rang. 286 =89 Ind. Cas. 708. Material discrepancies introduced into evidence with intention to benefit accused, causes forfeiture of pardon. 27 Cr. L. J. 77 =91 Ind. Cas. 253. Where accused, while in jail made a statement to Sub-Divisional Officer that he was influenced and assaulted by Police to make his confession, pardon should not be given under s. 337 Cr. P. Code. 2 P. L. T. 125=A. I. R. 1921 Pat. 429. Pardon cannot be tendered in case of offence under s. 457 C. P. Code as it is not triable exclusively by the Court of Sessions. A. I. R. 1921 Pat. 499=2 Pat. L. T. 125. No distinction can be drawn between a person who has accepted and a person accepting tender of pardon. When a person accepted tender of pardon once his subsequent resiling from that position does not make him cease to be a person accepting a pardon. 31 P. L. R. 1010=A. I. R. 1931 Lah. 182. Approver's disclosure of facts may be oral. Section 337 (1) nowhere lays down that the disclosure of facts shall be reduced to writing. 9 Lah. 608=29 P. L. R. 165=A. I. R. 1928 Lah 320=108 Ind. Cas. 514. Where one of the accused has been tendered pardon and by mistake his name has been included among

accused and his plea of being guilty was taken in Sessions Court, his subsequent removal from the dock and examination as prosecution witness is not illegal and his evidence was admissible. 54 C. 539=28 Cr. L. J. 689=A. I. R. 1927 Cal. 680=103 Ind. Cas. 545. Trial or an enquiry need not be in progress when pardon is tendered. 49 A. 181=24 A. L. J. 1050=27 Cr. L. J. 1369=A. I. R. 1927 All. 90=98 Ind. Cas. 489. Though validity of pardon given under s. 337 would be affected by the fact that the co-accused was ultimately convicted of a minor offence, yet apart from the validity of pardon, approver can be examined in Sessions Court as a witness, if he is not committed for trial along with the accused. 27 Cr. L. J. 1103=A. I. R. 1926 All. 590=97 Ind. Cas. 367.

Clause 1A—Omission to record reasons is neither illegality nor irregularity which vitiates the proceedings. 5 L. L. J. 407=25 Cr. L. J. 174=A. I. R. 1924 Lah. 90=76 Ind. Cas. 398. The defect is cured by s. 537. To vitiate trial it must be shown that the omission to record reason has in effect occasioned a failure of justice. 1929 A. L. J. 227=30 Cr. L. J. 1137=A. I. R. 1929 All. 311=120 Ind. Cas. 126.

Clause (2)—Where in a case under s. 394 I.P. Code Magistrate grants conditional pardon to an approver, case must be committed to sessions under s. 337 (2) (a). 4 Bur. L. J. 11=26 Cr. L. J. 829=A. I. R. 1925 Rang. 207=86 Ind. Cas. 477. After tendering pardon to approver Magistrate having powers under s. 30 can try the case in which approver is to be examined as witness, but must commit accused to sessions of High Court, if he is satisfied that reasonable grounds exist for believing accused's guilt. 25 Cr. L. J. 1341=A. I. R. 1925 Nag. 219=82 Ind. Cas. 578. Failure to comply with provisions of s. 337 (2) is illegality and not mere irregularity in procedure and makes a trial void. It is imperative that approver must be examined as witness in committal and subsequent proceedings of every person tried for same offence. Approver's death only can absolve Court from complying with this provision. Non-compliance renders trial illegal. 31 Cr. L. J. 111 =11 Lah. 280=31 P. L. R. 496=A. I. R. 1930 Lah. 95=120 Ind. Cas. 489. No distinction can be drawn between person who has accepted and person accepting tender of pardon. 32 Cr. L. J. 1126=A. I. R. 1931 Lah. 102. Section 337 (2) lays down that every person accepting a pardon shall be examined as a witness for the prosecution in the case. But after withdrawal of pardon it is not obligatory or desirable for the prosecution to examine such person as a prosecution witness. 61 C. 399=38 C. W. N. 659=A. I. R. 1934 Cal. 636. Where pardon is accepted and approver is examined under s. 164 on oath, his statement can form subject of alternative charges under ss. 193 and 194. I. P. Code. A. I. R. 1933 Lah. 321=14 Lah. 507=34 P. L. R. 421=34 Cr. L. J. 469. Where an accomplice has been discharged under s. 494 (a) instead of pardon being tendered under s. 337, he is competent witness against his co-accused. 27 Cr. L. J. 807=A. I. R. 1926 Nag. 426=95 Ind. Cas. 471. Where approver discloses offences other than that he is charged with, while making full disclosure he should not be proceeded against by crown for the offence further disclosed. 5 Pat. 171=27 Cr. L. J. 967=A. I. R. 1926 Pat. 279. Approver not being examined at the trial of the persons he has implicated is not a breach on the part of the crown of the conditions, upon which disclosure was made and pardon granted, so far as the trial of the approver himself is concerned. 9 Lah. 608=29 P. L. R. 165=A. I. R. 1928 Lah. 320. There is no law that Local Government must prosecute every offender. 8 N. L. J. 138=26 Cr. L. J. 1467=A. I. R. 1925 Nag. 313=89 Ind. Cas. 1035. Pardon may be offered to one or more accused, but only in manner prescribed by law. 21 Cr. L. J. 769=58 Ind. Cas. 449. No sanction should be granted where contradictory statements are made by approver under undue influence. 5 Lah. L. J. 407=25 Cr. L. J. 174=76 Ind. Cas. 398.

Sub-section 2 (A).—What this sub-section means is that whenever an approver is examined, the Magistrate has no jurisdiction to proceed with the trial but must commit the accused to the Sessions. It does not mean that the approver should be committed for trial along with the accused. 12 O. L. J. 542=2 O. W. N. 464=88 Ind. Cas. 736=26 Cr. L. J. 1216=A. I. R. 1925 Oudh. 472. A Magistrate specially empowered was trying a case, in which the prosecution evidence included the approver. After evidence was closed and before judgment was delivered, the amended Act came into force and under s. 337 (2A) as there was an approver in the case, it could be tried only by a Court of Sessions. *Held*, that under s. 347, the duty of the Magistrate was to commit the accused to the Sessions and not to proceed with the case. The illegality was not one curable under s. 537. 26 C. L. J. 549=85 Ind. Cas. 645=A. I. R. 1925 Lah. 378. Meaning of s. 337 (2A) is where pardon has been granted to one accused, the case against the other must be committed to

Sessions. 6 O. W. N. 218=30 C. L. J. 567 ; A. I. R. 1931 Pesh. 3 ; A. I. R. 1929 Oudh. 190 ; A. I. R. 1933 Pesh. 3 ; but see A. I. R. 1932 All. 581=1932 A. L. J. 754=139 Ind. Cas. 408 ; 34 Cr. L. J. 1023=60 C. 652. Accused does not include approver. A. I. R. 1935 Bom. 70.

Sub-section (3)—Sub-section (3) contemplates only a case where there has been a commitment made by the Magistrate to the Court of Session or the High Court. It omits to consider the case where the Magistrate himself on his own responsibility discharges the accused person. The meaning of the sub-section is that the approvers shall not be set at large until the judicial proceedings pending against the accused are finished. 14 Bom. L. R. 897=13 Cr. L. J. 842=17 Ind. Cas. 714=37 B. 146. Custody referred to in s. 337 is custody in prison. A. I. R. 1931 Lah. 353=12 Lah. 609=32 P. L. R. 423. Approver like accused person must be detained in judicial custody or confinement in prison A. I. R. 1931 Lah. 353=32 Cr. L. J. 785=32 P. L. R. 423 ; see also 32 Cr. L. J. 913=12 Lah. 635=A. I. R. 1931 Lah. 476 ; A. I. R. 1932 Sind. 40. Accused person is to be detained in judicial custody or in confinement in prison. A. I. R. 1931 Lah. 353=32 Cr. L. J. 785=32 P. L. R. 423.

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Notes—As to who can tender pardon, vide, 33 C. 1353 ; 10 C. W. N. 847 ; 6 W. R. Cr. 5 ; 10 M. 356. Where a Sessions Judge offered a pardon to one of the accused persons, examined him as a witness, against the others and then revoked the pardon and tried and convicted him, *held*, that the procedure was altogether irregular. A. W. N. 1882, 31.

Commitment of person to whom pardon has been tendered.

339. (1) Where a pardon has been tendered under section 337 or section 338, and *[the public prosecutor certifies that in his opinion] any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made,† [such person may be] tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter :

‡ [Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made ; in which case it shall be for the prosecution to prove that such conditions have not been complied with.

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him § [at such trial].

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

Notes—Where a person who has been tendered a pardon has not fulfilled the conditions upon which he was pardoned, the Sessions Judge is competent to order his commitment. 76 Ind. Cas. 185=25 Cr. L. J. 121=1924 Lah. 568 ; see also 22 Cr. L. J. 128 ; 21 Cr. L. J. 518. Withdrawal of pardon is not necessary when approver in forfeiture is committed for trial. 18 Cr. L. J. 444=39 A. 305=15 A. L. J. 120=38 Ind. Cas. 100 ; see also 24 P. R. 1918 Cr.=14 P. L. R. 1919=47 Ind. Cas. 442. An approver can only be tried for offence pardoned. 17 Cr. L. J. 391=9 Bur. L. T. 76=8 L. B. R. 357=35 Ind. Cas. 823. Sanction cannot be refused in case of contradictory statement by approver. A. I. R. 1933 Lah. 868=1933 Cr. C. 1113. When a pardon has been withdrawn, the approver cannot be examined as a prosecution witness in the

* These words were inserted by s. 87, Act XVIII of 1923.

† These words were substituted for the words "he may be" by *ibid.*

‡ This proviso was added by *ibid.*

§ These words were substituted for the words "when the pardon has been forfeited under this section" by *ibid.*

Sessions Court. 61 C. 399=35 Cr. L. J. 1479=38 C. W. N. 659=A. I. R. 1934 Cal. 636. Sanction to prosecute is proper when approver gives evidence contradicting his confession. 1929 A. L. J. 227=30 Cr. L. J. 1157=A. I. R. 1929 All. 321=120 Ind. Cas. 126. Public prosecutor is to certify wilful concealment or breach of condition for pardon. No sanction should be under sub-section (3) unless public prosecutor so certifies. 6 O. W. N. 902=31 Cr. L. J. 204=A. I. R. 1929 Oudh. 529=121 Ind. Cas. 83. Section 339 (1) does not override s. 476. 23 N. L. R. 35=28 Cr. L. J. 645=A. I. R. 1927 Nag. 189=103 Ind. Cas. 101. Amended section is not retrospective. 25 Cr. L. J. 1355=A. I. R. 1925 Nag. 172=82 Ind. Cas. 715. The absence of certificate by the Public Prosecutor vitiates the trial. 5 Lah. 329=26 Cr. L. J. 287=A. I. R. 1925 Lah. 15=84 Ind. Cas. 61 ; see also 26 Bom. L. R. 1240=26 Cr. L. J. 469=A. I. R. 1625=Bom. 135=85 Ind. Cas. 149. Indifference to being pardoned or otherwise is not acceptance of pardon. 26 Cr. L. J. 336=A. I. R. 1924 All. 564=84 Ind. Cas. 560. In case of Forfeiture of pardon and sanction to prosecute under the old code, trial under new code without certificate is bad. 8 L. L. J. 305=27 Cr. L. J. 940=27 P. L. R. 489=96 Ind. Cas. 396. Commitment without certificate which is produced before trial in Sessions is legal. 27 Cr. L. J. 254=4 Bur. L. J. 23=3 Rang. 55=92 Ind. Cas. 430=A. I. R. 1925 Rang. 219. No conviction of approver, should be made without a finding of his having forfeited the pardon. 6 O. W. N. 372=30 Cr. L. J. 559=A. I. R. 1929 Oudh. 256=116 Ind. Cas. 64. Admission under s. 339 (2) Cr. P. Code is a disclosure made on promise of pardon and not under pressure, and is hence not excluded by s. 24 of Indian Evidence Act. 29 P. L. R. 165=29 Cr. L. J. 413=9 Lah. 608=A. I. R. 1928 Lah. 320=108 Ind. Cas. 514. The words in sub-section (2) are wide enough to cover a statement before the pardoning Magistrate. A. I. R. 1925 Nag. 172=82 Ind. Cas. 715. A valid pardon once given is not in any way affected by subsequent proceedings in the case. 19 S. L. R. 183=25 Cr. L. J. 1057=A. I. R. 1925 Sind. 105=81 Ind. Cas. 881. When a pardon is tendered on the usual condition and in giving evidence at the trial material discrepancies are introduced into the evidence with the intention of benefiting the accused, there is a forfeiture of the pardon by giving false evidence. 91 Ind. Cas. 253=27 Cr. L. J. 77. It is open to an accused who has accepted pardon to resile from it and claim to be tried. If he does it before he is treated as an approver and put into the box, there is no illegality in his being tried along with the other accused. The acceptance of pardon must continue in force till he actually gives evidence and then only will the applicability of this section arise. 1923 M. W. N. 697=18 L. W. 607=33 M. L. T. (H. C.) 156=43 M. L. J. 613. The absence of a Public Prosecutor's certificate under this section is not necessarily a fatal defect. 3 Rang. 55=4 Bur. L. J. 23=A. I. R. 1925 Rang. 219. An accused was granted a pardon under s. 339 (1) and the Magistrate recorded on oath in a preliminary examination certain statements. In the committing Court he resiled from the statements. *Held*, the preliminary examination was not justified by law and on the basis of the same sanction for perjury should not be granted. The proper procedure would be to produce evidence against him under s. 329 (1). 3 Rang. 224=89 Ind. Cas. 708=26 Cr. L. J. 1396=A. I. R. 1925 Rang. 286. A valid pardon once given is not in any way affected by subsequent proceedings in the case. Even where the offence for which the accused are tried and convicted is not an offence triable exclusively by a Court of Session, the evidence of an approver is still admissible when the pardon given was in respect of an offence triable exclusively by a Court of Session. A. I. R. 1925 Sind. 105. If before being examined, the accused rejects conditional pardon and refuses to give evidence as approver, his case does not fall under s. 339. 45 M. L. J. 613=25 Cr. L. J. 210=76 Ind. Cas. 642. In case of damaging admissions in cross-examination but adherence to confession in examination-in-chief and re-examination, there is still compliance with the conditions of pardon. 13 O. L. J. 663=3 O. W. N. 474=27 Cr. L. J. 768=45 Ind. Cas. 288. Trial of approver must be *de novo* after conclusion of the case. Accused is entitled to plead pardon. Court to find forfeiture of pardon before trial begins. 16 S. L. R. 131=23 Cr. L. J. 611=A. I. R. 1922 Sind. 31=68 Ind. Cas. 835. Joint trial of hostile approver with other accused and using his confession for convicting all is a substantial error of law. A. I. R. 1931 Oudh. 113=7 O. W. N. 972=32 Cr. L. J. 218=128 Ind. Cas. 209 ; see also A. I. R. 1934 Oudh. 257. Where statement is made by inducement of pardon but not under pressure, statement is admissible under s. 339 (2), A. I. R. 1933 Lah. 910=1933 Cr. C. 1297. But such statement being in the nature of confession, it requires corroboration by extrinsic evidence. 35 Cr. L. J. 1242=A. I. R. 1934 Pesh. 46; see also A.L.R. 1934 Oudh. 257=35 Cr. L.J. 889=11 O. W. N. 765. Where Magistrate after recording plea as to whether

approver had complied with condition of tender of pardon, discussed the question whether he was guilty, *held*, there was no irregularity which would vitiate trial. 1933 Cr. C. 1297=A. I. R. 1933 Lah. 910.

Procedure in trial of person under section 339.

* [339A. (1) The Court trying under section 339 a person who has accepted a tender of pardon shall—

(*a*) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under section 271, sub-section (1), and

(*b*) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury or the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acqittal.]

Notes.—Where the accused was not asked in the manner provided in the section but was asked whether he had fulfilled the conditions on which a pardon has been granted and had given true evidence. *Held*, there was no proper compliance with the section. 5 Lah. 379.

Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

†[340. (1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) Any person against whom proceedings are instituted in any such Court under section 107 or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.]

Notes—This section extends to the case not only of a person accused of an offence in a Criminal Court but to the case of any person against whom proceedings are instituted under the Code in any Court. 50B. 741. A suspect is as much if not more, entitled as a matter of right as any other person accused of a substantive offence to have a reasonable opportunity afforded to him of defending himself. 96 I. 391. Access to legal adviser is irrespective of the charge sheet. 50 B. 741=21 Bom. L. R, 1043=27 Cr. L. J. 1169=A. I. R. 1926 Bom. 551=967 Ind. Cas. 801. Prisoner on remand under s. 167 is entitled to interview his legal adviser. A. I. R. 1930 Cr. C. 1041=A. I. R. 1930 Lah. 947=129 Ind. Cas. 481. Section 340 extends to the case of any person against whom proceedings are instituted under the Code. 97 Ind. Cas. 801=28 Bom. L. R. 1043. Refusal to hear a party through his pleader is an illegality vitiating the trial. 55 M. L. J. 626=48 M. L. W. 656=29 Cr. L. J. 1082. Prosecuting Inspector defending accused at Magistrate's instance can be said to be appointed by the accused. 31 Cr. L. J. 419=A. I. R. 1930 Nag. 150=122 Ind. Cas. 442. Accused is not unrepresented, when only junior counsel is present, his senior being absent. 115 Ind. Cas. 561=30 Cr. L. J. 494=A. I. R. 1929 Cal. 1. In case of criminal appeal from High Court, Rules of High Court and, not Cr. Pro. Code is to decide whether a vakil can act for a party. 55 C. 858=32 C. W. N. 313=29 Cr. L. J. 1022=A. I. R. 1928 Cal. 675 ; see also 58 B. 456=36 Bom. L. R. 1=A. I. R. 1934 B. 70. No appeal in writing is necessary for an advocate to act for an accused person. 7 P. L. T. 524=27 Cr. L. J. 666=A. I. R. 1926 Pat. 296=94 Ind. Cas. 714. Proper opportunity should be given for defence arguments. 26 Cr. L. J. 810=A. I. R.

* Section 339 A was inserted by s. 88 *ibid.*

† Section 340 was substituted by section 89 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.).

1925 All. 282=86 Ind. Cas 458 ; see also 47 A. 147=26 Cr. L. J. 575=85 Ind. Cas. 719. A Magistrate may permit even a person not authorised to practise in his Court to appear for an accused before him. 18. Cr. L. J. 345=10 Bur. L. T. 117=38 Ind. Cas. 729.

Procedure where accused does not understand proceedings.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial ; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case and the High Court shall pass thereon such order as it thinks fit.

Notes.—Where the jury find and the Sessions Judge agrees with the jury that the accused is able to follow the proceedings in Court and to understand the same, it is the duty of the Sessions Judge to convict the accused of the offence with which he is charged and to pass a sentence on him in accordance with law. He should not report to High Court that the accused was not capable of making defence in Court. 97 Ind. Cas. 361=27 Cr. L. J 1907=7 L. R. 138 (Cr.) Where a deaf and dumb accused was found guilty of an attempt to commit suicide and at the trial made certain signs indicating his guilt, the High Court affirmed the conviction and sentenced the accused to a days' imprisonment. 25 Bom. L. R. 43=A. I. R. 1923 Bom. 194 ; see also 9 C. P. L. R. 38 Cr ; see also 28 Cr. L. J. 656=A. I. R. 1927 Lah. 799 ; 30 P. L. R. 609=10 Lah. 566=112 Ind. Cas. 688 ; 18 Bom. L. R. 553=18 Cr. L. J. 143=40 B. 598. This Section has no application where it is shown that the accused understood the proceedings. 3 Bom. L. R. 371. This section requires that the Court shall proceed to the end of the trial and then report the result to the High Court, if a conviction follows. It does not empower a Magistrate to make the report in the middle of trial. 4 Bom. L. R. 825 ; see also Rat. Un. Cr. C. 836 ; 2 Weir. 493. In submitting a case to the High Court under this section the Magistrate must state his views of the conduct of the dumb accused in the commission of the offence, and take some evidence regarding the previous history and habits of the accused. There must also be a finding whether the accused was capable of understanding and did in fact understand the nature of the proceedings and whether he understood the purport of the evidence given by the witnesses, and whether he wanted to call witnesses in his defence. Rat. Un. Cr. C. 696=Cr. Rg. 26 of 1894. Accused cannot be convicted in a case under s. 341 in the absence of a finding that he understands the nature of his act and of the proceedings. 30 P. L. R. 597=30 Cr. L. J. 948=A. I. R. 1930 Lah. 64=118 Ind. Cas. 642.

Power to examine the accused.

342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused, shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them ; but the Court and the jury (if any), may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and, put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

Scope.—The language of this section is mandatory, and the omission to comply with its provisions is not a mere error of form. 2 Weir. 405. This section says that the Court should question the accused generally on the case before he is called on for his defence, for the purpose of enabling him to explain any circumstances

appearing in the evidence against him. U. B. R. (1892-1896) Vol. I. 144. This section permits an examination of the accused to be made solely for the purpose of enabling the accused to explain facts appearing against him. 7 C. W. N. 345 ; 14A. 242=A. W. N. 1892, 83. The object of this section is not to fill up a gap in the evidence of the prosecution, but to enable the prisoner to explain any circumstances appearing in the evidence against him. 26 C. 49. It is not for the purpose of ascertaining what witnesses the accused intends to call, or what evidence he will give, or what his defence is that a Court is justified or authorised in examining an accused under this section. 14 A. 242. By "accused" is meant a person over whom the Magistrate or other Court is exercising jurisdiction. 16 B. 661. A Judge examining a prisoner, under this section ought not to cross-examine him ; the only permissible questions are such as will enable the prisoner to explain any circumstances appearing in the evidence against him. 10 C. 140=13 C. L. R. 358 ; see also 1 C. L. R. 436. This section applies to summons as well as warrant cases. Magistrate's examination of accused is not discretionary. 9 N. L. J. 43=22 N. L. R. 65=27 Cr. L. J. 632= A. I. R. 1926 Nag. 300=94 Ind. Cas. 408 ; see also A. I. R. 1926 Sind. 1 (F. B.)=26 Cr. L. J. 1554=90 Ind. Cas. 434. Ss. 342 and 245 do not limit s. 342. 45 Bom. 672=22 Cr. L. J. 17=A. I. R. 1921 Bom. 374=59 Ind. Cas. 129. Section 342 is not mandatory as regards inquiry under s. 110. Irregularity is curable under s. 537. 50 C. 985= 25 Cr. L. J. 1085=81 Ind. Cas. 909. This section cannot exempt persons who is not an accused from punishment for false accusation. 25 Cr. L. J. 1194=A. I. R. 1925 Oudh. 227=82 Ind. Cas. 58. Section 342, Cr. Pro. Code does not apply to proceedings under Chapter VIII. 50 C. 985=A. I. R. 1924 Cal. 392=81 Ind. Cas. 909. Re-examination of accused under s. 342 is not necessary, if charge is altered before the accused enters on his defence. 23 Cr. L. J. 146=1 Pat. 54=3 Pat. L. T. 91=65 Ind. Cas. 610. Proceedings under s. 488 Cr. P. Code are more of a civil than a criminal nature and so s. 342 does not apply. 52 B. 768=30 Bom. L. R. 957=29 Cr. L. J. 1051=A. I. R. 1928 B. 347=112 Ind. Cas. 475. It is not incumbent on the Magistrate to examine under s. 342 the husband or the father as the case may be, before an order under s. 488 can be made against him. 29 Cr. L. J. 1002=10 Lah. 406=30 P. L. R. 549=A. I. R. 1929 Lah. 32=112 Ind. Cas. 218. Section 32 is a general provision applicable to sessions cases also. 1 Pat. L. T. 211=21 Cr. L. J. 705=5 Pat. L. J. 430=58 Ind. Cas. 49. Failure to examine accused under s. 342 for offence under s. 352, is an illegality vitiating the proceedings. 22 Bom. L R. 1040=22 Cr. L. J. 17=45 B. 672=59 Ind. Cas 129. A person separately tried is a competent witness against his accomplices. The issue of process is not essential to constitute a person an accused within s. 343, 21 Cr. L. J. 769=16 N. L. R. 9=58 Ind. Cas. 449. Section 342 does not apply to a Court witness for the complainant or any other person. 3 Pat. 1015=5 P. L. T. 571=25 Cr. L. J. 1276=A. I. R. 1924 Pat. 764=82 Ind. Cas. 284. Section 342 is not applicable to summons cases. 28 Cr. L. J. 478=A. I. R. 1927 Lah. 435=101 Ind. Cas. 606. Section 342 does not apply to evidence taken under s. 428. 29 Cr. L. J. 972=52 B. 699=30 Bom. L. R. 651=A. I. R. 1928 Bom. 200=112 Ind. Cas. 60. Re-examination of accused under s. 342 is not necessary, if charge is altered before the accused enters on his defence. 23 Cr. L. J. 146=1 Pat. 54=3 Pat. L. T. 91=A. I. R. 1922 Pat. 393=65 Ind. Cas. 610. Sub-section (4) of s. 342 relates to proceedings specified in s. 342. 54 C. 52=28 Cr. L. J. 481=A. I. R. 1927 Cal. 307=101 Ind. Cas. 657. S. 324 (4) does not prevent the examination of the parties to a litigation under s. 145 Cr. Pro. Code on oaths. 26 Cr. L. J. 70=A. I. R. 1925 Oudh. 286=83 Ind. Cas. 630. Under s. 342, the accused is to be examined for him to explain the evidence against him. 23 S. L. R. 1=29 Cr. L. J. 932=A. I. R. 1929 Sind. 5. The words "the accused" in clause (4) of s. 342 do not apply to a witness who may be accused in some other case. 17 Cr. L. J. 256=18 Bom. L. R. 266=34 Ind. Cas. 976. The first part of the section is discretionary but the second part is obligatory. 1 Pat. L. T. 241=21 Cr. L. J. 705=5 Pat. L. J. 430. The word "examine ' in section 342 covers all kinds of examination including cross-examination and re-examination. 50 C. 935= 27 C. W. N. 783=25 Cr. L. J. 27=75 Ind. Cas. 715. A medical witness for the prosecution is not outside the purview of s. 342. 22 Cr. L. J. 259=2 P. L. T. 741= A. I. R. 1922 Pat. 299=60 Ind. Cas. 659. The provisions of section 342 are mandatory. The Magistrate has no option but to examine the accused after cross-examination of all prosecution witnesses. 22 Cr. L. J. 697=6 P. L. J. 644=2 P. L. T. 520=63 Ind. Cas. 825. Where accused was examined under s. 342 after only some witnesses were examined, but not after all witnesses were examined, the trial is vitiated. 6 L. L. J. 618=27 Cr. L. J. 87=A. I. R. 1925 Lah. 288=91 Ind. Cas. 391. Non-compliance with the mandatory provisions

of the second part of clause (1) s. 342 is a serious illegality, sufficient to vitiate the trial. 30 Cr. L. J. 18=A. I R. 1928 Lah. 382=112 Ind. Cas. 850. The expression "after the witness for prosecution have been examined" includes their cross-examination after the charge. Magistrate should question the accused before he enters upon his defence. The latter portion of s. 342 is imperative. 20 N. L. R. 174=26 Cr. L. J. 971=A. I. R. 1925 Nag. 44=87 Ind. Cas. 427 ; see also 6 P. L. T. 493=26 Cr. L. J. 927=A. I. R. 1925 Pat. 723=86 Ind. Cas. 991. Examination of accused for the second time after second cross-examination of the prosecution witnesses is not necessary. 28 O. C. 130=12 O. L. J. 182=2 O. W. N. 327=26 Cr. L. J. 1301=A. I. R. 1925 Oudh, 422=89 Ind. Cas. 245 ; 26 Cr. L. J. 1418=A. I. R. 1926 Lah. 154=89 Ind. Cas. 842. Non-examination of accused under s. 342 in a *de-novo* trial by one Magistrate succeeding another vitiates the trial. 29 Cr. L. J. 125=A. I. R. 1927 Lah. 720=106 Ind. Cas. 717. Accused need not be re-examined under s. 342 after prosecution witnesses are recalled by Court and examined under s. 540. 27 Cr. L. J. 475=A. I. R. 1926 Nag. 348=93 Ind. Cas. 699 ; see also 4 Lah. 61=25 Cr. L. J. 891=A. I. R. 1924 Lah. 94 ; 24 Cr. L. J. 547=46 M. 449=44 M. L. J. 567=73 Ind. Cas. 163. Obligation under s. 256 is distinct from that under s. 342. 27 Bom. L. R. 105=26 Cr. L. J. 690=50 B. 42=86 Ind. Cas. 66. Person called on to give security is not "accused" 50 C. 985=25 Cr. L. J. 1085=A. I. R. 1924 Cal. 392=81 Ind. Cas. 909. Under s. 342 (4) Cr. Pro. Code, an accused stands for a person accused and then under trial and under examination by the Court. 26 Cr. L. J. 492=3 Bur. L. J. 265=3 Rang. 11=A. I. R. 1925 Rang. 122=85 Ird. Cas. 236. Examining accused before all prosecution witnesses have been examined is bad in law. It must be after prosecution case is complete and before defence is called. 36 C. L. J. 417=27 C. W. N. 99=50 C. 223=24 Cr. L. J. 198=71 Ind. Cas. 662 ; see also 25 Cr. L. J. 426=A. I. R. 1923 Lah. 539=77 Ind. Cas. 602. It is doubtful whether s. 342 does not apply to chapter 8 of the Criminal Procedure Code. A. I. R. 1933 Sind. 49=34 Cr. L. J. 591=143 Ind. Cas. 351. Where after examinatiou of accused, investigating officer was examined accused should be further examined. 34 Cr. L. J. 161=A. I. R. 1932 Sind. 165=1933 Cr. C. 743. Judge must call attention of accused to important point and ask for explanation. 34 Cr. L. J. 568=1933 Cr. L. J. 686=10 O. W. N. 678=A. I. R. 1933 Oudh. 305. Provisions of s. 342 are mandatory and non-compliance with these vitiates trial. 32 Cr. L. J. 757=1930 M. W. N. 914=A. I. R. 1931 Mad. 241 ; A. I. R. 1933 Cal. 347=34 Cr. L. J. 549. Section 342 (4) does not apply to application for transfer. 29 N. L. R. 328=34 Cr. L. J. 1035=A. I. R. 1933 Nag. 201. Answers by accused must be relevant. Irrelevant answers may be refused by Judge. 1933 A. L. J. 799=34 Cr. L. J. 967=A. I. R. 1933 All. 690. S. 289 has to be read with s. 342. Questions under s. 342 should not however amount to lengthy cross-examination. *Ibid.* Joint statement is illegal and vitiates trial. 55 B. 356=32 Cr. L. J. 572=33 Bom. L. R. 82. Magistrate is bound to take down what accused says. 34 Bom. L. R. 571=33 Cr. L. J. 613=56 B. 434. Where accused is defended by counsel, failure of Magistrate to put explicit questions is immaterial. 143 Ind. Cas. 46=1932 M. W. N. 801=64 M. L. J. 88=34 Cr. L. J. 481=A. I. R. 1933 Mad. 233. Accused can never be examined as witness. 132 Ind. Cas. 519=32 Cr. L. J. 913=12 Lah. 635=32 P. L. R. 493=A. I. R. 1931 Lah. 476. Accused though competent to testify is incompetent witness. 34 Cr. L. J. 121=1932 Cr. C. 932=10 Rang. 511=A. I. R. 1932 Rang. 190 (F. B.) Where accused states that his statement is same as that of co-accused and co-accused has made two contradictory statements, the accused should get benefit of statement beneficial to him. 34 Cr. L. J 161=A. I. R. 1932 Sind. 165. Accused cannot defeat the ends of justice by merely refusing to answer. Court may draw reasonable inferences from such refusal as provided by s. 342. A. I. R. 1931 Lah. 178=32 Cr. L. J. 684=131 Ind. Cas. 277.

Object of examination.—Examination of accused is intended to be for enabling him to explain any circumstances appearing in the evidence against him. 11 Pat. L. T. 70 ; see also 126 Ind. Cas. 449=A. I. R. 1930 Sind. 225 ; A. I. R. 1926 Cal. 424. Questions in the nature of cross-examination or filling gaps in prosecution should be avoided. *Ibid.* General questions of asking him what he has to say in explanation of evidence against him is insufficient. Obscene documents must be specifically asked to be exmplained. 7 Rang. 821=31 Cr. L. J. 387=A. I. R. 1930 Rang. 114. Before asking for explanation Magistrate should warn accused that he is not obliged to make statements, unless he desires to do so and that, if he does, his statement will be used against him during trial. 23 M. L. W. 384=27 Cr. L. J. 311=A. I. R. 1926 Mad. 570=92 Ind. Cas. 695. Examination under s. 342 should not be conducted like cross-examination of adverse witnesses. It should force accused

to commit himself in statements against his interest. 10 Lah. 223=30 P. L. R. 385=29 Cr. L. J. 719=A. I. R. 1929 Lah. 382 ; see also 25 Cr. L. J. 761=A. I. R. 1925 Sind. 116=81 Ind. Cas. 249 ; 8 N. L. J. 190=27 Cr. L. J. 66=22 N. L. R. 1=91 Ind. Cas. 242 ; 3 Lah. L. J. 287=23 Cr. L. J. 388=2 Lah. 129=67 Ind. Cas. 340 ; 18 Cr. L. J. 774=41 Ind. Cas. 150. General question to accused is not compliance with the section. Magistrate must ask accused about every material point. 1 Rang. 689=2 Bur. L. J. 238=25 Cr. L. J. 482=77 Ind. Cas. 887. Trial is not vitiated by deviations from provisions of the section unless accused is thereby prejudiced. 4 Pat. 488=6 P. L. T. 154=86 Ind. Cas. 459. Section is not only for benefit of accused but part of a system for enabling the Court to discover truth. 29 C. W. N. 231=26 Cr. L. J. 631=52 C. 522. Section 342 does not purport to be only in the interest of accused persons. 35 Cr. L. J. 879=1934 A. L. J. 753=A. I. R. 1934 All. 693 ; but see 40 L. W. 803=1934 M. W. N. 1136=67 M. L. J. 800.

Oath or affirmation.—Indian law of evidence does not permit accused to give evidence in support of his defence. 30 Cr. L. J. 646=11 P. L. T. 45=A. I. R. 1929 Pat. 145 (F. B.)=116 Ind. Cas. 756. A party to proceedings under s. 368 of the Calcutta Municipal Act is not an accused person and as such is not exempted from administration of oath under s. 342. 31 C. W. N. 506=45 C. L. J. 469=28 Cr. L. J. 407=A. I. R. 1927 Cal. 509. So also proceedings under Legal Practioners Act, s. 14 are quasi-criminal proceedings and pleader may be examined on oath. 49 C. 732=26 C. W. N. 589=35 C. L. J. 356=24 Cr. L. J. 33=71 Ind. Cas. 81. No oath is to be administered to accused under s. 342. But section 342 is restricted to accused on trial and not to accused in other proceeding. 131 Ind. Cas. 142=35 C. W. N. 490=32 Cr. L. J. 667=58 C. 1214=A. I. R. 1931 Cal. 341.

Time of examination.—This section is mandatory. The accused must be examined after cross-examination and re-examination of prosecution witnesses and not before. 28 Cr. L. J. 417=A. I. R. 1927 Sind. 175=101 Ind. Cas. 449 ; see also 50 B. 42=27 Bom. L. R. 105=26 Cr. L. J. 690=86 Ind. Cas. 66 ; see also 24 Cr. L. J. 475=72 Ind. Cas. 891 ; 22 Cr. L. J. 400=2 Pat. L. T. 549=61 Ind. Cas. 844 ; 27 C. W. N. 28=77 Ind. Cas. 988 ; 51 C. 933=26 Cr. L. J. 26=84 Ind. Cas. 325. Omission to examine aecused before entering defence is irregularity calling for interference under s. 537, if justice fails. 49 A. 551=25 A. L. J. 379=28 Cr. L. J. 399=100 Ind. Cas. 1055 ; see also 31 C. W. N. 337=28 Cr. L. J. 347=45 C. L. J. 591. Where accused is examined before any prosecution evidence, examination is not under s. 342. 6 Lah. 183=26 P. L. R. 331=26 Cr. L. J. 1238=A. I. R. 1925 Lah. 432=88 Ind. Cas. 854. Statement by accused at an early stage does not dispense with questioning accused at close of prosecution evidence. 37 C. L. J. 413=27 Cr. L. J. 943=28 C. W. N. 118=75 Ind. Cas. 367. Non-compliance with this section is illegality vitiating entire proceedings. 25 Cr. L. J. 1020=A. I. R. 1924 Lah. 734=81 Ind. Cas. 796. Where accused has been examined after close of prosecution and entered defence, he cannot claim to be examined. 56 C. 1157=31 Cr. L. J. 406=A. I. R. 1930 Cal. 219=122 Ind. Cas. 291. Provided accused is enabled to explain evidence against him after prosecution is completely closed, it is immaterial whether he is examined before or after framing of charge. 32 Bom. L. R. 596=A. I. R. 1930 Bom. 241=124 Ind. Cas. 810 ; but see 31 Bom. L. R. 1134=A. I. R. 1929 Bom. 447.

Putting of written statement.—Section 342 (2) does not extend to written statement by accused. 24 A. L. J. 329=27 Cr. L. J. 253=A. I. R. 1926 All. 287=92 Ind. Cas, 429. Written statement is to be accepted in lieu of oral statement. 4 Pat. 488=6 P. L. T. 154=26 Cr. L. J. 811 ; see also 1 Pat. 31=4 P. L. T. 60=23 Cr. L. J. 703=A. I. R 1922 Pat. 388=69 Ind. Cas. 383. Where accused put in written statement, omission to examine orally is not illegal. 50 B. 174=28 Bom. L. R. 115=27 Cr. L. J. 1335=98 Ind. Cas. 407 ; see also 3 P. L. T. 322=22 Cr. L. J. 114=65 Ind. Cas. 546 ; 2 Pat. L. T. 455=22 Cr. L. J. 442=61 Ind. Cas. 794 ; 23 Cr. L. J. 697=14 L. W. 418=69 Ind. Cas. 377 ; 120 Ind. Cas. 753=31 Cr. L. J. 171=10 P. L. T. 19 ; 27 Cr. L. J. 405=A. I. R. 1926 All. 358=93 Ind. Cas. 69. Where Magistrate merely asks whether accused has got anything to say besides the written statement, though the procedure is not proper, it is not illegal. 22 Cr. L. J. 276=60 Ind. Cas. 676. Written statement of accused should be allowed even in Sessions trial. It cannot however take place of examination under s. 342. 1933 A. L. J. 799=34 Cr. L. J. 967=A. I. R. 1933 All. 690.

Procedure.—In recording accused's examination under s. 342, s. 364 must be complied with. 2 P. L. T. 288=6 P. L. J. 147=22 Cr. L. J. 417=61 Ind. Cas.

705. Proper method of applying s. 342 is to bring specific evidence against him to his notice. General question is not enough. 26 Cr. L. J. 572=85 Ind. Cas. 716. If the accused is defended by counsel, no lengthy examination should be entered into. If he is undefended, incriminating evidence against him must be pointed out. 3 Pat. L. T. 649=23 Cr. L. J. 233=66 Ind. Cas. 73. Question to accused should not be to entrap him or fall gaps in prosecution evidence. But his answers to legitimate questions can be taken into account. 1930 Cr. C. 926=A. I. R. 1930 Pat. 498. Accused should be examined after re-examination of the prosecution witnesses. He cannot be examined before close of prosecution evidence, or after close of his defence evidence. A discussion with counsel for accused as to nature and number of witnesses for defence is not what section requires. 24 Cr. L. J. 248=A. I. R. 1923 Cal. 470=71 Ind. Cas. 792; see also 19 S. L. R. 104=25 Cr. L. J. 662=81 Ind. Cas. 150. Re-examining the accused after recall of prosecution witnesses is not obligatory. If evidence contains new matter, such examination is highly desirable. 45 M. L. J. 279=18 L. W. 113=1923 M. W. N. 860=25 Cr. L. J. 7=75 Ind. Cas. 695; see also 30 Cr. L. J. 625=A. I. R. 1929 Lah. 371; 34 Cr. L. J. 591=A. I. R. 1933 Sind. 49. Examination should not be based on detailed instructions of prosecuting counsel. 16 N. L. J. 158=A. I. R. 1933 Nag. 269=1933 Cr. C. 1003. Court should call attention of accused to important point and ask for explanation. 57 C. L. J. 177=34 Cr. L. J. 322=64 M. L. J. 466=34 Bom. L. R. 507=37 C. W. N. 514=1933 A. L. J. 645=A. I. R. 1933 P. C. 124. But nature of questions to accused must depend on facts of each case. 6 P. L. T. 588=4 Pat. 459=20 Cr. L. J. 954=A. I. R. 1925 Pat. 713=87 Ind. Cas. 106. Where the accused does not appreciate circumstances in evidence against him, Court must ask specific questions. General questions is not enough. 6 P. L. T. 33=86 Ind. Cas. 156; see also 86 Ind. Cas. 58=6 P. L. T. 39. Where accused refuses to answer questions and files written statement, the Magistrate is not bound to go on questioning him. 4 Pat. 231=6 P. L. T. 73=A. I. R. 1925 Pat. 378=86 Ind. Cas. 996.

Summons case.—This section is not applicable to summons cases. Accused files written statement after close of prosecution and before defence. It is not essential for Magistrate to question him generally. 9 L. L. J. 109=28 P. L. R. 228=28 Cr. L. J. 480=A. I. R. 1927 Lah. 268; see also A. I. R. 1931 Rang. 244 (F. B.)=9 Rang. 506; but see 54 C. 286=45 C. L. J. 8= 28 Cr. L. J. 297=A. I. R. 1927 Cal. 250=100 Ind. Cas. 377. Where summons case has begun as warrant case, omission to examine accused after further evidence after charge cannot be condemned. 34 Cr. L. J. 340=A. I. R. 1933 Nag. 192. This section is applicable to summons as well as warrant cases. If there is nothing to answer under s. 245, examination may be dispensed with. 27 Cr. L. J. 405=A. I. R. 1926 All. 358=93 Ind. Cas. 69; see also 15 Lah. 60=35 P. L. R. 295=35 Cr. L. J. 1394=A. I. R. 1934 Lah. 90; 19 S. L. R. 121=27 Cr. L. J. 1290=A. I. R. 1926 Sind. 281; 20 S. L. R. 34=26 Cr. L. J. 1554=90 Ind. Cas. 434; 65 Ind. Cas. 618=23 Cr. L. J. 154=A. I. R. 1922 Lah. 45; A. I. R. 1935 All. 217; 23 Bom. L. R. 984=23 Cr. L. J. 21=A. I. R. 1921 Bom. 370=64 Ind. Cas. 501; A. I. R. 1926 Lah. 667=27 Cr. L. J. 1000=96 Ind. Cas. 856. Where accused was prejudiced by non-examination, fresh trial was ordered. A. I. R. 1925 Oudh. 491=85 Ind. Cas. 943; see also A. I. R. 1922 Bom. 290=64 Ind. Cas. 669=23 Cr. L. J. 45=23 Bom. L. R. 1203; 6 Pat. L. J. 174=2 P. L. T. 390=22 Cr. L. J. 427=A. I. R. 1921 Pat. 11=61 Ind. Cas. 715. In a summary trial the mere fact that statement of accused has not been recorded is not fatal. A. I. R. 1935 All. 217.

Privileged occasion.—Defamatory statement by accused whlie answering questions under s. 342 is not punishable, if relevant to the matter in issue. 25 A. L. J. 855=A. I. R. 1927 All. 707.

Power of Court.—In case of absence of sufficient evidence for conviction statement of accused cannot be used to supplement prosecution evidence. 26 A. L. J. 1334=51 A. 313=30 Cr. L. J. 101=A. I. R. 1929 All. 1=113 Ind. Cas, 213. Administering inquisitional interrogatory to accused or subjecting him to cross-examination or questioning him with a view to elicit truth, are beyond the ambit of section. 8 Rang. 372=A. I. R 1930 Rang. 351=127 Ind. Cas. 730; see also 2 Lah. 129=23 Cr. L. J. 388=3 Lah. L. J. 287=67 Ind. Cas. 340; 18 Cr. L. J. 941=42 Ind. Cas. 173; 35 Ind. Cas. 492=17 Cr. L. J. 316. Thumb impression of accused can be taken in Court and s. 342 does not prevent it. 1 Rang. 759=2 Ber. L. J. 270=26 Cr. L. J. 108=A. I. R. 1924 Rang. 115=83 Ind. Cas. 668. *Contra.* 17 Cr. L. J. 336=10 Bur. L. T. 32=35 Ind. Cas. 492. If the accused prefers to be reticent Court

should not hold inquisitional proceedings. 50 C. L. J. 593=A. I. R. 1930 Cal. 209=125 Ind. Cas. 656 ; see also 31 Cr. L. J. 15=A. I. R. 1929 Nag. 350=120 Ind. Cas. 210. The Magistrate should go thoroughly into evidence and help accused in putting up obvious defence pleas. A. I. R. 1930 Rang. 349=128 Ind. Cas. 845. It is not obligatory to examine accused after examination of a witness after case is closed. 30 Bom. L. R. 1086=29 Cr. L. J. 1057=A. I. R. 1928 Bom. 388=112 Ind. Cas. 561. Section 540 is controlled by section 342. Where accused has been once examined under s. 342, his re-examination after any witness under s. 540 is not essential. 26 Cr. L. J. 1418=A. I. R. 1926 Lah. 154=89 Ind. Cas. 842 ; see also 10 L. L. J. 262=29 P. L. R. 703=29 Cr. L. J. 740=A. I. R. 1928 Lah. 647. Formal questions in general terms is sufficient compliance with section. But Court should exercise discretion as to specific questions in individual cases. 27 Cr. L. J 181=A. I. R. 1927 Nag. 71=91 Ind. Cas. 997 ; see also 26 Bom. L. R. 109=25 Cr. L. J. 1127=81 Ind. Cas. 951 ; 28 Cr. L. J. 383=26 M. L. W. 33=A. I. R. 1927 Mad. 613=100 Ind. Cas. 991. Where personal attendance has been excused under s. 205, personal attendance for making statement under s. 342 is not to be insisted upon. 4 Rang. 506=28 Cr. L. J. 226=A. I. R. 1927 Rang. 73=99 Ind. Cas. 1026 ; see also A. I. R. 1934 Bom. 212=36 Bom. L. R. 433=35 Cr. L. J. 1035. In exceptional circumstances the Court can take help of prosecution in putting questions under this section. 151 Ind. Cas. 778=35 Cr. L. J. 1457=A. I. R. 1934 Nag. 213. Court should draw the accused's attention to any important point against him and ask for explanation. A. I. R. 1934 All. 735=152 Ind. Cas 120.

Non-compliance.—In summary trials, failure to examine accused under s. 342 vitiates trials. 20 S. L. R. 34=26 Cr. L. J. 1554=A. I. R. 1926 Sind. 1=90 Ind. Cas. 434 ; see also A. I. R. 1934 Lah. 96=35 Cr. L. J. 1394=15 Lah. 60. Requirements of this section are not complied with where particulars of offence which accused are charged are not explained to them. 25 Cr. L. J. 319=A. I. R. 1923 Rang. 132=76 Ind. Cas. 1039. Examination of accused after examination-in-chief of prosecution witnesses is not sufficient. He must be examined after their cross-examination and re-examination. 50 C. 308=25 Cr. L. J. 799=81 Ind. Cas. 319 ; see also 27 Cr. L. J. 1021=A. I. R. 1926 Lah. 684=96 Ind. Cas. 877"; 5 P. L. T. 445=A. I. R. 1924 Pat. 791=81 Ind. Cas. 199 ; 24 Cr. L. J. 661=A. I. R. 1924 Oudh. 111=73 Ind. Cas. 693. When no charge is framed non-examination of accused does not vitiate proceedings. 25 Cr. L. J. 417=A. I. R. 1924 Nag. 301=77 Ind. Cas. 593.

Non-compliance-absence of prejudice.—Failure to comply strictly with the provisions of section 342 vitiates trial, yet High Court in revision need not set aside conviction if prejudice is not caused. 8 L. L. J. 90=27 Cr. L. J. 727=27 P. L. R. 183=A. I. R. 1926 Lah. 553 ; see also 27 Cr. L. J. 719=94 Ind. Cas. 911 ; 93 Ind. Cas. 69 ; 83 Ind. Cas. 692=26 Cr. L. J. 132=A. I. R. 1924 All. 763 ; 3 O. W. N. 534=27 Cr. L. J. 852=A. I. R. 1926 Oudh. 424=95 Ind. Cas. 932 ; 29 Cr. L. J. 771=10 P. L. T. 429=A. I. R. 1929 Pat. 64 ; 30 Cr. L. J. 18=A. I. R. 1928 Lah. 382=112 Ind. Cas. 850 ; 26 A. L. J. 196=30 Cr. L. J. 530=A. I. R. 1928. All. 222=115 Ind. Cas. 872 ; 8 Rang. 372 ; 10 P. L. T. 196=31 Cr. L. J. 171=120 Ind. Cas. 753 ; A. I. R. 1935 All. 217. A. I. R. 1934 Sind. 67=35 Cr. L. J. 1175=28 S. L. R. 106. Where there has been a clear and deliberate non-compliance with ss. 342 and 364 Cr. Pro. Code, no question of prejudice arises and the irregularity is not curable under s. 537. A. I. R. 1934 Nag. 213=35 Cr. L. J. 1457=151 Ind. Cas. 778 ; see also A. I. R, 1934 Oudh. 457=35 Cr. L. J.1417=11 O. W. N. 1206. Where the accused is not prejudiced a technical failure to comply strictly with the provisions of s. 342 is not fatal. 7 P. L. T. 496=27 Cr. L. J. 1017=A. I. R. 1926 Pat. 393=96 Ind. Cas. 873 ; see also 111 Ind. Cas. 852=23 S. L. R. 1=29 Cr. L. J. 932 ; 7 Rang. 470=30 Cr. L. J. 1164=A. I. R. 1929 Rang. 331 ; 26 Cr. L. J. 1336=3 Rang. 139=89 Ind. Cas. 312 ; 20 A. L. J. 874=24 Cr. L. J. 67=45 A. 124=71 Ind. Cas. 115 ; 2 P. L. T. 549=22 Cr. L. J. 460=61 Ind. Cas. 844 ; 81 Ind. Cas. 976=A. I. R. 1925 Nag. 147 ; 26 Cr. L. J. 1374=A. I. R. 1925 Oudh. 603=89 Ind. Cas. 462 ; 8 Rang. 372=32 Cr. L. J. 23=A. I. R. 1932 Rang. 351=127 Ind. Cas. 730 ; 40 L. W. 803=67 M. L. J. 800=33 Cr. L. J. 811=1932 Cr. C. 186=9 O. W. N. 116=A. I. R. 1932 Oudh. 113. Where the procedure has not been followed, the test is whether there is failure of justice. 34 Cr. L. J. 121=10 Rang. 511=A. I. R. 1932 Rang. 190 (F. B.) ; see also A. I. R. 1933 Cal. 187=34 Cr. L. J. 369=1933 Cr. C. 233 ; 57 C. L. J. 57=A. I. R. 1933 Cal. 594 ; A. I. R. 1934 Pat. 330=35 Cr. L. J. 1322. Non-compliance with provisions of the section necessitates re-trial. But where case is petty one, Court need not order

retrial. 34 P. L. R. 798=A. I. R. 1933 Lah. 1002. Mere fact that opposite party was not examined in proceedings under s. 488 is no ground for sending cases back to trial Court. A. I. R. 1932 Cal. 488=33 Cr. L. J. 640=36 C. W. N. 380=138 Ind. Cas. 629.

Non-compliance—non-incurable illegality.—Trial is vitiated if accused is not examined as required by s. 342. A. I. R. 1922 Pat. 212. Provisions of s. 342 (1) are mandatory and omission to observe provisions thereof amounts to illegality which cannot be cured under s. 537. 29 Cr. L. J. 382= 108 Ind. Cas. 381 ; see also 30 Bom. L. R. 385=29 Cr. L. J. 555=A. I. R. 1928 Bom. 140=109 Ind. Cas. 359 ; 27 P. L. R. 635=27 Cr. L. J. 1023=96 Ind. Cas. 879=A. I. R. 1926 Lah. 683 ; 7 P. L. T. 259=25 Cr. L. J. 1289=89 Ind. Cas. 153 ; 2 P. L. T. 288=6 P. L. J. 147=22 Cr. L. J. 417=61 Ind. Cas. 705 ; 50 B. 34=27 Bom. L. R. 1405=27 Cr. L. J. 165=A. I. R. 1926 Bom. 57=91 Ind. Cas. 949 ; 26 P. L. R. 533=26 Cr. L. J. 1370=89 Ind. Cas. 458 ; 1920 Pat. 281=21 Cr. L. J. 793=1 P. L. T. 640=58 Ind. Cas. 521 ; 1 P. L. T. 241=5 P. L. J. 430=58 Ind. Cas. 49 ; 42 Ind. Cas. 176=18 Cr. L. J. 944=11 Bur. L. T. 134=42 Ind. Cas. 176 ; 16 Cr. L. J. 765=17 Bom. L. R. 892=31 Ind. Cas. 365 ; 19 Cr. L. J. 280=44 Ind. Cas. 184 ; 4 P. L. T. 231= 24 Cr. L. J. 311=A. I. R. 1923 Pat. 292=72 Ind. Cas. 71 ; 49 C. 1075=24 Cr. L. J. 3=39 C. L. J. 31=71 Ind. Cas. 51 ; 4 Lah. L. J. 230=23 Cr. L. J. 154=65 Ind. Cas. 618 ; 61 Ind. Cas. 794=22 Cr. L. J. 442=2 Pat. L. T. 455 ; 7 Lah. 564=27 Cr. L. J. 1007=27 P. L. R. 427=96 Ind. Cas. 863 ; 27 Cr. L. J. 1000=A. I. R. 1926 Lah. 667 ; 2 Pat. L. T. 288=22 Cr. L. J. 417=61 Ind. Cas. 705 ; 27 Cr. L. J. 336=4 Bur L. J. 143=92 Ind. Cas. 752. 28 C. W. N. 119=25 Cr. L. J. 289=76 Ind. Cas. 961 ; A. I. R. 1934 Lah. 415=35 Cr. L. J. 1447 ; 35 P. L. R. 613 ; A. I. R. 1934 Pesh. 75=35 Cr. L. J. 1361=151 Ind. Cas. 501 ; 35 P. L. R. 525=A. I. R. 1934 Lah. 631 ; 35 P. L. R. 173=A. I. R. 1934 Lah. 648 ; 130 Ind. Cas. 845=32 Cr. L. J. 623.

Non-compliance—acquittal—Section 342 is imperative. Failure to examine accused after prosecution witnesses, is not proper even if accused is acquitted. 27 Cr. L. J. 1364=A. I. R. 1927 Rang. 9=98 Ind. Cas. 484. So an order of acquittal may be setaside on the ground that the trial had been vitiated by a failure to comply with the mandatory provisions of section 342. 51 C. 924=39 C. L. J. 411=26 Cr. L. J. 15=A. I. R. 1924 Cal. 975=83 Ind. Cas. 495.

Non-compliance—retrial.—Where provisions of the section has not been complied with by Magistrate, Superior Court should setaside conviction and sentence and remit the case to trial court for disposal according to law. 27 C. W. N. 28=25 Cr. L. J. 524=A. I. R. 1921 Cal. 605=77 Ind. Cas. 988 ; see also 27 Cr. L. J. 110= A. I. R. 1926 Cal. 692=91 Ind. Cas. 542 ; 29 Cr. L. J. 905=A. I. R. 1928 Lah. 230= 111 Ind. Cas. 665 ; 27 Cr. L. J. 475 ; 29 Cr. L. J. 475=37 C. L. J. 413=28 C. W. N. 118=24 Cr. L. J. 946=A. I. R. 1925 Cal. 574 =75 Ind. Cas. 367 ; 69 Ind. Cas. 377 =14 M. L. W. 418 ; but see 38 C. L. J. 175. For re-trial to commence from point of error. 25 Cr. L. J. 1152 ; 29 Cr. L. J. 475=A. I. R. 1928 Nag. 162.

Non-compliance—other effects of—Trial is vitiated for non-compliance. A. I. R. 1930 Mad. 241 ; see also 33 Bom. L. R. 82. Where no new matter has been introduced in evidence in fresh trial omission to examine accused for second time at such trial does not vitiate trial. A. I. R. 1934 Mad. 22.

No influence to be used to induce disclosures.

343. Except as provided in sections 337 and 338, no influence by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Notes.—Court must not use pressure on accused to bring in his absconding co-accused. A. I. R. 1930. Lah. 953. The evidence of a witness whom prosecution has assured not to prosecute is admissible, though its wright may be less. Such assurance is within the power of prosecution. 8 N. L. J. 138=26 Cr. L. J. 1467 ; see also 34 Ind. Cas. 976=17 Cr. L. J. 256=18 Bom. L. R. 266.

Power to postpone or adjourn proceedings.

344. (1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing stating the reasons therefor, from time to time,

postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

Explanation—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Notes.—This section relates to proceeding in inquires and trials and has nothing to do with police investigation, and it contemplates a remand to jail and not to police custody. Cr. Rg. 55 of 1897. This section of the Code dealing with proceedings in prosecutions expressly empowers the Court to postpone or adjourn an enquiry upon such terms as it thinks fit. 28 A. 207=2 A. L. J. 831=2 Cr. L. J. 803. Magistrate shold not readily give adjournments. 9 Pat. 113=A. I. R. 1930 Pat. 241=125 Ind. Cas. 134. In a petty criminal case parties should be completely ready with all their witnesses at the first hearing. 9 Pat. 113=A. I. R. 1930 Pat. 241=125 Ind. Cas. 134. Magistrate has inherent jurisdiction to adjourn inquiry or trial. 30 Bom. L. R. 962 =29 Cr. L. J. 1053=112 Ind. Cas. 477 ; see also A. I. R. 1934 Sind 143=152 Ind. Cas. 382. Hearing may be adjourned provided notice is given to opposite party, as Code intends criminal trials to proceed forthwith. 11 N. L. J. 260=29 Cr. L. J. 1092= A. I. R. 1929 Nag. 42=112 Ind. Cas. 676. Court must not take up case after court hours. 9 P. L. T. 344=29 Cr. L. J. 299=A. I. R. 1928 Pat. 277=107 Ind. Cas. 827. This section applies even before process to accused has issued. 3 Pat. L. R. Cr. 134=6 P. L. T. 477=26 Cr. L. J. 1179=A. I. R. 1925 Pat. 619=88 Ind. Cas. 603. Court must not countenance prosecution taking adjournment or not at his pleasure. 26 Cr. L. J. 1050=A. I. R. 1926 Cal. 102=87 Ind. Cas. 970. Convenience is not a ground to be considered. 22 Cr. L. J. 669=34 P. L. R. Lah. 78=63 Ind. Cas. 461. The absence of the principal accused is no ground for adjourning the case infinitely, but accused is not on this ground entitled to be discharged. 49 C. 182=22 Cr. L. J. 465=A. I. R. 1922 Cal. 334=61 Ind. Cas. 993. S. 344 refers specially to the stay of inquiry or trial and this definitely includes a preliminary inquiry under s. 202. 152 Ind. Cas. 382=A. I. R. 1934 Sind. 143. Criminal Court has no power to stay pending proceedings indefinitely. A. I. R. 1933 Surat. 358=27 S. L. R. 219=1933 Cr. C. 1340. Existence of reasonable cause is conditions precedent to order under s. 344 (1). Magistrate properly directing postponement has unfettered discretion to remand accused to custody. Explanation to s. 344 (1) gives only one type of reasonable cause. Circumstances other than those mentioned in explanation may afford reasonable cause for remand. 37 C. W. N. 683=1933 Cr. C. 1254=A. I. R. 1933 Cal. 752. Court may adjourn case "from time to time" but not *sine die*. 141 Ind. Cas. 179=34 Cr. L. J. 139=27 S. L. R. 17=A. I. R. 1932 Sind. 214. If s. 344 is really applicable to a case, it is duty of Court to apply that section and be guided by considerations laid down therein and by no others. A. I. R. 1931 All. 617=32 Cr. L. J. 1045=1931 A. L. J. 617. In addition to this section Court has inherent jurisdiction to stay proceedings. 17 Cr. L. J. 7=4 P. W. R. Cr. 1916. This section does not apply to adjournment of appeals. 21 Cr. L. J. 201=29 P. R. 1919 Cr.= 2 Lah. L. J. 79=54 Ind. Cas. 985. Pending case should not be proposed unless to a specified date. 27 Cr. L. J. 560=A. I. R. 1926 All. 421=93 Ind. Cas. 1056. This section does not empower the Magistrate to remand an accused person in custody of the Magistrate to police custody for the purpose of obtaining information with regard to the offences which the accused may be alleged to have committed. 4 Bom. L. R. 878. It would be highly undesirable that the same dispute should be allowed to be brought out in two Courts, namely Criminal and Civil Courts, simultaneously, and under s. 344 of the Code of Criminal Proceedure ought to be stayed pending disposal of the civil suit. 26 Cr. L. J. 1485=A. I. R. 1926 All. 30. Where a Magistrate is of opinion that a party before him is unnecessarily wasting time and protracting the case, he has discretion to refuse an adjournment for

bringing fresh witnesses. 26 Cr. L. J. 958=87 Ind Cas. 110. A Magistrate is not justified in ordering costs of adjournment to be paid by complainant for his failure to produce evidence when one of the accused is not present on the date, and an adjournment is necessary in order to procure the absentee accused. 27 Cr. L. J. 572=94 Ind. Cas. 140=A. I. R. 1926. Lah. 407. Under this section a Sub-divisional Magistrate can only adjourn a case from time to time but has no power to stay proceedings in his own Court. 39 M. L. T. 103=1927 M. W. N. 694=104 Ind. Cas. 625=28 Cr. L. J. 849. The High Court will not ordinarily interfere if the Court refusing to act under this section has exercised a judicial discretion. 50 M. 839=104 Ind. Cas. 252=28 Cr. L. J. 812=A. I. R. 1927 Mad. 778 ; see also 3 Pat. L. R. Cr. 134=6 P. L. T. 477=26 Cr. L. J. 1179=A. I. R. 1925 Pat. 619. A Magistrate has jurisdiction to postpone his inquiry even apart from s. 344, under inherent jurisdiction. 49 C. L. J. 388=A. I. R. 1929 Cal. 281. Though the policy of law is that Court should try case as soon as complaint is received, on sufficient grounds, hearing may be adjourned. 3 Pat. L. R. 134=6 Pat L. T. 477=26 Cr. L. J. 1179=A. I. R. 1925 Pat. 619=88 Ind. Cas. 603. Adjournments are regulated by this section. 28 C. W. N. 490=26 Cr. L. J. 68=A. I. R. 1924 Cal. 614=83 Ind. Cas. 628. Accused must have applied for fresh process before asking for adjournment, owing to absence of a witness, who had been served. 44 M. L. J. 84=17 N. L. W. 18=32 M. L. T. 100=46 M. 253=29 Cr. L. J. 84=71 Ind. Cas. 212. In a proceeding under s. 145, Cr. Pro. Code, Court should give adjournment to enable documents filed in Civil Courts which were closed to be produced. 33 C. L. J. 507=22 Cr. L. J. 335=25 C. W. N. 622=61 Ind. Cas. 63. Magistrate has jurisdiction to order costs of adjournment to be paid to opposite party. 42 B. 254=19 Cr. L. J. 326=26 Bom. L. R. 124=44 Ind. Cas. 342 ; see also 19 Cr. L. J. 6=2 P. L. W. 218=42 Ind. Cas. 918 ; 40 M. 1130=33 M. L. J. 366=5 L. W. 763=18 Cr. L. J. 612=(1917) M. W. N. 560=39 Ind. Cas. 980. Where the Court had to adjourn, as one accused was absent, order for costs of Rs. 50 for adjournment at the instance of the other accused as there counsel was absent is unjustified. 36 P. L. R. 74=A. I. R. 1934 Lah. 441=152 Ind. Cas. 145. Power to order accused for costs of adjournment does not extend to previous adjournment's granted without conditions. 34 Bom. L. R. 1106=33 Cr. L. J. 802=56 B. 536=A. I. R. 1932 Bom. 470, Order for costs unless unreasonable will not be interfered by the High Court. 34 Bom. L. R. 1106=33 Cr. L. J. 802=A. I. R. 1932 Bom. 470. Where application is made for transfer of a case, no order for costs under s. 344 should be made. 34 Bom. L. R. 1106=33 Cr. L. J. 802=A. I. R. 1932 Bom. 470=56 B. 536. Refusal of adjournment for revision is no ground for transfer. A I. R. 1933 Sind. 17=33 Cr. L. J. 908=26 S. L. R. 255. It is not complainant's duty to accompany Court process-server to secure service of summons upon accused or respondents. 1933 Cr. C. 941=A. I. R. 1933 Lah. 720. After framing of a charge in a non-compoundable case, complainant is only a witness and on his failure to attend and give evidence on a particular day, he cannot be ordered to pay costs. 25 Cr. L. J. 87=A. I. R. 1924 Lah. 627=75 Ind. Cas. 23 ; see also 24 Bom. L. R. 380=23 Cr. L. J. 338=A. I. R. 1922 Bom. 239=66 Ind. Cas. 994. On failure of accused to appear on day fixed, Court has no authority to order him to pay costs of complainant. 20 A. L. J. 280=23 Cr. L. J. 243=A. I. R. 1922 All. 184=66 Ind. Cas. 179. Application for stay of civil suit, must be made first to Magistrate's Court. 24 Cr. L. J. 640=A. I. R. 1924 Mad. 235=73 Ind. Cas. 528. As regards desirability of pending criminal suit pending civil suit, vide 11 Mys. L. J. 420 ; A. I. R. 1934 Sind. 143=1934 Cr. C. 1150 ; A. I. R. 1933 Sind. 358 ; 17 Cr L. J. 205. Remand under s. 344 can be ordered without report under s. 173. 32 Cr. L. J. 1045=A. I. R. 1931 All. 617 ; see also 35 Cr. L. J. 1180=150 Ind. Cas. 1056.

345. (1) The offences punishable under the sections of the Indian Penal Code [specified]* in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table :—

Compounding offences.

* This word was substituted for the word "described" by s. 90 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Utternig words, etc., with deliberate intent to wound the religious feeling of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully retaining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ... ... House trespass	447 448	The person in possession of the property trespassed upon.
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery ... ... Enticing or taking away or detaining with criminal intent a married woman.	497 498	The husband of the woman.
Defamation ... ... Printing or engraving matter, knowing it to be defamatory. Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	500 501 502	The person defamed.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
*[Act caused by making a person believe that he will be an object of divine displeasure.]	508	The person against whom the offence was committed.

†(2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table :—

* This entry was added by s. 90 of the Code of Criminal Procedure (Amendment Act, 1923 (XVIII of 1923).

† This sub-section was substituted for sub-section (2) by *ibid.*

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	The person to whom hurt is caused.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining a person in secret.	346	Ditto.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound by law or by legal contract, to protect.	418	Ditto.
Cheating by personation	419	The person cheated.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for tradeor manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto.
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person, who would otherwise be competent to compound an offence under this section is * [under the age of eighteen years or is] an idiot or a lunatic, any person competent to contract on his behalf may † [with the permision of the Court] compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be before which the appeal is to be heard.

‡[(5A) A High Court acting in the exercise of its powers of revision under section 439 may allow any person to compound any offence which he is competent to compound under this section].

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused § [with whom the offence has been compounded].

(7) No offence shall be compounded except as provided by this section.

Notes.—Where the parties to a compoundable offence compound it under this section and produces a writing signed by them before the Court, the Court is bound to act upon it, and is not at liberty to call upon the parties to prove that the case has been compounded. 16 Bom. L. R. 939=26 Ind. Cas. 1000=16 Cr. L. J. 88 ; but see 19 Ind. Cas. 948. Under ss. 170 and 63 of the Code of Criminal Procedure, a Police-officer is not empowered to allow the compounding of any offence himself, but should send it to the Court of the Magistrate to be so compounded. U. B. R. (1892—1896) Vol. I. 42. Court may proceed against such of the accused as have not compromised. 26 Cr. L. J. 238=16 S. L. R. 149=A. I. R. 1921 Sind. 101=84 Ind. Cas. 62. Whether case is compoundable or not, depends on its condition at the date of the petition. 26 Cr. L. J. 1428=A. I. R. 1925 Nag. 395=89 Ind. Cas. 900. Compromise after hearing of appeal does not come under s. 345. 1933 Cr. C. 740=34 Cr. L. J. 926=A. I. R. 1933 All. 434. A compromise once effected cannot be withdrawn and unless and until, the trial Magistrate comes to a finding that no compromise had been effected, he cannot proceed with the trial. 32 P. L. R. 393. Before allowing composition Court must be satisfied about its legality. 31 Bom. L. R. 789=A. I. R. 1929 Bom. 375. Composition is not hushing up the matter. A. I. R. 1929 Pat. 512. Where some of the offences are not compoundable, Magistrate may reject application for composition made very late. 31 Bom. L. R. 789=A. I. R. 1929 Bom. 375. Offence may be compounded at any time before sentence, and Court cannot proceed further, the moment petition is put in. 29 Cr. L. J. 1058=112 Ind. Cas. 562 ; see also 45 C. 816. Where agent files complaint on behalf of another, Court may at former's instance acquit the accused without enquiring into his authority to compound. 22 A. L. J. 820=26 Cr. L. J. 98=A. I. R. 1924 All. 778=83 Ind. Cas. 658. Husband alone can compound offence under s. 498. 23 Cr. L. J. 690=5 L. L. J. 183=A. I. R. 1922 Lah. 177=69 Ind. Cas. 370. Person in charge of a wife can complain but not compound on behalf of her husband. 24 Cr. L. J. 780=4 Lah. L. J. 488=A. I. R. 1924 Lah. 330=74 Ind. Cas. 444 ; see also 24 Cr. L. J. 190=71 Ind. Cas. 248. Where complaint against only one of the accused is compounded all the rest are acquitted in respect of the same charge. 4 P. L. T. 107=A. I. R. 1923 Pat. 348=67 Ind. Cas. 592 ; see also 20 Cr. L. J. 824=1 Pat. L. T. 32=53 Ind. Cas. 824 ; but see 19 Cr. L. J. 176 =41 M. 523=43 Ind. Cas. 592 ; 45 B. 346=59 Ind. Cas. 199 ; 22 Cr. L. J. 353=43 A. 483=61 Ind. Cas. 209 ; 121 P. L. R. 1920=56 Ind. Cas. 229 ; 1930 A. L. J. 85. Offence under s. 323 can be compounded only by the person hurt. 18 Cr L. J. 729. =15 A. L. J. 467=40 Ind. Cas. 729. Once a composition is arrived at it has the effect

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* These words were substituted for the words "a minor" by s. 90 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by s. 90 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ Sub-section (5A) was inserted by *ibid.*

§ These words were added by *ibid.*

of acquittal, but if a party resiles from it, Court must go on. 41 M. 685=34 M. L. J. 217=19 Cr. L. J. 359=(1918) M. W. N. 493=44 Ind. Cas. 583 ; but see 33 C. L. J. 226=22 Cr. L. J. 301=A. I. R. 1921 Cal. 403. The moment a case is compromised and so recorded Court is *functus officio* to order complainants' appearance. 2 P. L. T. 584=22 Cr. L. J. 675=A. I. R. 1921 Pat. 290=63 Ind. Cas. 611. Composition of a compoundable case is not a thing opposed to public policy. 4 Luck. 669=125 Ind. Cas. 385. This section allows cases in which appeals are pending to be compounded with the leave of the Court. Cases which come before the Appellate Court in revision cannot be compounded. 13 A. L. J. 104=37A. 127=16 Cr. L. J. 247=28 Ind. Cas. 103 ; but see 27 P. L. R. 231 ; 73 Ind. Cas. 334 ; see also sub-section (5A). The composition of a compoundable offence has the effect of an acquittal. The complainant cannot afterwards draw back from the compromise or deny it. 81 Ind. Cas. 346=25 Cr. L. J. 810. The compounding of an offence with one or more of several accused persons has not the effect of acquittal in respect of the remaining accused between whom and the complainant no composition has been arrived at. 94 Ind. Cas. 144=27 Cr. L. J. 576=7 Lah. 314=27 P. L. R. 493. An offence of wrongful restraint is compoundable by the person restrained even prior to a complaint. 49 A. 484=25 A. L. J. 396=101 Ind. Cas. 671=28 Cr. L. J. 495=A. I. R. 1927 All. 375. Any person may set the criminal law in motion, but it is only the person specified in this section who can compound the offence. 51 B. 512=29 Bom. L. R. 718=102 Ind. Cas. 549=28 Cr. L. J. 58=A. I. R. 1927 Mad. 410. Where an accused is charged under sections 325 and 147 I. P. Code, and the former charge is compounded, the charge under s. 147 does not *ipso facto* lapse. 26 Cr. L. J. 686=86 Ind. Cas. 62=26 P. L. R. 35=A. I. R. 1925 Lah. 464. Under s. 345 (5A) as amended, a High Court in revision may allow any person to compound any offence which he is competent to compound under this section. 21 A. L. J. 838. Offence cannot be compounded when a revision is pending before the High Court. 29 M. L. J. 621=16 Cr. L. J. 750=39 M. 604=31 Ind. Cas. 350. After conviction there can be no composition without leave of Court. Appellate Court is not bound to recognise it. 20 Cr. L. J. 832=53 Ind. Cas. 832=11 L. W. 33. A special exhaustive possession cannot be enlarged by referring to powers of Appellate Court under s. 423 Cr. P. Code. 43C. 1143=17 Cr. L. J. 334=20 C. W. N. 1071=35 Ind. Cas. 515. Court exercising revisional jurisdicton has no powers to direct parties to file a compromise. 42 A. 474=18 A. L. J. 574=21 Cr. L. J. 447=56 Ind. Cas. 239 ; see also 20 Cr. L. J. 87=48 Ind. Cas. 837. Consideration for the composition may be anything and agreement from which one or other resiles, comes under the section. 39 M. 946=16 Cr. L. J. 803=31 Ind. Cas. 819. After compounding of compoundable offence, subsequent suit for damages on facts constituting original offence does not lie. 35 Bom. L. R. 850=A. I. R. 1933 Bom. 413. Where case is compoundable and accused alleges compromise, the Court before proceeding must enquire whether compromise was effected. 32 P. L. R. 293=32 Cr. L. J. 1034=A. I. R. 1931 Lah. 402 ; see also 1934 A. L. J. 1061=A. I. R. 1934 All. 1025. Even when summons refers to a non-compoundable instead of the compoundable offence in complaint, Court cannot proceed further, when complainant has withdrawn it. 2 P. L. T. 602=22 Cr. L. J. 493=62 Ind. Cas. 189. Where the offence is compoundable with the permission of the Court, the Court should make a reference to another Court. 35 P. L. R. 329=35 Cr. L. J. 1372 ; see also 31 P. L. R. 121=A. I. R. 1930 Lah. 272. In an offence compoundable with leave of Court, High Court can in revision, and on refusal by lower court, allow composition, 1929 Cr. C. 272=A. I. R. 1929 Pat. 512 ; see also 28 S. L. R. 109=152 Ind. Cas. 412=A. I. R. 1924 Sind. 122 ; 35 Cr. L. J. 579=35 P. L. R. 257=A. I. R. 1934. Lah. 317 ; 46 A. 91=21 A. L. J. 838=25 Cr. L. J. 1005=A. I. R. 1924 All. 209 =81 Ind. Cas. 717. Composition once effected cannot be withdrawn. Once dead of composition is filed Magistrate must not adjourn for purpose of its verification, but acquit the accused. 1930 A. L. J. 281=A. I. R. 1930 All. 409=127 Ind. Cas. 420. A mere note that complainant withdraws the case is enough to effect a compounding of the offence. 45A. 145=24 Cr. L. J. 758=A. I. R. 1923 All. 474=74 Ind. Cas. 262. Magistrate must allow compromise where offence is not serious and petition is filed at an early date. 23 Cr. L. J. 85=65 Ind. Cas. 437 ; see also 89 Ind. Cas 385. Where there are two complainants only one alone cannot completely compound the case. 27 C. W. N. 168=37 C. L. J. 254=24 Cr. L. J. 578=A. I. R. 1923 Cal. 168=73 Ind. Cas. 322. Even during pendency of appeal, complaint may be compromised. 55 C. 1930=A. I. R. 1929 Cal. 96. As criminal complaint cannot be referred to arbitration, award cannot be made a rule of civil court. 30 P. L. R. 122=11 L. L. J. 89 ; but see 26 Cr. L. J. 1594 ; 42 C. L. J. 139.

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the presidency towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate, to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

Procedure of provincial Magistrate in cases which he cannot dispose of.

(2) The Magistrate to whom the case is submitted may, if so empowered either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Notes.—Section is wide enough to allow refusing the case back to the Magistrate who submitted it. 31 Cr. L. J. 1010=32 M. L. W. 381=A. I. R. 1930 Mad. 765=59 M. L. J. 308. Where the case is stayed under s. 346, Magistrate to whom case is submitted must try case *de novo*. 1933 Cr. L. J. 572=34 Cr. L. J. 749=27 S. L. R. 266=A. I. R. 1933 Sind. 191. Where a second class Magistrate submits a case under section 346 of the Criminal Procedure Code to the Sub-divisional Magistrate considering it to be beyond his own jurisdiction, the latter cannot return it on the ground that he had already passed an order that it was only a second class case. He is bound to dispose of the case in one of the ways prescribed by the section. Rat. Un. Cr. C. 554. A Subordinate Magistrate must refer immediately to a superior Court, in which there is reason to believe that an offence beyond his own jurisdiction has been committed, and must be careful to avoid taking cognizance of a major offence as a minor. U. B. R. (1897—1901) Vol. I, 84. A commitment made to the Sessions by a Magistrate acting under the power conferred by section 346 is not illegal, merely because he has not examined *de novo* the witnesses who were examined by the Magistrate who submitted the case under the provisions of that section. To the case of an accused thus committed to the Court of Sessions, s. 232 has no application. 12 C. W. N. 1336=6 Cr. L. J. 429. The word "evidence" in this section means all facts and statements which have been disclosed by enquiry and is not restricted to depositions recorded by the Magistrate. 100 Ind. Cas. 992=28 Cr. L. J. 384=A. I. R. 1927 Mad. 591. Where a case is submitted by a Sub-Magistrate to a Sub-divisional Magistrate under this section his jurisdiction determines. 69 Ind. Cas. 438=23 Cr. L. J. 710. Where a Magistrate to whom a case is referred under this section passes orders on the evidence taken by the Magistrate who was not competent to try the case, he cannot be considered to be trying the case himself. 72 Ind. Cas. 525.

347. (1) If in an inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall* commit the accused under the provisions hereinbefore contained.

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Notes.—The special power to commit to a Sessions Court, conferred on a Magistrate by this section cannot be interpreted as depriving the accused of the benefit of the procedure prescribed in Ch. XVIII of the Code. 15 Cr. L. J. 366. The accused can exercise his right of cross-examination before the enquiring Magistrate in a case triable by the Court of Session. 16 C. L. J. 688. This section does not deprive the accused any of the rights conferred upon him by Chapter XVIII. 57 M. L. J. 555. Entire provisions relating to enquiry before committal should be followed. 52 M. 995=31 Cr. L. J. 273=57 M. L. J. 555. Magistrate can at any stage decide that he should not try, and if he commits must complete the evidence. A. I. R. 1930 Cal. 663=129 Ind. Cas. 182. Even a summons case may be committed to the Sessions. 21 Cr. L. J. 791=58 Ind. Cas. 519. Though Magistrate can inflict maximum sentence he may for other reasons commit the accused. 42 M. 83=35 M. L. J. 559=19 Cr. L. J. 997=48 Ind. Cas. 337. Magistrate may commit in

* The words "stop further proceedings and" were ommitted by s. 91, *ibid.*

respect of only one charge and convict or acquit in regard to the rest. 26 Cr. L. J. 520=85 Ind. Cas. 360. Provision of chapter 18 must be scrupulously followed in case he decides to commit. 17 S. L. R. 188=26 Cr. L. J. 148=83 Ind. Cas. 708. That he could not pass an adequate sentence is not the only reason for committing accused to Sessions. 26 Cr. L. J. 1389=3 Rang. 422=A. I. R. 1925 Rang. 207=89 Ind. Cas. 525. Magistrate cannot refuse to convict accused to Sessions especially where all the circumstances require it. 53 B. 611=31 Bom. L. R. 602=30 Cr. L. J. 1090=A. I. R. 1929 Bom. 313=119 Ind. Cas. 666. Magistrate though also competent to try must if he commits give reasons therefor. 29 Cr. L. J. 612=A. I. R. 1928 Pat. 551=109 Ind. Cas. 804. Magistrate committing accused to Sessions has to follow chapter 18. 33 Bom. L. R. 1192=33 Cr. L. J. 68=A. I. R. 1931 Bom. 517. Magistrate of first class specially appointed to try accused can commit him to Court of Session. *Ibid.* Where case was tried as warrant case up to framing of charge and examination of the accused and the case was subsequently committed to Sessions, commitment should be quashed on the ground that no opportunity was given to the accused to adduce defence witness. A. I. R. 1932 Mad. 502=1932 M. W. N. 634=63 M. L. J. 101=33 Cr. L. J. 765; but see A. I. R. 1931 Bom. 517=33 Bom. L. R. 1192.

Trial of persons previously convicted of offences.

*348. (1) Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, shall† [if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused] be committed to the Court of Session or High Court, as the case may be, unless the Magistrate ‡[is competent to try the case and] is of opinion that he can himself pass an adequate sentence if the accused is convicted :

against coinage, stamp law or property.

Provided that, if §[any Magistrate in the district] has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.

‖ [(2) When any person is committed to the Court of Session or High Court under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under section 209].

Notes.—Old offenders should ordinarily be charged before a first class Magistrate. 2 Weir. 422. The provisions of this section are subject to the express provisions of s. 348. Where the accused is an old offender, a second class Magistrate trying the offender should commit him to the Sessions under s. 348, unless he is of opinion that he can himself pass an adequate sentence. 2 Weir. 423. It is illegal to submit or commit a case with a finding of his own. 17 Cr. R. L. J. 201=91 Bur. L. T. 213=34 Ind. Cas. 313.

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. (1) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record,

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* Renumbered by s. 92, *ibid.*

† These words were inserted by s. 92 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words were substituted for the words "before whom the proceedings are pending" by s. 92 of Act, XVIII of 1923.

§ These words were substituted for the words "the District Magistrate" by *ibid.*

‖ Sub-section (2) was added by *ibid.*

the opinion and submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

*[(1A) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate].

(2) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law ;

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Notes.—A Sub-divisional Magistrate, to whom a case is sent, under s. 349 for severe punishment, by a second class Magistrate, cannot return it to the latter for committal to the Court of Sessions and the committal by the second class Magistrate also is illegal. The Sub-divisional Magistrate must deal with the case according to law. Rat. Un. Cr. C. 222 ; see also Rat. Un. Cr. C. 479 ; 9 M. 377. A Magistrate to whom the accused person has been sent by subordinate Magistrate for enhanced punishment, has no power to send the case for enquiry to another Magistrate. 4 M. 633 ; 36 M. 16 ; 2 Cr. L. J. 464. Where proceedings are sent to a Magistrate, under. s. 349, the whole case is opened up for him to deal with according to his discretion. Rat. Un. Cr. 350. Where a second class Magistrate made a reference to the Sub-divisional Magistrate under s. 349, on a ground not specified in that section ; *held*, that the reference was contrary to law and as it resulted in the accused being sentenced by a Magistrate who had not heard the evidence at all, it must be deemed to have prejudiced the accused and resulted in a failure of justice and that the conviction must be set aside. 22 N. L. R. 166=A. I. R. 1957 Nag. 37. Magistratrate while sending up a case under s. 349, is prohibited not from giving a finding but from passing a sentence. Such conviction being a mere surplusage no further reference to High Court is necessary for quashing the conviction before proceeding under s. 349. 52 B. 456=30 Bom. L. R. 620=29 Cr. L. J. 904=A. I. R 1928 Bom. 240=111 Ind. Cas. 664. Where Magistrate cannot inflict adequate sentence on only one of the accused he must send up all of them. 18 S. L. R. 216=26 Cr. L. J. 1363=A. I. R. 1926 Sind. 48=89 Ind. Cas. 451. Where the Magistrate has to send up one accused he cannot convict the others. 1928 M. W. N. 72=29 Cr. L. J. 621=109 Ind. Cas. 816 ; see also 24 A. L. J. 80=26 Cr. L. J. 1630=A. I. R. 1926. All. 176=93 Ind. Cas. 926. Magistrate in sending up accused for adequate sentence should not convict the accused but may express his opinion as to guilt. 3 Pat. 1015=5 P. L. T. 571=25 Cr. L. J. 1276=A. I. R. 1924 Pat. 764=82 Ind. Cas. 284. Nagpur City being not yet declared a Sub-division its Magistrate has no jurisdiction to dispose of a reference by another Magistrate. 28 Cr. L. J. 489=A. I. R. 1927 Nag. 209=101 Ind. Cas. 665. Where case of adolescents is referred that of adults also tried with them may be referred. 22 N. L. R. 106=24 Cr. L. J. 738=A. I. R. 1924 Nag. 37=74 Ind. Cas. 66. Sub-divisional Magistrate on receiving record must make up his mind whether the accused are guilty or not and exercise his own independent judgment in the matter. 21 Cr. L. J. 52=1920 M. W. N. 120=54 Ind. Cas. 404. Where case is submitted under s. 349 there is no conviction by submitting Magistrate but only opinion is conferred. 34 Cr. L. J. 1045=65 M. L. J. 405=A. I. R. 1933 Mad. 728. Where there was summary trial by Magistrate for offence under s. 349 Penal Code, and case was forwarded to District Magistrate under s. 349, District Magistrate should try case a new. 136 Ind. Cas. 208=33 Cr. L. J. 472=1934 Cr. C. 595=A. I. R. 1932 All. 507.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry of a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the

* This sub-section was inserted by s. 93 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and recommence the inquiry or trial:

Provided as follows:—

(*a*) In any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;

(*b*) the High Court or, in cases tried by Magistrate subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346* [or in which proceedings have been submitted to a superior Magistrate under section 349.]

† [(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter within the meaning of of sub-section (1).]

Notes.—This section is intended to provide for a case where an enquiry or trial has been commenced before one incumbent of a particular Magisterial post, and that officer ceases to exercise jurisdiction in that post, and is succeeded by another office,r. 13 A. 66=A. W. N. 1890 7; see also 20 C. 870. This section does not apply to Sessions Judges. 25 B. 50=3 Bom, L. R. 558; 7 C. P. L. R. Cr. 1; 9 C. L. J. 59; 8 Cr. L. J. 121; 3 M. 112; 21 W. R. Cr. 47.; 1864 W. R. 32; 20 P. R. 1870; 23 W. R. Cr. 59. This section gives the second Magistrate an alternative. He can act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself, or he may summon the witnesses and recommence the enquiry or trial. But he cannot do both. The accused may demand the witnesses or any of them to be re-summoned and re-heard. Where an accused demands that all the witnesses are to be re-summoned and re-heard, he compels the second Magistrate to adopt the second alternative course and to recommence the trial or enquiry. 2 L. B. R. 17. A proceeding under section 145 is an enquiry under this section 7. Ind. Cas. 54=11 Cr. L. J. 440=37 C. 812. The only object of clause 1, seems to leave it to the discretion of the Magistrate to either act on evidence recorded by this predecessor or to hear it over again for himself. It is settled law that the proceeding before a Magistrate in a warrant case under Chapter XXI, Cr. Pro. Code are only an "enquiry" until a charge is framed, and after framing of a charge become a trial. Where the proceedings recommenced under s. 350, are only an enquiry they are recommenced as an enquiry. Where they have developed in a trial stage, they recommended as a trial, *i. e.* a proceeding in which a charge has been framed. A Magistrate who recommences an enquiry or trial does not thereby modify its nature or the stage at which it has arrived. 16 M. L. T. 303=27 M. L. J. 589.=1914 M. W. N. 646=15 Cr. L. J. 673=25 Ind. Cas. 1001. The object of s. 350 is that an accused person, if he so wishes, is entitled to obtain the decision of the Magistrate trying him on the evidence heard by that Magistrate alone. A. I. R. 1934 Nag. 209=152 Ind. Cas. 236. Section being only exception to rule that Magistrate should hear evidence, if a bench consisting of a Magistrate who did not hear it deliver judgment, procedure is illegal. 20 Cr. L. J. 336=3 U. B. R. (1919) 118=50 Ind. Cas. 672. If accused do not insist on a *de novo* trial Magistrate can act on evidence on record. A. I. R. 1921 Pat. 472. *De novo* trial means ignoring of the previous charge. A. I. R. 1931 Nag. 39=27 N. L. R. 13=130 Ind. Cas. 825; see also 67 M. L. J. 293=A. I. R. 1934 Mad. 475=35 Cr. L. J. 1363 =57 M. 1019; A. I. R. 1934 Sind 106=35 Cr. L. J. 126=28 S. L. R. 239. *De novo* trial means more than merely allowing cross-examination and proceeding from the stage where charge was framed. 20 S. L. R. 50=27 Cr. L. J. 332=A. I. R. 158=92

* These words and figures were added by s. 94 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was added by *ibid.*

Ind. Cas. 748. *De novo* trial helps the Magistrate to observe the witnesses fully. 26 Cr. L. J. 1596=49 M. L. J. 423=1926 M. W. N. 652=A. I. R. 1925 Mad. 1280=90 Ind. Cas. 668. Where prior proceedings were in the nature of enquiry question of *de novo* trial does not arise. A. I. R. 1930 Cal. 666=129 Ind. Cas. 182. Where succeeding Magistrate has taken cognizance *de novo* case cannot be again transferred to the first Magistrate. 28 Cr. L. J. 23=24 M. L. W. 640=A. I. R. 1927 Mad. 81=99 Ind. Cas. 55. On commencement, of trial *de novo* accused may change his mind and say that he will only cross-examine witnesses. Complainant has no privilege under s. 350 though he suffers disadvantage by accused's not availing of sub-clause (1) (a). 27 Cr L. J. 659=94 Ind. Cas. 707. Section 33, Evidence Act remains unaffected by s. 350, Cr. Pro. Code. 28 P. L. R. 199=28 Cr. L. J. 451=8 Lah. 570=A. I. R. 1927 Lah. 332=101 Ind. Cas. 483. Discretion of Magistrate to act on evidence on record is subject to consent of accused. 1930 Cr. C. 147=31 Cr. L. J. 282=A. I. R. 1930 Nag. 59=121 Ind. Cas. 646. Accused has a right to demand re-examination of witnesses. 29 Cr. L. J. 229=107 Ind. Cas. 160. The District Magistrate which transferring a case cannot impose condition that there should be no *de novo* trial without consent of accused. 1930 Cr. C. 176=A. I. R. 1930 Lah. 168=121 Ind. Cas. 374. Where Magistrate returns whole case he cannot rely upon evidence already recorded. 28 Cr. L. J. 302=A. I. R. 1927 Lah. 238=100 Ind. Cas. 382. Where nearly whole of the evidence was recorded by the Additional Sessions Judge, Sessions Judge's sentence is illegal, though parties consented. 32 Cr. L. J. 115=A. I. R. 1930. Rang. 354=128 Ind. Cas. 354. This procedure applies on remand also. 8 P. L. T. 181=27 Cr. L. J. 1125=A. I. R. 1927 Pat. 5=97 Ind. Cas. 645. Magistrate cannot deliver a judgment written out by his predecessor. He must hear arguments, consider evidence on record and form his own judgment. 43 C. L. J. 100=27 Cr. L. J. 406=A. I. R. 1926 Cal. 537=93 Ind. Cas. 70. If Magistrate who recorded statement of accused is transferred and case is committed to Sessions Court the statement was admissible in evidence under s. 287=7 Lah. 20=27 Cr. L. J. 627=27 P. L. R. 534=94 Ind. Cas. 403. There is no distinction so far as the applicability of the section is concerned between cases where there has been a change of Magistrate in the course of the enquiry and where the enquiry has been closed by one Magistrate in the original Court by an order of discharge and then re-opened by the Sessions Judge when another Magistrate has succeeded. In both the cases the enquiry is the same. The right of the accused under the proviso of re-summoning witnesses is confined to trials and does not extend to inquiries. 1931 M. W. N. 179=33 M. L. W. 336=60 M. L. J. 524=131 Ind. Cas. 5. Where a case is transferred by District Magistrate to another Magistrate, fresh witnesses can be summoned by the latter. 1930 M. W. N. 911=32 M. L. W. 782.

De novo trial is not obligatory if sub-section (2) of s. 350 applies. 18 S. L. R. 216=26 Cr. Cr. L. J. 1363=A. I. R. 1926 Sind. 48=89 Ind. Cas. 451. This section is applicable to summons cases, warrant cases and proceedings under s. 107 Cr. Pro. Code. 25 Cr. L. J. 1380=27 O. C. 323=A. I. R. 1925 Oudh. 228=83 Ind. Cas. 340; see also 3 Lah. 115=101 W. R. Cr. 1922=23 Cr. L. J. 330=A. I. R. 1922 Lah. 49=66 Ind. Cas. 826; 43 M. 511=38 M. L. J. 370 (F. B.)=56 Ind. Cas. 50. In the absence of a demand a *de novo* trial is not necessary. 22 Cr. L. J. 82=1 Pat. L. T. 679=59 Ind. Cas. 370. Where case is staged under s. 346, the Magistrate to whom case is submitted must try the case *de novo*. 34 Cr. L. J. 749=27 S. L. R. 266=A. I. R. 1933 Sind. 191. Where Magistrate does not act *suo motu* and witnesses are recalled at accuseds, request the trial is not *de novo* and fresh charge need not be framed. 9 O. W. N. 1136=34 Cr. L. J. 124=8 Luck. 286=A. I. R 1933 Oudh. 86; see also 32 Cr. L. J 635=33 M. L. W. 336=54 M. 512. Where Magistrate who framed charge after hearing prosecution witnesses was transferred his successor cannot ignore charge but accused has right under s. 350 to have any witnesses recalled or re-heard. 1933 M. W. N. 94=A. I. R. 1933 Mad. 841. Where after transfer of a case to another Magistrate after hearing principal prosecution witnesses, accused did not claim *de novo* trial, conviction by the new magistrate is still open to objection. 37 C. W. N. 982=34 Cr. L. J 958=A. I. R 1933 Cal. 582; see also 33 Cr. L. J. 653=55 M. 795=62 M. L. J. 738=A. I. R. 1932 Mad. 505; A. I. R. 1933 Pesh. 78. Succeeding Magistrate can never deliver judgment written already. 38 C. L. J. 202=50 C. 664=24 Cr. L. J. 489=72 Ind. Cas. 953. Even if the case is transferred again to the original Magistrate a *de novo* trial is not dispensed with. 26 Cr. L. J. 510=A. I. R. 1925 Mad. 174=47 M. L. J. 926=85 Ind. Cas. 254. New trial does not cancel previous charge so that if accused is let off it amounts to an acquittal. 17 Cr. L. J. 1=32 Ind. Cas. 129. Section applies where Magistrates

succeed or when case is transferred. 20 Cr. L. J. 41=48 Ind. Cas. 681 ; see also 20 Cr. L. J. 638=52 Ind. Cas. 398 ; 53 Ind. Cas. 820=20 Cr. L. J. 820 ; 46 Ind. Cas. 289=19 Cr. L. J. 705 ; 45 Ind. Cas. 673=19 Cr. L. J. 625=5 P. L. W. 40 ; 20 Cr. L. J. 496=12 Bur. L. T. 53=51 Ind. Cas. 480 ; 20 Cr. L. J. 41=48 Ind. Cas. 681 ; 45 Ind. Cas. 993=19 Cr. L. J. 657. This section does not apply to Bench cases, and evidence must be heard by the same quorum throughout. 22 Cr. L. J. 740=2 Lah. 237=64 Ind. Cas. 132 ; 9 Bur. L. T. 203=37 Ind. Cas. 160. Accused after demanding the right may withdraw from it, but complainant cannot claim trial from the very beginning. 26 Cr. L. J. 526=A. I. R. 1925 Mad. 317=85 Ind. Cas. 366. Accused cannot claim a *de novo* trial simply because his counsel had not been heard by the first Magistrate. 11 O. L. J. 725=25 Cr. L. J. 1075=28 O. C. 109=81 Ind. Cas. 899. Third Magistrate can act on evidence recorded by his predecessors. 47 M. 245=45 M. L. J. 808=53 M. L. T. 189=25 Cr. L. J. 566=81 Ind. Cas. 54. Section 350 applies to cases where Magistrate ceases to have jurisdiction so for as the point is concerned. 40 A. 307=19 Cr. L. J. 378=16 A. L. J. 217=44 Ind. Cas. 682. Judgment written by an officer on leave is not a judgment in law. 21 C. W. N. 755. The new Magistrate must inform the accused of his right to a *de novo* trial. 17 Cr. L. J. 401=10 Bur. L. T. 73=35 Ind. Cas. 961. Section 350 applies to enquriy under s. 247 of the U. P. Municipalities Act. 25 Cr. L. J. 651=A. I. R. 1925 All. 245=81 Ind. Cas. 139. Section 350 (1) (a) does not apply to proceedings in a warrant case before framing of charge. 46 M. 719=24 Cr. L. J. 192=32 M. L. T. 81=A. I. R. 1923 Mad. 660=71 Ind. Cas. 608. Where the witnesses are not summoned at the instance of the accused for cross-examination, but are summoned for examination in a *de novo* trial, the order in which these witnesses are to be examined-in chief rests at the discretion of the prosecution. A. I. R. 1934 Nag. 209=1934 Cr. C. 980. The wording of the principal clause of section 350 is very different from that in proviso (a). In the main body reference is made to an enquiry or trial. Proviso (a) is limited to trial and also makes reference to an accused, a word which does not appear in the preceding part of the section. The intention of the legislature was to limit the application of proviso (a) to criminal trial and not to extend the proviso to enquiries such as a proceeding under s. 145 Cr. Pro. Code which are also covered by the first portion of the section. The right of re-examining witnesses is confined to trials and not to enquiries under s. 145 Cr. Pro. Code. 37 C. L. J. 128=24 Cr. L. J. 569=A. I. R. 1923 Cal. 483=73 Ind. Cas. 265 ; see also 5 P. L. T. 237=2 Pat. L. R. Cr. 108=25 Cr. L. J. 89=76 Ind. Cas. 25 ; but see A. I. R. 1934 Oudh. 324=11 O. W. N. 825. The provisions of this section apply to all cases in which cases are transferred for whatever reason from the file of one Magistrate to that of another. 12 C. W. N. 416=35 C. 457=7 C. L. J. 488. This section is applicable where the case is transferred from one Magistrate to another. 32 M. 218 ; 35 C. 457 ; 20 C. 870 ; 3 A. 365.

Changes in constitution of Benches.

[*350A. No order or judgment of a Bench of a Magistrate shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under sections 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings.]

Notes.—Where of three Bench Magistrates one alone was present throughout the proceedings, no conviction order can be passed by such a Magistrate. 27 Cr. L. J. 463=7 Lah. 122=A. I. R. 1925 Lah. 304 ; see also 22 Cr. L. J. 511 ; 29 Cr. L. J. 310 ; 934 A. L. J. 376=A. I. R. 1934 All. 144 ; A. I. R. 1932 Nag. 95=28 N. L. R. 1932 All. 127=33 Cr. L. J. 200=135 Ind. Cas. 835 ; A. I. R. 1932 All. 191=1932 A. L. J. 166.

Detention of offenders attending Court.

351. (1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which, such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

* Section 350A was inserted by s. 95, *Ibid.*

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard.

Notes.—This section applies to investigations preliminary to commitment for a subsequent trial and not to cases where the trial is actually being preceeded with. 14 W. R. Cr. 20. The Court cannot proceed under this section where the accused is not in attendance in his Court. 12 Cr. L. J. 92=9 Ind. Cas, 429=5 S. L. R. 1. This section is self-contained and complete in itself and quite independent of the provisions of s. 190 and necessarily of s. 191 of the Code. 2 N. L. R. 113=3 Ind. Cas. 661=10 Cr. L. J. 303. A Magistrate taking cognizance of an offence against a witness in a case, disclosed by the evidence of another witness, does so under s. 191 clause C, and not under s. 351 Cr. Pro. Code. 1 C. W. N. 105; see also 22 Cr. L. J. 603=A. I. R. 1921 Bom. 365=62 Ind. Cas. 875. This section empowers a Court to join as a co-accused any person attending his Court, who seems to him to be implicated in the case under trial. 4 S. L. R. 258=11 Ind. Cas. 583.

Courts to be open.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in the room or building used by the Court.

Notes.—Trial in jail is not invalid. 1917 P. W. R. 21. As regards exclusion of police officers, *vide* 26 Cr. L. J. 1130; 1885.A. W. N. 221.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Evdence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapter XVIII, XX, XXI, XXII, and XXIII shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in presence of his pleader.

Notes.—Recording evidence behind the back of a party is illegal. 5 Cr. R. 132. The evidence must be recorded in the presence of the accused. Rat. Un. Cr. C. 24; see also 2 N. W. P. 49; 14 Cr. L. J. 287; A. I. R. 1928 Pat. 691; 28 Cr. L. J. 771; 29 Cr. L. J. 521=A. I. R. 1928 Lah. 34; 30 Cr. L. J. 736=A. I. R. 1928 Rang. 284; 28 Cr. L. J. 756; 46 M. 117. It is irregular to import into a case the evidence given in another case by merely reading over a deposition to a witness and asking him if it was correct. L. B. R, (1872-1892) 299. When personal attendance is dispensed with all the evidence must be taken in the presence of the accused's pleader. 14 Cr. L. J. 287. The Sessions Judge may dispense with the attendance of the accused in a Sessions trial. 42 M. L. J. 337=45 M. 359. An order is wholly illegal if it is based on evidence which is recorded when the party was not a party to the proceedings at all. 26 Cr. L. J. 1289=A. I. R. 1925 Nag. 457=98 Ind. Cas. 153; see also 43 M. L. J. 629=23 Cr. L. J. 748.

Manner of recording evidence outside Presidency-towns.

354. In inquiries and trials (other than summury trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall he recorded in the following manner.

355. (1) In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in sub-section (1) of section 260 clauses (*b*) to (*m*), both inclusive, when tried by a Magistrate of the first or second class, and in all proceedings under section 514 (if not in the course of a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record in summons-cases and in trials of certain offences by first and second class Magistrate.

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

Notes.—This section merely prescribes a brief record in summons cases and other cases, which may be tried summarily, when they are as a matter of fact tried regularly. 3 L. B. R. 3=2 Cr. L. J. 375. There is no provision of law which renders it illegal for a native second class Magistrate to record the memorandum of the substance of evidence of each witness mentioned in s. 355 in English. 19 M. 269=2 Weir. 433. In a case of theft combined with a charge of previous conviction the Magistrate should not record the evidence in the form of a memorandum, as such offence is not triable summarily. 2 Weir 432. In summary cases the recording of evidence is governed by ss. 263 and 264 and s. 355 has no application at all to summary cases. 58 B. 298=A. I. R. 1934 Bom. 157=86 Bom. L. R. 212=35 Cr. L. J. 841. Section 355 does not apply to offences coming under s. 261 cl. (b). 28 Cr L. J. 537=A. I. R. 1927 Bom. 426=102 Ind. Cas. 345. In a case of theft in which the value of property stolen does not exceed Rs. 50, the procedure at the trial is regulated by section 355 and not section 356. 21 A. L. J. 276=A. I. R. 1923 All. 432. In appealable summary cases and in non-appealable case, the Magistrate is perfectly free to take such notes as he pleases. 25 A. L. J. 143=28 Cr. L. J. 97=A. I. R. 1927 All. 124=99 Ind. Cas. 225. Where the substance of the evidence taken by the Magistrate was not signed the error vitiated the trial. 3 Pat. L. T. 322=23 Cr. L. J. 114. The evidence of witnesses need not be read over to them in a case triable summarily. 65 Ind. Cas. 552.

356. (1) In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

Record in other cases outside presidency towns.

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or language of the Court is English an authenticated translation of such evidence in the language of the Court shall form part of the record.

Evidence given in English.

* [(2A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the Magistrate or Sessions Judge may take it down in that language with his own hand, or cause it to be taken down in that language in his presence, and hearing and under his personal direction and superintendence, and an authenticated translation of such evidence in the language of the Court or in English shall form part of the record.]

* Inserted by Act 18 of 1923.

proceedings before commissioners under Defence of Indian Act. 29 P. L. R. 14=29 Cr. L. J. 212=A. I. R. 1928 Lah. 125=107 Ind. Cas. 100. The principle underlying s. 360 clause (1) should be made applicable to the substance of the examination of the complainant on oath, particularly when it is to be utilized as a basis for a possible perjury charge in future. 26 Cr. L. J. 1401=A. I. R. 1926 Nag. 141=89 Ind. Cas. 713. This section has no application to proceedings under Chapter 12 and in such proceedings it is not obligatory on the Court to read over the depositions to witnesses. 41 C. L. J. 337=29 C. W. N. 475=26 Cr. L. J. 915=A. I. R. 1925 Cal. 1040=86 Ind. Cas. 979. The provisions of s. 360 Cr. P. Code are applicable to proceedings when a person is called upon to show cause why he should not furnish security for good behaviour and failure to comply with the provisions of that section would vitiate the enquiry or trial. There is considerable doubt whether s. 360 Cr. P. Code applies to proceedings under Chapter VIII of that code. 41 C. L. J. 352=26 Cr. L. J. 1240=A. I. R. 1925 Cal. 720=88 Ind. Cas. 856. The word "accused" in section 360 subsection (1) means a person over whom a Cr. Court is exercising jurisdiction. S. 360 Cr. P. Code is applicable to enquiries held under Chapter XII. 52 C. 437=29 C. W. N. 474=26 Cr. L. J. 914=A. I. R. 1925 Cal. 678=86 Ind. Cas. 978.

Where a witness deposes in vernacular and deposition is recorded in English, it need not be read over to him in English and then interpreted in vernacular. Subsection 360 does not require that the deposition recorded in English should be translated into the vernacular to a witness who has deposed in the vernacular, after having first been read over to him in English. 46 C. L. J. 368=29 Cr. L. J. 49=A. I. R. 1928 Cal. 27=106 Ind. Cas. 545. Where the accused does not understand either the language of the Court or of the witness the deposition of a witness need not be interpreted to the accused. 5 Rang. 53=54 I. A. 96=25 A. L. J. 117=31 C. W. N. 271=4 O. W. N. 283=8 P. L. T. 155=28 Cr. L. J. 259=6 Bur. L. J. 65=29 Bom. L. R. 813=45 C. L. J. 441=A. I. R. 1927 P. C. 44=52 M. L. J. 585=100 Ind. Cas. 227. The sole object of this provision of the law seems to be to ensure the accuracy of the record. Failure to strictly comply with the provision of s. 360 will not under all circumstances vitiate a trial. Failure to strictly comply with the provisions 360 should be considered as a mere irregularity curable by s. 537, if no prejudice is caused. 4 Bur. L. J. 213=27 Cr. L. J. 669=A. I. R. 1926 Rang. 53=94 Ind. Cas. 717. The rule prescribed by s. 360 Cr. Pro. Code, was enacted in order to ensure accuracy in recording the evidence given by a witness and to give him an opportunity to correct any mistake made by the writer thereof. 15 Lah. 407. Witness is not entitled to an opportunity to explain discrepancies in his evidence. But it is open to a witness if he wishes to do so. 33 C. W. N. 664=A. I. R. 1929 Cal. 390.

Objection—Deposition is not read to witness in accordance with the requirements of the law. It cannot be used against him on a charge of perjury. 29 P. L. R. 14=29 Cr. L. J. 212=A. I. R. 1928 Lah. 125=107 Ind. Cas. 100; see also 15 Lah. 407. An objection taken on the ground that the provisions of s. 360 have not been observed cannot be raised for the first time in revision, but must be taken at once. 8 P. L. T. 166=28 Cr. L. J. 77=A. I. R. 1927 Pat. 100=99 Ind. Cas. 109.

Sufficient compliance—Reading over to a witness his evidence even after some days of his examination-in-chief but immediately after his cross-examination is sufficient compliance with s. 360. 33 C. W. N. 664=1929 Cr. C. 26=A. I. R. 1929 Cal. 390; see also 4 P. L. W. 44=19 Cr. L. J. 169=43 Ind. Cas. 585. Although the deposition of a witness is not read over to him, but the witness reads it himself the deposition is legal evidence. 5 Pat. 63=7 P. L. T. 396=27 Cr. L J. 484=A. I. R. 1926 Pat. 232=93 Ind. Cas. 884; but see 26 Cr. L. J. 951=A. I. R. 1925 Cal. 1120=87 Ind. Cas. 103. Failure to read over deposition after examination of each witness was over, vitiates the trial. 53 C. 129=27 Cr. L. J. 688=A. I. R. 1926 Cal. 563=94 Ind. Cas. 736. The evidence of each witness ought to be read over to him as it is completed. It is not sufficient that each sentence is read out as it is being recorded. 22 Cr. L. J. 669=63 Ind. Cas. 461. When accused is absent, the reading over of a deposition in the presence of his pleader is sufficient compliance with the provisions of this section. 46 C. L. J. 368=29 Cr. L. J. 49=A. I. R. 1928 Cal. 27=106 Ind. Cas. 545. Where evidence of one witness was read over while another being examined, the trial should be set aside. 52 C. 499=26 Cr. L. J. 1213=A. I. R. 1925 Cal. 831=88 Ind. Cas. 733; see also 87 Ind. Cas. 840=26 Cr. L. J. 1016=A. I. R. 1926 Cal. 423; 41 C. L. J. 393=26 Cr. R. J. 1265=A. I. R. 1925 Cal. 933=88

Ind. Cas. 1043. Reading over of the evidence by witness himself is not enough. Accused is entitled to know contents of record. 52 C. 431=29 C. W. N. 650=26 Cr. L. J. 1178=A. I. R. 1925 Cal. 782=88 Ind. Cas. 602; see also 30 C. W. N. 336=27 Cr. L. J. 509=93 Ind. Cas. 973. Reading depositions of witnesses after the examination of all over is illegal. Deposition must be read over as soon as examination is over. 1925 M. W. N. 795=26 Cr. L. J. 1587=49 M. 71=22 M. L. W. 339=A. I. R. 1925 Mad. 1206=49 M. L. J. 421=90 Ind. Cas. 659.

Effect of non-compliance—A mere omission or irregularity to comply with s. 360 unaccompanied by failure of justice is not enough to warrant the quashing of a conviction. 31 C. W. N. 271=25 A. L. J. 117=8 P. L. T. 155=54 I. A. 96=28 Cr. L. J. 259=5 Rang. 53=6 Bur. L. J. 65=29 Bom. L. R. 813=45 C. L. J. 441=A. I. R. 1927 (P. C.) 44=52 M. L. J. 585 (P. C.)=100 Ind. Cas. 227. Except in cases where reading over the deposition to the witness would be absurd, as for example, with a stone deaf person, it must be done. *Ibid.* Non-compliance with section 360 will vitiate trial only if accused is prejudiced. 4 Pat. 488=6 P. L. T. 154=26 Cr. L. J. 811=86 Ind. Cas. 459; see also 26 Cr. L. J. 1016=A. I. R. 1926 Cal. 423=87 Ind. Cas. 840; 52 C. 470=26 Cr. L. J. 1233=A. I. R. 1925 Cal. 816=88 Ind. Cas. 849; 6 Pat. 478; 28 Cr. L. J. 514=A. I. R. 1927 All. 764. 3 Rang. 612=4 Bur. L. J. 257=27 Cr. L. J. 857=95 Ind. Cas. 937; 5 P. L. T. 237=2 Pat. L. R. Cr. 108=25 Cr. L. J. 89=A. I. R. 1924 Pat. 786=76 Ind. Cas. 25. An omission to comply with the provisions of s. 360 Cr. P. Code, in recording depositions in a former case is a bar to the use of such deposition as evidence in any subsequent proceedings. A. I. R. 1928 Cal. 271. The violation of s. 360 vitiates the trial. 51 C. 159=28 C. W. N. 968=26 Cr. L. J. 201=41 C. L. J. 224=83 Ind. Cas. 905; see also 28 C. W. N. 119=38 C. L. J. 281=25 Cr. L. J. 289=A. I. R. 1924 Cal. 182=76 Ind. Cas. 961. Section 360 of the Code of Criminal Procedure is mandatory. S. 360 applies equally to accused as well as to witnesses. 22 Cr. L. J. 568=62 Ind. Cas. 584. The evidence of each witness ought to be read over to him. It is not sufficient that each sentence is read out as it is being recorded. 22 Cr. L. J. 669=63 Ind. Cas. 461. Where deposition was not read over as soon as recorded but at the close of the day, this is not sufficient compliance with the provisions of s. 360. 42 C. L. J. 585=30 C. W. N. 644=27 Cr. L. J. 375=92 Ind. Cas 887. Deposition must be read over to witnesses. But failure to do so does not vitiate order though it may exempt the witnesses from prosecution for perjury. 3 Pat. L. T. 291=23 Cr. L. J. 125=65 Ind. Cas. 557; see also 86 Ind. Cas. 33=16 S. L. R. 255=26 Cr. L. J. 657; 18 S. L. R. 342=88 Ind. Cas. 449; 29 P. L. R. 14=29 Cr. L. J. 212=A. I. R. 1928 Lah. 125. Any non-compliance with provisions of s. 360 which has not resulted in any failure of justice does not vitiate the trial. 31 C. W. N. 691=28 Cr. L. J. 751=103 Ind. Cas. 799; see also 28 Cr. L. J. 606=A. I. R. 1927 All. 755=102 Ind. Cas. 782; 28 Cr. L. J. 596=A. I. R. 1927 All. 757=102 Ind. Cas. 772. Deposition should be read over to the witness in the accused's presence. 6 P. L. T. 493=26 Cr. L. J. 927=A. I. R. 1925 Pat. 723=86 Ind. Cas. 991; but see 8 P. L. T. 166=28 Cr. L. J. 77=99 Ind. Cas. 109; 41 C. L. J. 479=29 C. W. N. 701=52 C. 721=26 Cr. L. J. 1194.

Interpretation of evidence to accused or his pleader.

361. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court and not understood by the pleader, it shall be interpreted to such pleader, in that language.

(3) When documents are put in for the purpose of formal proof it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Notes.—If the evidence is given in a language not understood by the accused or his pleader, it is under this section to be interpreted to the witness in his own language. 54 I. A. 96=45 C. L. J. 441=29 Bom. L. R. 813=52 M. L. J. 585 P. C. Witness who is an active partisan for prosecution should not be chosen to be interpreter. 53 C. 659=30 C. W. N. 696=27 Cr. L. J. 805=95 Ind. Cas. 469. An accused ought to be kept informed of what is being said. 31 M. L. W. 386=1929 M. W. N. 898=A. I. R. 1930 Mad. 186=125 Ind. Cas. 253.

Record of evidence in Presidency Magistrate's Courts.

362. (1) In every case* [tried by a Presidency Magistrate in which an appeal lies, such Magistrate] shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

(2) Evidence so taken down shall ordinarily be recorded in the form of a narrative but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

†[(2A) In every case referred to in sub-section (1), the Magistrate shall make a memorandum of the substance of the examination of the accused. Such memorandum shall be signed by the Magistrate with his own hand, and shall form part of the record].

(3) Sentences ‡ [unless they are sentences of imprisonment ordered to run concurrently] passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

§[(4) In cases other than those specified in sub-section (1), it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge.]

Notes.—This section prescribes that the evidence in appealable cases, that is, in which a Presidency Magistrate imposes a fine exceeding Rs. 200 or imprisonment for a term exceeding six months, shall be duly recorded. 31 C. 983=8 C. W. N. 839. A Presidency Magistrate is not bound to record evidence in any summons cases or warrant cases or cases in which enquiries have to be made as in summons cases or warrant cases, except where he may impose a fine exceeding two hundred rupees or imprisonment for a term exceeding six months. 33 C. 1036=4 C. L. J. 408=4 Cr. L. J. 368. When a Presidency Magistrate sentences an accused person to imprisonment for more than six months, he is bound to record evidence of witnesses, even though the sentence is imposed for the purpose of detention of the accused in the reformatory. 26 Bom. L. R. 1232. The Magistrate is bound in a case which comes within s. 362 to take a note of all the material trial. 46 C. 411=22 C. W. N. 834=20 Cr. L. J. 24=28 C. L. J. 105=48 Ind. Cas. 504. Recording evidence as indirect narrative, although irregularity, but will not vitiate trial. 18 Cr. L. J. 336=38 Ind. Cas. 448. This section applies to an application under s. 488. 32 Bom. L. R. 1499. Magistrate's right to refuse to record evidence under s. 362 is absolute. A. I. R. 1032 Bom. 180=34 Bom. L. R. 286=56 B. 200. Appeal depends upon the sentence to be passed by the Magistrate. The Magistrate has therefore to make up his mind before he has heard the evidence, as to whether he is likely to pass a sentence which will make it appealable. 36 Bom. L. R. 1126.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Notes.—The judge may note the demeanour of a witness. 2 Weir, 435; 125 P.L. R. 1914=15 Cr. L. J. 203; 29 C. W. N. 316=85 Ind. Cas. 708. A. I. R. 1928 Lah. 975.

Examination of accused how recorded.

364. (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter,‖ ¶[or the Chief Court of

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* These words were substituted for the words "in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he" by s. 97 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

† This sub-section was inserted by *ibid.*

‡ These words were added by *ibid.*

§ This sub-section was added by s. 93 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‖ The words "or the Chief Court of the Punjab", were repealed by the Repealing and Amending Act, 1919 (XVIII of 1919).

¶ Inserted by Act, XXXII of 1925.

Oudh]* the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English: and such record shall be shown or read to him, or if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound † as the examination proceeds to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263‡ [or in the course of a trial held by a Presidency Magistrate].

Notes.—A Magistrate when he is examining a prisoner or asking him whether he pleads guilty or not, should refrain from assuming that he is guilty of the crime with which he is charged. The proper mode is to tell the prisoner that he is charged with a certain offence and ask him if he has any explanation to give, and whether he wishes to make any statememt. 2 Weir. 438. In examining an accused person under this section, it is improper to ask him such a question as, "If you did not commit the murder, who did it?" 7 O. C. 191. All that a Court has the right to do under this section is to ask the accused person to explain the circumstances which appear in evidence against him. 15 C. L. J. 323=14 Ind. Cas. 667=13 Cr. L. J. 283. The procedure indicated by clause (2) involves the Magistrate's offering the record for the accused's signature but it does not empower the Magistrate to require his signature. 4. Cr. L. J. 205=3 L. B. R. 199. Where the Magistrate instead of asking separate questions to the accused puts him a long composite question, the examination of the accused is irregular and not in accordance with law. 103 Ind. Cas. 847=28 Cr. L. J. 767=A. I. R. 1927 Lah. 650. If the prisoner is not prejudiced in any way by the omission, the absence of the questions put to him does not make the confession inadmissible. 28 Cr. L. J. 341=100 Ind. Cas. 821.

The Court is bound to reduce to writing in the form of questions and answers the statements of the accused, the Magistrate is bound to sign it as also the accused. 30 A. 399=18 Cr. L. J. 559=39 Ind. Cas. 703. Under s. 364, the accused is entitled to explain or add to his answers when his statement is shown. 10 Lah. 223=30 P. L. R. 385=29 Cr. L. J. 769=A. I. R. 1929 Lah. 382=110 Ind. Cas. 801. Whole of the examination of accused including every question put to him and answer given by him should be recorded in full, even if it seems to be irrelevant. A. I. R. 1931 Oudh. 166. Non-compliance with section 364 vitiates trial. 29 C. W. N. 936=26 Cr. L. J. 1032=A. I. R. 1926 Cal. 430; see also 52 C. 446=26 Cr. L. J. 1244=88 Ind. Cas. 860; 4 P. L. T. 186=24 Cr. L. J. 497=72 Ind. Cas. 961; 52 C. 402=26 Cr. L. J. 761=41 C. L. J. 50=86 Ind. Cas. 345. Where an accused is examined under s. 342 the whole of such examination including every question put to him and every answer

* The words "or the Court of Lower Burma" were repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1923 (XI of 1923).

† The words "unless he is a Presidency Magistrate" were omitted by s. 2 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923.)

‡ These words were substituted by s. 2 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923), for the words and figures "or section 362, sub-section (2A)" which were inserted by s. 98 of Act XVIII of 1923.

given by him, shall be recorded in full, and such record shall be shown or read to him, or shall be interpreted to him so that he may explain or add to his answers. 2 P. L. T. 288=6 P. L. J. 147=22 Cr. L. J. 417=61 Ind. Cas. 705; see also 39 M. 977=17 Cr. L. J. 195. The defect is curable provided no injury is caused to the accused as to his defence on the merits. 31 Bom. L. R. 565=A. I. R. 1929 Bom. 325=31 Cr. L. J. 97=120 Ind. Cas. 350. Where no inquiry has been made or commenced in the Court, no question could be asked under s. 364 of the accused. 31 Cr. L. J. 533=A. I. R. 1930 Lah. 454=123 Ind. Cas. 540. Statements made before trial commences need not be recorded by Magistrate. 42 M. L. J. 37=45 M. 230=23 Cr. L. J. 680=69 Ind. Cas. 264. Magistrate in a summary case need not place upon the record the notes of the evidence or a full statement of the examination of the accused person. 28 Cr. L. J. 76=A. I. R. 1927 Oudh. 42=99 Ind. Cas. 108; see also 6 Pat. 504=8 P. L. T. 757=28 Cr. L. J. 1037=106 Ind. Cas. 221. Formalities should be strictly followed as non-compliance is fatal to the prosecution case. 15 P. L. T. 586=A. I. R. 1934 Pat. 651; see also A. I. R. 1934 Nag. 213=35 Cr. L. J. 1457=151 Ind. Cas. 778; A. I. R. 1934 Oudh. 151=11 O. W. N. 444=35 Cr. L. J. 915. Examination of accused including every question put to him and answer given by him should be recorded in full. A. I. R. 1931 Oudh. 166=8 O. W. N. 228. It is not necessary to put series of questions to persons making confession. A. I. R. 1932 Lah. 180.

Record of evidence in High-Court.

365. Every High Court established by Royal Charter * [and the Chief Court of Oudh] † ‡ § ‖ [shall] from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, ¶ [and the evidence shall be taken down in accordance with such rule.]

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment.

366. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained,—

(*a*) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(*b*) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

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* The word "and" was omitted, by the Lower Burma Courts Act, 1900 (VI of 1900). This Act has since been repealed by the Repealing and Amending Act, 1923 (XI of 1923).

† Inserted by Act 32 of 1925.

‡ The words "the Chief Court of the Punjab" were repealed by the Repealing and Amending Act, 1923 (XXXVII of 1923).

§ The words "and the Chief Court of Lower Burma" were repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1923 (XI of 1923).

‖ This word was substituted for the word "may" by s. 99 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

¶ These words were substituted for the words "and the Judges of such Court shall take down the evidence of the substance thereof in accordance with the rule (if any) so prescribed" by *ibid.*

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

Notes.—This section only imposes a condition that the judgment should be pronounced in open Court and imposes a few other conditions but such conditions do not include the condition that the record should not have been lost or that, if only a portion of the judgment is pronounced the conviction is illegal. 14 M. L. T. 317=25 M. L. J. 406=21 Ind. Cas. 467. To deliver a judgment before writing reasons for the decision is a procedure neither contemplated nor permitted by ss. 366 or 367, and amounts to an irregularity. 12 Ind. Cas. 986=5 S. L. R. 131= 12 Cr. L. J. 610. A sentence is illegal where there is no written judgment when it is passed. 14 A. 242=A. W. N. 1892, 83. A judgment is delivered when (1) it is written, (2) signed (3) dated (4) pronounced in open Court. The last three steps must take place on the same occasion. 40 M. 108=33 Ind. Cas. 646=17 Cr. L. J. 166=32 M. L. J. 81 ; but see 45 M. 913=31 M. L. T. 342=23 Cr. L. J. 583=68 Ind. Cas. 615 ; 7 Rang. 370=30 Cr. L. J. 1166=A. I. R. 1930 Rang. 77=120 Ind. Cas. 225. The Court should discuss evidence in the judgment. 27 O. C. 32=25 Cr. L. J. 913=81 Ind. Cas. 529. Judgment prepared by the presiding officer after other members left the Bench is not a proper judgment. 28 M. L. W. 498=55 M. L. J. 576=52 M. 237=112 Ind. Cas. 61. Procedure of directing accused to be acquitted without writing judgment is irregular. A. I. R. 1933 All. 660=34 Cr. L. J. 1036=145 Ind. Cas. 664. Judgment was written by outgoing Magistrate, but delivered by presiding Magistrate is without jurisdiction. 35 C. W. N. 838. Where judgment was delivered in open Court by High Court Judge and taken down by his writer, omission to initial fair copy is not serious defect. A. I. R. 1933 All. 40=55 A. 132=1933 A. L. J. 13=34 Cr. L. J. 703.

Language of judgment. Contents of judgment.

367. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court *[or from the dictation of such presiding officer] in the language of the Court, or in English ; and shall contain the point or points for determination, the decision thereon and the reasons for the decision ; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it † [and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.]

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative.

(3) When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) If the accused is convicted of any offence punishable with death and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed ;

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

*[(6) For the purposes of this section, an order under section 118 or section 123 sub-section (3), shall be deemed to be a judgment.]

* These words were inserted by s. 100 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were added by *ibid.*

Notes.—Under this section it is not necessary that the presiding officer of the Court who wrote the judgment, should be the same person as the presiding officer, who is required to date, sign and pronounce it in open Court. 18 M. L. J. 197=7 Cr. L. J. 459. An omission to record a judgment in all the matters required by the Code is an irregularity. 2 Weir. 238. There is nothing in the Code which requires a Court when dismissing an appeal summarily under s. 427, to write a judgment in conformity with the provisions of s. 367. 25 M. 534=2 Weir, 473; see also 12 A. L. J. 850=36 A. 496=15 Cr. L. J. 512=24 Ind. Cas. 600. Judgment consisting of few notes on arguments of counsel and vague conclusions does not amount to a proper judgment. 31 P. L. R. 1017=A. I. R. 1930 Lah. 1054=129 Ind. Cas. 223. The record of charges should indicate far more fully than mere enumeration of the numbers of the sections, but it must be affirmatively proved that there has been misdirection and misunderstanding and the verdict is erroneous owing to misdirection by Judge before it is set aside. A. I. R. 1930 Cal. 712=129 Ind. Cas. 109. To justify a conviction, the judgment should contain a definite finding as to the guilt of the accused. 18 Cr. L. J. 698=21 C. W. N. 550=40 Ind. Cas. 698. Reference to oral evidence is not necessary if conclusions from evidence, the point for determination, the decision thereon, and the reasons for the decisions are given. 24 Cr. L. J. 181=2 Pat. L. R. Cr. 154=71 Ind. Cas. 597. A Court should in its judgment duly weigh the evidence and discuss the points for and against the party. 17 Cr. L. J. 167=14 A. L. J. 279=33 Cr. L. J. 647. In case of several accused, case of each is to be separately discussed. The judgment of the Court should contain a discussion of the evidence as against each accused. 19 Cr. L. J. 248=44 Ind. Cas. 40. In case of wholesale acceptance of prosecution evidence without any attempt to scrutinise it, the judgment cannot stand. 21 Cr. L. J. 140=54 Ind. Cas. 620. But it is not illegal to embody prosecution statement, after checking its correctness. 47 C. 154=21 Cr. L. J. 386=31 C. L. J. 192=55 Ind. Cas. 994. Judgment of a stereotyped nature in general terms must be set aside. A. I. R. 1921 Pat. 487=62 Ind. Cas. 83. Pronouncing sentence before writing judgment is an irregularity covered by section 537. 25 Cr. L. J. 705=A. I. R. 1925 Lah. 137=81 Ind. Cas. 193. Where judgment was written and signed by predecessor, succeeding Magistrate can deliver it. 11 O. L. J. 725=25 Cr. L. J. 1075=21 O. C. 109=81 Ind. Cas. 899; see also 24 Cr. L. J. 173=21 A. L. J. 137=A. I. R. 1923 All. 276=71 Ind. Cas. 525. Where the judgment was signed and dated before delivery and sent to the chief clerk to deliver, it was not legally pronounced and conviction is vitiated. 1 Bur. L. J. 122=24 Cr. L. J. 584=73 Ind. Cas. 328. Where the judgment was entirely in handwriting of the Magistrate the irregularity of the judgment not being signed is covered by s. 537. 47 A. 284=26 Cr. L. J. 688=23 A. L. J. 8=86 Ind. Cas. 64. If the record is prepared by a member of the Bench and not by the presiding officer, it shall have to be signed by each member af the Bench taking part in the proceedings. But where a judgment of a Bench is prepared by the presiding officer, it is sufficient if he alone signs it. 29 Cr. L. J. 913=52 M. 237=A. I. R. 1928 Mad. 1172=55 M. L. J. 576=112 Ind. Cas. 61. Judgment containing no discussion of evidence is not a proper judgment. 10 L. L. J. 347=29 Cr. L. J. 1031=112 Ind. Cas. 359. Where a Magistrate prepares a judgment but does not sign it, such omission is a mere irregularity. 7 Rang. 370=30 Cr. L. J. 1166=A. I. R. 1930 Rang. 77=120 Ind. Cas. 225. Judgment and record must in all cases be signed by all members present. 53 M. 165=A. I. R. 1930 Mad. 187=57 M. L. J. 763=124 Ind. Cas. 501. Under s. 367 every judgment is required to contain the point or points for decision. To ascertain and define exactly these points is the very ground stone of a sound and stable judgment. 28 S. L. R. 12=A. I. R 1934 Sind. 89. In a judgment undue importance should not be given to motive. 17 N. L. J. 274. Strength of evidence must be considered before and not after conviction. 14 P. L. T. 82=12 Pat. 241=34 Cr. L. J. 349=A. I. R. 1933 Pat. 149. (S. B.); see also A. I. R. 1933 Pat. 180=34 Cr. L. J. 395=14 P. L. T. 96. Judgment must contain points for decision, decision thereon and reason for decision. A. I. R. 1933 Nag. 328. All evidence need not be dismissed. Judge can select evidence important and sufficient to prove point for consideration. 145 Ind. Cas. 481=1933 A. L. J. 799=34 Cr. L. J. 967=A. I. R. 1933 All. 690. Judgment should not be unnecessarily long. 64 M. L. J. 88=1933 Cr. C. 289=56 M. 231=34 Cr. L. J. 481=A. I. R. 1933 Mad. 233. Magistrate should apply his mind to every question of law and fact. 1932 Cr. C. 795=34 Cr. L. J. 163=A. I. R. 1932 Sind. 180. Libellous remarks should not be made without opportunity to explain. 27 S. L. R. 13=1933 Cr. C. 219=34 Cr. L. J. 367=A. I. R. 1933 Sind. 91. In judgment matter should not be ordinarily expunged. 27 S. L. R. 13=34 Cr. L. J. 367=A. I. R. 1933 Sind. 91. In criminal trial quantity

of evidence required does not vary with enormity of crime. 34 Cr. L. J. 808=A. I. R 1933 Sind. 166=34 Cr. L. J. 808. Judgment prepared by Magistrate after he ceased. to have jurisdiction in local area is entirely without jurisdiction. A. I. R. 1931 Pat. 386=32 Cr. L. J. 1224=12 P. L. T. 647. But where judgment was signed but not pronounced by Magistrate and was pronounced by successor of such Magistrate, accused is not entitled to *de novo* trial. A. I. R. 1933 Mad. 251=1933 Cr. C. 365 =34 Cr. L. J. 117=36 M. L. W. 881. Unless failure of justice is caused High Court may not interfere. A. I. R. 1932 Bom. 473=33 Cr. L. J. 801=34 Bom. L. R. 1110= 139 Ind. Cas. 608. Magistrate should discuss as to how evidence as to general repute affects accused. A. I. R. 1933 Pat. 112=34 Cr. L. J. 476=1933 Cr. C. 261. The rules contained in section 367 apply to the judgment of any Appellate Court other than a High Court. 25 Cr. L. J. 246=76 Ind. Cas. 710 ; see also 25 Cr. L. J. 113=A. I. R. 1924 Lah. 660=76 Ind. Cas. 177 ; 72 Ind. Cas. 71=24 Cr. L. J. 311= A. I. R. 1924 Cal. 537 ; 3 Pat. L. T. 203=23 Cr. L. J. 261=66 Ind. Cas. 325 ; 63 Ind. Cas. 336=2 P. L. T. 228=22 Cr. L. J. 640 ; 63 Ind. Cas. 416=22 Cr. L. J. 656=2 Pat. L. T. 616 ; 42 Ind. Cas. 722=18 Cr. L. J. 991 ; 18 Cr. L. J. 649=4 O. L. J. 141=40 Ind. Cas. 297 ; 38 Ind. Cas. 326=18 Cr. L. J. 294=20 C. W. N. 1296. A judgment following the opinion of a subordinate Magistrate is bad in law. 20 Cr. L. J. 444=51 Ind. Cas. 268. An Appellate Court, dismissing an appeal summarily must record its reasons for the dismissal. 22 Cr. L. J. 321=2 Pat. L. T. 10=61 Ind. Cas. 49. Appellate judgment must contain materials indicating that appeal has been properly tried. The Appellate judgment must be self-contained and understandable without reference to trial court judgment. 2 Lah. 308=28 Cr. L. J. 9=24 P. L. R. 1922=64 Ind. Cas. 377 ; see also 25 Cr. L. J. 901=81 Ind. Cas. 437=A. I. R. 1925 Cal. 266 ; 27 Cr. L. J. 114=A. I. R. 1926 Bom. 71=91 Ind. Cas. 690. Where an appeal is dismissed the Appellate Court is bound to write a judgment stating points for determination and the reasons for its decision. 26 Cr. L. J. 1380= 89 Ind. Cas. 516=A. I. R. 1925 Lah. 64. The judgment of an Appellate Court should show on the face of it that the case of each accused in joint trial has been separately taken into consideration and judicial attention to the case of each accused has been given. 39 C. L. J. 117=25 Cr. L. J. 1044=A. I. R. 1924 Cal. 618=Ind. Cas. 890 ; see also 24 O. C. 230. The rules of the original criminal court cannot be strictly applied to an Appellate Court may be applied as far as it is possible. L. R. 3 A. 9 (Cr.). In a case under s. 476 Cr. Pro. Code, the Appellate judgment was as follows : "Heard the appellant and I do not think it necessary to direct prosecution of the respondent in this case. Appeal dismissed." *Held*, that the judgment was bad. 35 C. W. N. 660. Remarks upon the evidence will not be varied or expunged by the High Court except by an appeal preferred against the decision. Objectionable remarks will not be expunged. 1930 M. W. N. 791. A judgment should contain point or points for determination the decision thereon and reasons for the decision and if an Appellate Court fails to comply with these requisitions, the irregularity amounts to an illegality and vitiates the order. 31 Cr. L.J. 925=32 Bom. L.R. 353=A.I.R. 1930 Bom. 163=125 Ind. Cas. 710 ; see also 24 A.L.J. 318=27 Cr. L. J. 449 A.I.R.=26 All. 318=93 Ind. Cas. 241 ; 92 Ind. Cas. 855 =20 S. L. R. 82=27 Cr. L. J. 343=A. I. R. 1926 Sind. 275. Appellate judgment must also comply with s. 367 especially when facts are intricate and evidence contradictory. A. I. R. 1931 Pat. 379=12 P. L. T. 601. Under s. 367 the Judge is not to write a judgment but to record the heads of the charges to the jury. The charge recorded should be such as to convey sufficient information as to the explanation of the law by the Judge and about important questions of fact. 30 C. W. N. 693=43 C. L. J. 537=27 Cr. L. J. 926=96 Ind. Cas. 270=A. I. R. 1926 Cal. 895. Judge should make it clear that the minds of assessors and Judge have been directed to each and every one of points in charge. A. I. R. 1934 Sind. 23. Sessions Court should follow ss. 367 and 424. But the omission to do so cannot vitiate and nullify the whole proceeding before the Sessions Court. 20 S. L. R. 261=27 Cr. L. J. 833=95 Ind. Cas. 753. Heads of charge to jury, must show how the law was explained and that the evidence properly laid before him. 39 A. 348=18 Cr. L. J. 491=15 A. L. J. 205=39 Ind. Cas. 331. Heads of charge to jury should be put on record as soon as possible. It is not enough to state that certain sections of the I. P. Code were read over and explained. 4 Pat. 626=7 P. L. T. 239=27 Cr. L. J. 49=91 Ind. Cas. 225 ; see also 27 Cr. L. J. 1164=A. I. R. 1927 Mad. 56=97 Ind. Cas. 748.

Pronouncing sentence before completing the judgment makes the sentence illegal and vitiates the conviction. 11 P. L. T. 195=31 Cr. L. J. 416=A. I. R. 1930 Pat. 148=122 Ind. Cas. 531. The Judge should make it clear to a Court of Appeal that the mind of the assessors and of himself have been distinctly directed to each and

every one of the points which must be decided before a conviction can be recorded. 28 S. L. R. 295. In a charge of murder the Judge should decide whether the accused is guilty of murder. A. I. R. 1934 Sind. 89. The judgment of any Appellate Court other than a High Court must under s. 357 read with s. 424, contain among other things the point or points for determination, the decision thereon and the reason for the decision. 37 C. 194=11 C. L. J. 410=11 Cr. L. J. 348=5 Ind. Cas. 999. Under this section, the judgment of a Criminal Court should be written in the language of the Court or in English. 4 C. L. J. 282=4 Cr. L. J. 162. An appellate Court must give reasons for the decisions in its judgment. 98 Ind. Cas. 716=27 Cr. L. J. 1404=A. I. R. 1927 Nag. 88. The provisions of section 362, Cr. Pro. Code are mandatory. 8 Pat. 904.

Clause (5)—If an accused is convicted of an offence punishable with death and the sentence of death is not passed, the reason as to why the Court has not passed the sentence of death should be given as required by s. 367 (5) (105), 105 Ind. Cas. 804=4 O. W. N. 977; see also 33 C. W. N. 1226; 30 Cr. L. J. 571; 29 Cr. L. J. 682; 29 Cr. L. J. 540; 7 Lah. 141=27 P. L. R. 332. Capital sentence is not improper even in cases of constructive guilt of murder. 13 P. L. T. 702=11 Pat. 807=34 Cr. L. J. 427=A. I. R. 1933 Pat. 100. Weak evidence does not justify transportation for life but acquittal. 13 P. L. T. 702=11 Pat. 807=34 Cr. L. J. 427=A. I. R. 1933 Pat. 100. Reasons must be adequate for passing lesser sentence. *Ibid.* Death is the penalty for deliberate fratricide. 34 Cr. L. J. 395=A. I. R. 1934 Pat. 180.

Sentence of death.

368. (1) When any person is sentenced to death the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation.

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Court not to alter judgment.

369. *[Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court, established by Royal Charter, by the Letters Patent of such High Court, no Court], when it has signed its judgment, shall alter or review the same, except † to correct a clerical error.

Notes.—No Magistrate can add to or alter the proceedings or judgment in any case after they are signed and published. 10 C. W. N. 1062=4 Cr. L. J. 210=4 C. L. J. 415; 23 B. 50; 26 Cr. L. J. 1289; 1916 P. R. 25; 19 Cr. L. J. 225; 12 Bom. L. R. 521. A Court has no jurisdiction to review or revise its own orders. 1 O. W. N. 891. Judgment contemplated by s. 369 is only a decision on the merits. A. I. R. 1928 Rang. 288. Judgment of two Judges as Criminal Bench cannot be over-ridden by any other Judge or Bench of Judges. 38 C. W. N. 25=145 Ind. Cas. 937=A. I. R. 1933 Cal. 870. But Court has inherent power to revise its own *ex parte* orders. But such power cannot be involved when code has made express provision. A. I. R. 1931 Pat. 81=32 Cr. L. J. 551=11 P. L. T. 892. High Court can re-hear criminal case dismissed for default and not on merits. 23 Cr. L. J. 750=A. I. R. 1924 Lah. 310=69 Ind. Cas. 638; see also 46 M. 382=24 Cr. L. J. 439=44 M. L. J. 450=A. I. R. 1923 Mad. 426=32 Ind. Cas. 599. The Court has no jurisdiction to review or revise its own orders in criminal matters. 26 Cr. L. J. 543=A. I. R. 1925 Oudh. 476=85 Ind. Cas. 383. But in case of accidental omission to pass an order under s. 520, successor can pass the same, order under s. 517. 43 M. L. J. 87=24 Cr. L. J. 159=71 Ind. Cas. 51=A. I. R. 1922 Mad. 329. Entry in order sheet "Enter false, mistake of law" is order finally disposing of the case and therefore the Magistrate has no jurisdiction to alter or review that order. 1 Pat L. R. Cr. 97=24 Cr. L. J. 481=A. I. R. 1923 Pat. 532=72 Ind. Cas. 945. Where Sessions Judge passes a sentence of fine but omits to pass a sentence in default of payment of fine, he cannot order subsequently. Proper course is to submit to High Court to enhance the punishment by inflicting imprisonment in

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* These words were substituted for the words, "No Court other than a High Court" by s. 101, *ibid.*

† The words and figures "as provided in sections 395 and 484 or" were omitted by s. 101 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

default of payment of fine. 23 Bom. L. R. 846=22 Cr. L. J. 608=A. I. R. 1921 Bom. 368=62 Ind. Cas. 880; see also 20 Bom. L. R. 87=19 Cr. L. J. 279=42 B. 202=44 Ind. Cas. 183. It is not open to a Magistrate to review an order which is final so far as one party is concerned, under s. 145. 26 Cr. L. J. 1289=A. I. R. 1925 Nag. 457=89 Ind. Cas. 153. Order of discharge under s. 209 or s. 203 is not judgment within the meaning of s. 369. 33 C. W. N. 974=1930 Cr. C. 13=31 Cr. L. J. 260=A. I. R. 1930 Cal. 61=121 Ind. Cas. 401. Revisions against coviction dismissed by a High court Judge cannot be reviewed. 30 P. L. R. 409=1929 Cr. C. 429=10 Lah. 241=30 Cr. L. J. 815=A. I. R. 1929 Lah. 797=117 Ind. Cas. 569; see also; 20 Cr. L. J. 447=51 Ind. Cas. 271; 50 Ind. Cas. 25=46 C. 60=20 Cr. L. J. 265=38 A. 134=17 Cr. L. J. 47=32 Ind. Cas. 235. Sessions Court cannot review its own order. 18 Cr. L. J. 332=38 Ind. Cas. 444; see also A. I. R. 1934 Oudh. 85. Orders under s. 146 of Cr. Pro. Code cannot be reviewed by the same court though clerical errors may be corrected under s. 369. 19 Cr. L. J. 225=43 Ind. Cas. 817; see also 18 Cr. L. J. 556=21 C. W. N. 344. Section 561A is in no way limited or governed by s. 369. High Court has inherent power to re-consider sentence when ends of justice require. 5 O. W. N. 641=29 Cr. L. J. 893=A. I. R. 1928 Oudh. 402; see also 9 L. L. J. 42=28 Cr. L. J. 239=A. I. R. 1927 Lah. 139; 10 Lah. 1=29 Cr. L. J. 669=30 P. L. R. 247=A. I. R. 1928 Lah. 462; 1934 A. L. J. 204. Order enhancing without notice to accused is void and Court can re-hear the case. 47M. 428=46 M. L. J. 456=26 Cr. L. J. 370. Judgment even of High Court is trial when signed. 50 M. L. J. 51=27 Cr. L. J. 184; 27 Cr. L. J. 339=A. I. R. 1926 Nag. 323. Order of rejection of appeal is not judgment. A. I. R. 1934 All. 206. Power of review is not allowed in criminal cases. A. I. R. 1935 All. 60; A. I. R. 1935 All. 59.

Presidency Magistrate's judgment.

370. Instead of recording a judgment in manner herein-before provided, a Presidency Magistrate shall record the following particulars:—

(*a*) the serial number of the case;
(*b*) the date of the commission of the offence;
(*c*) the name of the complainant (if any);
(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;
(*e*) the offence complained of or proved;
(*f*) the plea of the accused and his examination (if any);
(*g*) the final order;
(*h*) the date of such order; and
(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Notes.—Although s. 370 allows a Presidency Magistrate to record merely the reasons for a conviction, instead of recording a judgment, this must be done in such a manner that the High Court, in revision, may be in a position to judge whether there were sufficient materials, before him to support the conviction. 8 C. W. N. 587. This section requires that the Presidency Magistrate should instead of recording a judgment, record certain particulars and in case of conviction and sentence of imprisonment or fine exceeding Rs. 200, a brief statement of the reasons for the conviction. 30 C. W. N. 981=97 Ind. Cas, 651=27 Cr. L. J. 1131=A. I. R. 1926 Cal. 1109. Where a conviction sheet by a Presidency Magistrate does not contain any record of the examination of the accused under s. 242 Cr. Pro. Code, and no statement of the reasons for the conviction is recorded, the conviction should be set aside and retrial ordered. 91 Ind. Cas. 542=27 Cr. L. J. 110=A. I. R. 1926 Cal. 692. Where a substantive sentence of imprisonment is passed, the Honorary Presidency Magistrate must record the reasons for the conviction. 44 M. L. J. 84=71 Ind. Cas. 212=24 Cr. L. J. 84. Under sub-section (1), a Presidency Magistrate who tries and convicts an accused in a summary trial is bound to give reasons for the conviction. 1923 Mad. 144. While the column provided for recording particulars in the form prescribed by s. 370 of the Criminal Procedure Code, must be filled up, no new and fast rule was contemplated as to now that should be done. 56 c. 1067=33 C. W. N 543. Order of conviction without recording other particulars vitiates order. 35 C. W. N. 868=33 Cr. L. J. 264=1932 Cr. C. 10=A. I. R. 1932 Cal. 62. Non-compliance with s. 370 is seriously

condemned. 136 Ind. Cas. 136=35 C. W. N. 867=33 Cr. L. J. 265=A. I. R. 1932 Cal. 64. Practice of Presidency Magistrates to dispose of cases without giving reasons as required by s. 370 should be discontinued. 36 C. W. N. 852=1932 Cr. C. 632=33 Cr. L. J. 729=A. I. R. 1932 Cal. 655 ; see 37 C. W. N. 368=34 Cr. L. J. 1059=60 c. 656=A. I. R. 1933 Cal. 532. Mere recording evidence and saying case is proved is not fulfilling conditions of s. 370 which requires reason to be given for conviction. A. I. R. 1932 Cal. 655=36 C. W. N. 852=33 Cr. L. J. 729. Judgment should explain reasons for believing prosecution. 16 Cr. L. J. 771=17 Bom. L. R. 890=31 Ind. Cas. 371. Absence of reasons for the finding vitiates conviction. 31 M. L. T. 400=23 Cr. L. J. 602=88 Ind. Cas. 820 ; but see 81 Ind. Cas. 908=25 Cr. L. J. 1084=20 M. L. W. 330. Words "if any" used in clause (f) cannot be properly be used as modifying provisions of s. 342 as regards Presidency Magistrate. 45 B. 672=27 Cr. L. J. 17=A. I. R. 1921 Bom. 374=59 Ind. Cas. 129. There is no objection to Magistrates' referring to document on record instead of taking the trouble of rewriting those portions, which should be included in his final order. 30 C. W. N. 981=27 Cr. L. J. 1131=A. I. R. 1926 Cal. 1109=97 Ind. Cas. 651.

Copy of judgment, etc. to be given to accused on application.

371. (1) On the application of the accused a copy of the judgment, or when he so desires, a translation in his own language, if practicable or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons case, be given free of cost.

(2) In trial by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII.

On the Submission of Sentences for Confirmation.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death the proceedings shall be submitted to the High Court* and the sentence shall not be executed unless it is confirmed by the High Court.

Notes.—In cases sent up to the High Court for confirmation of sentence of death under this section, it is the practice of that Court to be satisfied on the facts as well as the law of the case. Rat. Un. Cr. C. 710 ; see also 2 C. W. N. 49. In a reference under this section, the entire case is open before the High Court. 31 C. W. N. 881=46. C. L. J. 31=103 Ind. Cas. 700=28 Cr. L. J. 742=A. I. R. 1927 Cal. 631. Under s. 374 High Court must be satisfied that the finding of fact is justified by evidence on record. 30 C. W. N. 166=27 Cr. L. J. 378=92 Ind. Cas. 890 ; see also

* *See* Sch. V., Form XXXIV, *infra*.

32 C. W. N. 345=29 Cr. L. J. 546=A. I. R. 1928 Cal. 430=109 Ind. Cas. 482 ; A. I. R. 1931 Cal. 174 ; 32 C. W. N. 702=29 Cr. L. J. 833=111 Ind. Cas. 385. Where there is misdirection in charge to jury so as to cause failure of justice, verdict and sentence must be set aside. 26 C. W. N. 1002=23 Cr. L. J. 567=A. I. R. 1922 Cal. 124=68 Ind. Cas. 407. If evidence in case affords such degree of certainty of guilt of accused as mentioned in s. 3 of the Evidence Act sentence must be based on facts found proved by however little the proof of them exceeds the standard stated in the section ; otherwise the accused must be acquitted. 27 Cr. L. J. 731=A. I. R. 1926 Nag. 360=95 Ind. Cas. 59. Where man rushes into brawl with a heavy hatchet, strikes neighbour unable to defend and kills him, capital sentence should not be reduced 5 O. W. N. 29=29 Cr. L. J. 230=A. I. R. 1930 Oudh 221=107 Ind. Cas. 177. In Bombay High Court in cases of sentence of death even though on unanimous verdict of jury, whole case is re-opened before High Court on matters of fact as well as on matters of law. 16 Cr. L. J. 818=17 Bom. L. R. 1072=31 Ind. Cas. 994. Person convicted in trial by jury along with others, and sentenced to death can appeal on matter of fact and law. 140 Ind. Cas, 846=34 Cr. L. J. 83=13 P. L. T. 440=A. I. R. 1932 Pat. 302. High Court can set aside conviction without remanding case if there is sufficient evidence. A. I. R. 1933 Cal. 426 (S. B.)=34 Cr. L. J. 533=37 C. W. N. 595.

Power to direct further inquiry to be made or additional evidence to be taken.

375. (1) If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence, itself, or direct it to be made or taken by the Court of Session.

(2) Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs the presence of the convicted person may be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Notes.—Vide 12 Cr. L. J. 412=11 Ind. Cas. 596=16 P. W. R. 1911 ; 77 Ind Cas. 481.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period until such appeal is disposed of.

Notes—*Vide*, 23 Cr. L. J. 33 ; 6 C. W. N. 921 ; 19 C. W. N 556. ; 27 Cr L. J. 955 ; 64 Ind. Cas. 657 ; 34 C. W. N. 1154.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge after such hearing

as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion.

Notes.—The third judge should act on his own opinion. 1887 A. W. N. 125.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the Court of Session.

Notes.—This section is not applicable to civil detention. 26 Cr. L. J. 821=4 Bur. L. J. 9=3 Rang. 93=A. I. R. 1925 Rang. 202=86 Ind. Cas. 469.

Procedure in cases submitted by Magistrate not empowered to act under section 562.

380. Where proceedings are submitted to a Magistrate of the first class or a Subdivisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

Notes.—A second class Magistrate found the accused guilty of an offence under s. 322 of the Penal Code and he sent the record and the accused to the District Magistrate under s. 562. The District Magistrate sent the case back to the second class Magistrate pointing out that section 562 was inapplicable. *Held*, that the District Magistrate's order was illegal. 4 L. B. R. 150=Cr. L. J. 449. Magistrate to whom case is referred under s. 562 (2) has no power to set aside conviction under s. 380. He can either convict or make or direct further enquiry. 145 Ind. Cas. 659=34 Cr. L. J. 1045=65 M. L. J. 405=A. I. R. 1933 Mad. 728.

CHAPTER XXVIII.

Of Execution.

Execution of order passed under section 376.

381. When a sentence f death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing warrant* taking such other steps as may be necessary.

Postponement of capital sentence on pregnant woman.

382. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute † the sentence to transportation for life.

Notes.—The High Court is the only Court in which the law has vested the power of postponing the execution of a sentence of death passed and confirmed on a woman found to be pregnant. 2 Weir. 441 ; see also 34 P. R. 1878 Cr.

Execution of sentences of transportation or imprisonment in other cases.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be confined, and unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

* *See* Sch. V. Froms XXXV and XXXVI, *infra*.
† *See* Sch. V, From XXXVI, *infra*.

Notes.—A Magistrate has no power to sentence an accused to suffer imprisonment in a police lock-up. The terms "prison" and "jail" do not include any place for the confinement of prisoners who are exclusively in the custody of the police. 7 L. B. R. 62=22 Ind. Cas. 154=15 Cr. L. J. 10. Antedating of sentence is against spirit of ss. 383 and 397. 142 Ind. Cas. 728=A. I. R. 1933 Rang. 28.

Direction of warrant for execution.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail, or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

*386. [(1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(*a*) issue a warrant† for the levy of the amount by attachment and sale of any movable property belonging to the offender ;

(*b*) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter ;

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers its necessary to do so.

(2) The Local Government may make rules regulating the manner in which warrants under sub-section (1), clause (*a*), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), clause (*b*), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly.

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.]†

Notes.—The immovable property of an agriculturist can be attached and sold in execution of an order passed under s. 386, and the mere fact that the warrant is executable as if it were a decree does not make the provisions of s. 22 of the Deccan Agriculturists Relief Act applicable to such warrant. 28 Bom. L. R. 1231=A. I. R. 1926 Bom. 582. The words "belonging to" include the share of the offender in a Hindu joint family estate. 49 B. 906=27 Bom. L. R. 1363. Before any part of section 386, Cr. Pro. Code is put into action it is necessary that the Court issuing the warrant should have sentenced the offender to pay a fine. 10 Pat. L. T. 124= A. I. R. 1929 Pat. 108. Combined effect of s. 386 of Cr. Pro. Code and s. 16 of Punjab Land Alienation Act, is that land belonging to member of agricultural tribe cannot be sold in pursuance of warrant issued by Magistrate to Collector and sent to the nearest Civil Court for execution. 30 Cr. L. J. 1006=A. I. R. 1929 Lah. 667=119 Ind. Cas. 227. Where Civil Court executes warrant of attachment issued by Magistrate it becomes decree of Civil Court under s. 386 Cr. P. Code. But there is no jurisdiction to such executing Court, when it tries summarily a claim petition, to go behind the

* Section 386 was substituted by s. 102 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† *See* Sch. V. From XXXVII. *infra.*

decree. A. I. R. 1929 Mad. 383=119 Ind. Cas. 33. Immovable property of agriculturist can be attached and sold in execution of an order passed under s. 386. 50B. 844=28 Bom. L. R. 1231=A. I. R. 1926 Bom. 582=99 Ind. Cas. 310. Undivided share in immovable property cannot be seized. 12 Pat. 29=33 Cr. L. J. 872=13 P. L. T. 549=A. I. R. 1932 Pat. 292 (S. B.). Where property seized under s. 386 (1) (*a*) and petitioners claim property to be joined, the proper procedure is to proceed under clause (*b*). 138 Ind. Cas. 310=33 Cr. L. J. 671=13 P. L. T. 235=A. I. R. 1932 Pat. 212 ; see also 142 Ind. Cas. 524=1933 Cr. C. 189=34 Cr. L. J. 354=A. I. R. 1933 Sind. 43. Bullocks belonging to Hindu joint-family cannot be attached and sold under s. 386. (1) (*a*). 29 N. L. R. 320=1933 Cr. C. 932=A. I. R. 1933 Nag. 248 ; see also 34 Cr. L. J. 579=60 C. 851=A. I. R. 1933 Cal. 401. Fine of son cannot be recovered from father's property. 34 Cr. L. J. 467=34 P. L. R. 432. In case of attachment of property under s. 386, Magistrate is under a duty to investigate claim as under C. P. Code, Order 21, rule 58. 1933 A. L. J. 265=34 Cr. L. J. 847=A. I. R. 1933 All. 135. Where property attached under s. 386 is claimed by third person, Magistrate should stay sale to give claimant time to establish his right. 34 Bom. L. R. 1102=56 B. 364=33 Cr. L. J. 805=A. I. R. 1932 Bom. 476. Undivided share cannot be seized. 37 C. W. N. 567=34 Cr. L. J. 503=A. I. R. 1933 Cal. 402. No more than interest of offender in joint-family property can be attached. Proper course is to proceed under Civil P. Code, Order 21 rule 47. 138 Ind. Cas. 548=1932 M. W. N. 457=63. M. L. J. 142=55 M. 1041. It is desirable that rules mentioned by sub-section (2) should be framed. 34 Bom. L. R. 1102=56 B. 364=33 Cr. L. J. 805=A. I. R. 1932 Bom. 476. The expression "movable property" does not include salary which is not drawn. A. I. R. 1934 Rang. 82. The words "summary determination" in s. 386 (2) indicate that the claim should be made promptly and only so long as the attachment subsists. 13 Pat. 317=15 P. L. T. 57=A. I. R. 1934 Pat. 181 (S. B.). As regards subsistence of attachment, *ibid.*

Effect of such warrant.

***387.** † [A warrant issued under section 385, sub-section (1), clause (*a*), by any Court] may be executed within the local limits of the jurisdiction of such Court, and, it shall authorise the ‡[attachment] and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

§ [**388.** (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(*a*) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(*b*) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond,‖ with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made ; and, if the amount of the fine or of any instalment as the

* The provisions of ss. 387 and 389 have been declared to apply to fine imposed (1) under the Andaman and Nicobar Islands Regulation 1876 (III of 1876)—*see* s. 35 as amended by the Andaman and Nicobar Islands Regulation, 1884 (I of 1884), s. 7 ; and (2) under the Police Act, 1861, s. 37. The provisions of section 387 have been extended under s. 1 (2) to the Commissioner of Police, Calcutta *see* Ben. R. and O.

† These words and figures were substituted for the words "such warrant" by s. 103 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ This word was substituted for the word "distress" by *ibid.*

§ Section 388 was substituted by s. 3 of the Code of Criminal Procedure (Second Amendment) Act, 1933 (XXXVII of 1923).

‖ For form, *see* Sch. V, Form XXXVIIA, *infra.*

cash may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once :

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith ; and if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.]

Notes—Where sentence is not of fine only, instalments cannot be allowed. 143 Ind. Cas. 120=56 C. L. J 73=A. I. R. 1933 Cal. 308=34 C. L. J. 530. Section 388 (1) has no application if sentence of imprisonment is nominal. A. I. R. 1934 Rang. 11 S. 388 (2) refers only to order for payment of money which is not punishment inflicted *Ibid.*

Who may issue warrant.

*389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall †[subject to the provisions of section 391] be executed at such place and time as the Court may direct.

Notes.—Vide 1 L. B. R. 53. A direction that the sentence of whipping should be executed as soon as practicable is in a case not falling under clause (a) or clause (b) sub-section (1) of s. 391 proper order. 30 Bom. L. R. 389=29 Cr. L. J. 573= A. I. R. 1928 Bom. 138.

Execution of sentence of whipping, in addition to imprisonment.

391. (1) When the accused—

‡ (*a*) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(*b*) is sentenced to whipping in addition to imprisonment,

the whipping shall not be inflicted until fifteen days from the date of the sentence, or if an appeal is made within that time, until the sentence, is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer-in-charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment, when the term of imprisonment to which he is sentenced is less than three months.

Notes—Where the punishment of whipping is not awarded in addition to imprisonment but is a separate sentence for a separate offence, the immediate execution of it would not be illegal. 2 weir. 446. Under clause (3) a sentence of whipping cannot be passed in addition to imprisonment when the term of imprisonment is less than three months. 2 Bom. L. R. 54. When an accused is convicted of two offences, for one of which he is sentenced to imprisonment and for the other to whipping, it is not permissible to postpone the whipping merely because the accused appeals against his conviction for the latter offence.

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* *See* foot-note (*) on p. 300, *ante*.

† These words and figure were inserted by s. 21 of the Criminal Law Amendment Act, 1923 (XII of 1923).

‡ These words were substituted for the words "is sentenced to whipping in addition to imprisonment in a case which is subject to appeal" by s. 22, *ibid.*

4 Bom. L. R. 436. The sentence of whipping in addition to imprisonment the term of which is less than three months is illegal under s. 391 (3). 2 Weir. 447. An order that the sentence of whipping shall be inflicted after sentence of imprisonment is over is illegal. A. I. R. 1934 Pat. 551=15 P. L. T. 475.

392. (1) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs ; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instrument, as the Local Government directs.

Mode of inflicting punishment.

(2) In no case shall such punishment exceed thirty stripes *[and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.]

Limit of number of stripes.

Notes.—Under the provisions of ss. 392 and 393, not more than one sentence of whipping and that not exceeding 30 stripes, should be awarded at one time. U. B. R. 1906. Cr. Pro. Code. 47=4 Cr. L. J. 281.

393. No sentence of whipping shall be executed by instalments : and none of the following persons shall be punishable with whipping, namely :—

Not to be executed by instalments. Exemptions.

(*a*) females ;
(*b*) males sentenced to death or to transportation or to penal servitude or to imprisonment for more than five years ;
(*c*) males whom the Court considers to be more than forty-five years of age.

Notes.—It is improper to punish an accused person with whipping, when he has been on the same day sentenced in another case to transportation for seven years, this being contrary to the provisions of s. 393 of the above Code. U. B. R. (1892—1896) Vol. 44. The word "sentenced" which occurs in s. 393 Cr. Pro. Code and Burma Act, 8 of 1927, must be read in a general seize. A person sentenced for any period exceeding period fixed by Act whether in conviction in one case or in more than one, cannot be punished with whipping. 7 Rang. 769=31 Cr. L. J. 176= A. I. R. 1930 Rang. 138=120 Ind. Cas. 697. Section 393 (*b*) refers to execution and not passing of sentence of whipping. Sentence of whipping is illegal where imprisonment is for more than five years. 3 L. L. J. 395=21 Cr. L. J. 306=55 Ind. Cas. 466. Period of imprisonment to which already sentenced need not be taken into account for awarding whipping for offence committed subsequent to sentence. A. I. R. 1934 Rang. 58.

394. (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

395. (1) In any case in which, under section 394, a sentence of whipping is wholly or partially prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it ; and the said Court may, at its discretion, either remit such sentence, or sentence, the offender in lieu of whipping, or in lieu of

Procedure if punishment can not be inflicted under section 394.

* These words were added by s. 7 of the Whipping Act, 1909 (IV of 1909).

so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months* [or to a fine not exceeding five hundred rupees] which may be in addition to any other punishment to which he may have been sentenced for the the same offence.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term * [or a fine of an amount] exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Notes—In the absence of the Magistrate who passed the original sentence, the District Magistrate is "the Court which passed the the sentence," within the meaning of this section. 20 P. L. R. 1904=33 P. R. 1901 Cr. This section only gives authority to remit altogether a sentence of whipping or so much of it as has not been executed, or to impose a sentence imprisonment for a term not exceeding 12 months in lieu of it. U. B. R. (1892—1896) Vol. I, 45. The word "imprisonment" in this section, means a substantive sentence of imprisonment and not imprisonment in default of payment of fine. Where a sentence of whipping cannot be carried out, the only course open to the Court is to remit the sentence of whipping or to order imprisonment in lieu of it. A. W. N. 1889, 93.

Execution of sentences on escaped convicts.

396. (1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, penal servitude or transportation shall take effect according to the following rules that is to say—

(2) If the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment ;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement ; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Notes—When an accused was released by mistake and the mistake was discovered, five days after the release, the Magistrate directed the sentence to begin on the day on which he was re-arrested. U. B. R. (1897—1901) Vol, I. 89.

Sentence on effender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation, is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration† of the imprisonment, penal servitude or transportation to which he has been previously sentenced, [‡ unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.]

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* These words were inserted by s. 105 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† In the case of a youthful offender, however such sentence run concurrently—*see* s. 32 of the Reformatory Schools Act, 1897 (VIII of 1897).

‡ These words were inserted by s. 106 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

*[Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transporation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced :

Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.]

Notes.—The passing of concurrent sentences is opposed to the provisions of this section. 2 Bom. L. R. 111. A Magistrate of the first class sentenced the accused to two years' rigorous imprisonment on the 6th February on conviction for theft. The Sessions Judge, a month afterwards, sentenced him in another case to three years' rigorous imprisonment, which, he under s. 317, Criminal Procedure Code, directed, should begin to take effect on the expiration of the sentence passed by the magistrate. On apppeal the conviction and sentence passed by the Magistrate were reversed. *Held*, that the sentence passed by the Sessions Judge must be deemed to have commenced from the time it was ordered to commence, viz, from the expiration of the sentence passed by the Magistrate whether by reversal or by completion of the punishment. Rat. Un. Cr. C. 139. Under this section, a Sessions Judge may direct that a sentence of transportation, passed on a person already undergoing a sentence of imprisonment, shall commmence immediately or on the expiration of the imprisonment to which he has been previously sentenced. 2 Weir. 453. This section of the Criminal Procedure Code enacts that, when a person already undergoing a sentence of imprisonment, is sentenced to imprisonment etc, such imprisonment, etc. shall commence at the expiration of the imprisonment, etc., to which he has been previously sentenced. U. B. R. (1892—1896) vol. 1, 40. A person sentenced to imprisonment is "undergoing" that imprisonment within the meaning of section 397 of the Code from the moment the sentence is passed. 2 Weir 451. Where a person, who was ordered to be in imprisonment on failure to furnish security for good behaviour escaped from the custody of the Police officer, when he was being taken to jail, and was convicted and sentenced to a term of imprisonment, *held*, that the latter sentence should not be postponed to the expiry of the period of imprisonment for failure to give security. 2 Weir. 452. High Court has power to direct separate sentences of separate trials to run concurrently. 1929 A. L. J. 800=30 Cr. L. J. 904=51 A. 888=A. I. R. 1929 All. 585=118 Ind. Cas. 384. Separate sentence at separate trials can be made to run concurrently. 33 Cr. L. J. 77=33 Bom. L. R. 1163=A. I. R. 1931 Bom. 529. The term sentence in proviso includes order of detention within Cr. Pro. Code. S. 123. 9 Rang. 110=32 Cr. L. J. 714=A. I. R. 1931 Rang. 127 (F. B.) ; see also 145 Ind. Cas. 1007=10 O. W. N. 786=A. I. R. 1932 Oudh. 381 ; A. I. R. 1932 Rang. 50=9 Rang. 612=33 Cr. L. J. 174=1932 Cr. C. 210. Antidating of sentence is against spirit of ss. 383 and 397. A. I. R. 1933 Rang. 28=34 Cr. L. J. 447=1933 Cr. C. 275. Sentences under ss. 457 and 411, Penal Code, and also under s. 401 with other accused, passed on same day although separate trial can be ordered concurrently. 27 Cr. L. J. 807=A. I. R. 1926 Nag. 426=95 Ind. Cas. 472. Order detaining person who has failed to furnish security under chapter 8 is not sentence of imprisonment. 15 S. L. R. 205=A. I. R. 1921 Sind. 96=66 Ind. Cas. 191. Prisoner begins to undergo sentence of imprisonment from the moment sentence is pronounced. 3 Bar. L. J. 32=25 Cr. L. J. 1310=A. I. R. 1924 Rang. 307=80 Ind. Cas. 478. Where sentence is already passed for offence of committing dacoity there is no bar to the passing of a sentence under s. 400. 27 O. C. 385=26 Cr. L. J. 1412=89 Ind. Cas. 836=A. I. R. 1925 Oudh. 374. For the application of s. 397 accused should have been under going sentence of imprisonment on date on which sentence was passed on him for substantive offence. 10 O. L. J. 593=24 Cr. L. J. 577=A. I. R. 1923 Oudh. 249=73 Ind. Cas. 321.

Savings as to sections 396 and 397.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

* This proviso was added by *ibid.*

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Notes.—Section 398 provides that nothing in section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction. 2 Weir. 453.

Confinement of youthful offenders in reformatories.

399. When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct such person, instead of being imprisoned in a criminal jail, shall be confind in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897* is for the time being in force.

Notes.—A Judge or Magistrate is not at liberty in estimating the proper sentence to pe passed on juvenile offenders to consider the fact that there is no Reformatory. He is bound to pass a sentence of punishment adequate to offence. 2 Weir. 453. Reformatory Schools Act, 1897 having been extended to the Punjab, s. 399 Cr. P. Code stands repealed but youthful convict under s. 304 I. P. Code is not liable to be dealt with under Reformatory Schools Act. 17 P. R. Cr. 1918=25 P. W. R. Cr. 1918=19 Cr. L. J. 917=47 Ind. Cas. 433.

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued with an endorsement under his hand certifying the manner in which the sentences has been executed.

Notes.—Where in respect of the offence under s. 411 an accused is convicted by the Courts of a Native State, he cannot again be convicted on the same facts in British India. 73 Ind. Cas. 939=24 Cr. L. J. 715.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND CONMUTATIONS OF SENTENCES.

Power to suspend or remit sentences.

401. (1) When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or

* VIII of 1897.

by which the conviction was had or confirmed to state his opinion as to whether the aplication, should be granted or refused, together with his reasons for such opinion * [and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.]

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council of the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may if, at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

†[(4A) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.]

(5) Nothing herein contained shall be deemed to interfere with the right of ‡ [His Majesty, or of the Governor-General in Council when such right is delegated to him] to grant pardons, reprieves, respites or remissions of punishment.

† [(5A) Where a conditional pardon is granted by His Majesty, or, in virtue of any powers delegated to him, by the Governor-General, any condition thereby imposed, of whatever nature shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.]

(6) The Governor-General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

Notes—In a case, where it was held that the accused committed murder without any apparent sane motive and that the accused was at the time suffering from mental derangement of some sort, the High Court holding that the accused was not entitled to be acquitted under s. 84, Penal Code recommended the case to the Local Government, under this section, to be dealt with in such manner as it thought fit. 23 C. 604. This section has application only to persons punished with imprisonment. 11 A. 79. Young age, minor part played and influence of bad company are considered as intimating circumstances for reduction of sentence. 11 L. L. J. 203=A. I. R. 1929 Lah. 601 ; see also 7 Lah. 70=27 P. L. R. 534=A. I. R. 1926 Lah. 271=94 Ind. Cas. 403 ; A. I. R. 1932 Lah. 259=33 P. L. R. 191=33 Cr. L. J. 484 ; A. I. R. 1932 Lah. 308=33 P. L. R. 279=33 Cr. L. J. 580=138 Ind. Cas 410 ; A. I. R. 1933 Lah. 1021. Where in a case of murder the plea of insanity raised was not made out but there were exceptional circumstances in accused's favour the Court while affirming the conviction forwarded the paper to the Local Government. 32 P. L. R. 331=A. I. R. 1931 Lah. 276 ; see also 8 Lah. 684=28 Cr. L. J. 598=29 P. L. R. 104 ; A. I. R. 1934 Lah. 31.

Power to commute punishment.

§[**402.** (1)] The Governor-General in Council or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it—

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* These words were added by s. 107 of the Code of Crimial Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was inserted by *ibid.*

‡ These words were substituted for the words "Her Majesty" by *ibid.*

§ This section was re-numbered by s. 108 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

*[(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the India Penal Code.]†

Notes—"Doubts have been expressed as to the consistency of section 402 with section 54 or 55 of the Indian Penal Code and these have now been resolved."—*Statement of Objects and Reasons.*

CHAPTEE XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquited not to be tried for same offence.

403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisons of section 26 of the General Clauses Act, 1897,‡ or section 188 of this Code.

Explanation—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations,

(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or upon the same facts with theft simply, or with criminal breach of trust.

(*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery ; but it appears from the facts that A committed robbery at the time when the murder was committed ; he may afterwards be charged with, and tried for, robbery.

(*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

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* Sub-section (2) was added by *ibid.* † XLV of 1860.

‡ X of 1897.

(*f*) A is charged by a Magistrate of the second class with and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for robbery on the same facts.

(*g*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C, may afterwards be charged with, and tried for, dacoity on the same facts.

Scope—This section amplifies the well known maxim *Nemo debit bis vexari*. This section embodies the well established rule of common law that a man may not be put twice in peril for the same offence. 29 M. 126 (F. B). So in the case of an acquittal, the acquittal is conclusive. 38 C. 559. The wording of this section is very wide and jurisdiction of the Court does not merely refer to the character and status of the Court to try the offence, but also refers to want of jurisdiction on the grounds as shown by illustrations (*f*) and (*g*) of the section. 7 Pat. L. T. 383=27 Cr. L. J. 849=A. I. R. 1926, P. 302. The omission to frame a charge under a section does not amount to an acquittal of the accused of an offence under that section. 27 Cr. L. J. 615=94 Ind. Cas. 359=7 P. L. R. 115 (Cr.) Trial of second complaint after order of discharge on first complaint is not barred. A. I. R. 1935 All. 60 ; see also A. I. R. 1935 All. 59. Where after notice to remove encroachment, accused was prosecuted but was acquitted, he is not liable to be tried again simply because another notice by same authority relating to same encroachment was issued. A. I. R. 1935 Mad. 56. Where ground that proceedings are barred under s. 403 (1) was not taken in revision petition, High Court can take notice of it *suo motu*. A. I. R. 1935 Nag. 23. The rule of *resjudicata* does not bar any proceedings by general principle but only by special enactment, as contained in s. 13 of C. P. Code and s. 403 of the Criminal Procedure Code. 14 Bom. L. R. 259=4 L. B. R. 337=9 Cr. L. J. 21. The word "tried" in this section does not necessarily mean any decision of the case on the merits. 99 Ind. Cas. 855=28 Cr. L. J. 183. The trial of a case, commences if not from the moment the accused is served with a summons, certainly from the moment he appears in Court on the case being called. 29 Ind. Cas. 855=28 Cr. L. J. 183. Sub-section (4) refers to the character and status of tribunal when it refers to competency to try the offence, as shown by illustrations (*f*) and (*g*). 24 M. L. J. 463=10 Ind. Cas. 340=36 M. 308. An acquittal by a Magistrate having no jurisdiction is simply void under s. 530. 8 B. 307. A second trial is barred if it falls under the terms of the section. 22 C. 377 ; 23 C. 975 ; 27 C. 173. A subsequent trial is not barred when the facts are different. 31 C. 1007 ; 12 Bom. L. R. 226 ; 2 A. L. J. 673. When the Appellate Court acquits the accused on the ground that the conviction was recorded without the sanction necessary under section 195, and that therefore the Magistrate had no jurisdiction, the provisions of s. 403 will not bar a second prosecution. A. I. R. 1929 All. 940. The Doctrine of *autre fois acquit* does not apply to refusal by Magistrate under s. 476 to file complaint against accused. 1930 Cr. C. 1147=A. I. R. 1930 Sind. 315. See also the principle of *autre fois acquit* is not applicable when the section is same in both trials, but facts are wholly and completely different. Previous acquittal under s. 498 I. P. Code is no bar to subsequent proceedings on a charge of subsequent detention. 29 P. L. R. 52=29 Cr. L. J. 3=106 Ind. Cas. 339. Test is whether the evidence is the same in both cases. 29 Cr. L. J. 760=10 P. L. T. 446=A. I. R. 1928 Pat. 577=110 Ind. Cas. 722. Section 236 does not contemplate a series of acts constituting more than one offence, so section 403 (1) has no application where more than one offence has been committed by same transaction. 30 Cr. L. J. 806 9 Pat. 585=11 P. L. T. 722=A. I. R. 1930 Pat. 26=117 Ind. Cas. 625. The true test is not so much whether facts are same in both trials, as whether acquittal on first charge necersarily involves an acquittal on second charge. 48 C. 78. So when an accused was once tried for misappropriation of particular sums of money on certain dates is again tried for misappropriation of different sum of money on date falling within same interval, second trial is not illegal. 1930 M. W. N. 1097=A. I. R. 1930 Mad. 978=129 Ind. Cas. 75. Section 403 (1) forbids retrial only where person has been convicted or acquitted and such conviction or acquittal remains in force. 1929 Cr. C. 294=A. I. R. 1929 All. 710=121 Ind. Cas. 248. Section 403 (2) limits or rather explains the common law rule as meaning that acquittal or conviction for offence constituted by acts A. B. and C. will not for subsequent trial in respect of offence constituted by acts B, C and D. This sub-section has no application to a case in which entire series or acts constituted both offences. 11 P. L. T. 720=30 Cr. L. J. 806=9 Pat. 585=A. I. R. 1930 Pat. 26=117 Ind. Cas. 625 ; see also A. I. R. 1930 Lah. 1055=129 Ind. Cas.

224. In case of two distinct acts of omission, acquittal for one act of omission does not debar trial for other act of omission. A. I. R. 1933 Pat. 670. When the accused is guilty of three distinct offences, he can be tried for two of the offences although acquitted in respect of the third. 33 Cr. L. J. 41=25 S. L. R. 9=A. I. R. 1931 Sind. 116. Mistaken order of acquittal in previous case when discharge alone was possible is no bar to subsequent trial. 36 M. L. W. 641=34 Cr. L. J. 12=A. I. R. 1933 Mad. 98. Previous acquittal in respect of gross sum between specified dates does not bar second trial. 1931 A. L. J. 98=32 Cr. L. J. 376=53 A. 411=A. I. R. 1931 All. 209. Acquittal on charge of murder is bar to trial on charge of culpable homicide not amounting to murder. 33 Bom. L. R. 349=55 B. 520=33 Cr. L. J. 62=A. I. R. 1931 Bom. 309. Previous order of release but not of acquittal is no bar to subsequent trial. 60 C. 149=34 Cr. L. J. 181=36 C. W. N. 1038=A. I. R. 1932 Cal. 871. Prosecution should not be re-started on same facts when once accused has been discharged. 34 P. L. R. 833. Section 403 does not prevent court from doing what in essence seems at first sight to limit provisions of the section. 35 C. W. N. 1182=33 Cr. L. J. 434=18 A. I. Cr. R. 107=A. I. R. 1932 Cal. 291 Section 403 has no application where the decision of appeal by convict and appeal by Government is continuation of original trial. 28 N. L. R. 233=33 Cr. L. J. 849=A. I. R. 1932 Nag. 121 (F. B.). Where accused has been acquitted of certain charge in appeal he cannot be convicted in respect of same matter in subsequent appeal. A. I. R. 1933. Oudh. 470=1933 Cr. C. 1393. Magistrate ordering case reported under s. 173 to be struck off can re-open case by calling for charge sheet under s. 190 (1) (c). 14 P. L. T. 162=12 Pat. 234=A. I. R. 1933 Pat. 242. Where sentence for offence under s. 307 I. P. Code is still in force it does not bar trial and conviction under s. 302. A. I. R. 1935 Pesh. 18.

Principle.—Section 403 contains with certain limitations common law rule that no man may be punished twice for same offence. 30 Cr. L. J. 806=9 Pat. 585=A. I. R. 1930 Pat. 26=11 P. L. T. 722=117 Ind. Cas. 625; see also 30 Cr. L. J. 444=115 Ind. Cas. 309. Whether there has been previous acquittal is to be determined after hearing the evidence and ascertaining what the facts are in this case and what were the facts found in the previous case. 20 Cr. L. J. 572=23 C. W. N. 599=52 Ind. Cas. 60. A decision that a prosecution is barred under s. 403 of the Code should be arrived at only after an enquiry into the facts put by the complainant. 22 Cr. L. J. 67=23 C. W. N. 543=59 Ind. Cas. 323. Only identity of charges is looked to and not identity of parties. 21 S. L. R. 1=27 Cr. L. J. 1105=A. I. R. 1927 Sind. 10=97 Ind. Cas. 417. Section 403 is only a bar in respect of a previous trial by a Court of competent jurisdiction. A. I. R. 1934 Pat. 411=15 P. L. T. 554=35 Cr. L. J. 686; see also 19 Cr. L. J. 296=46 Ind. Cas. 716.

Court of competent jurisdiction.—The words "competent to try" in s. 403 refer to the character and status of the Court which had decided the case. 23 Cr. L. J. 305=66 Ind. Cas. 657. Where acquittal is for want of sanction, second prosecution is not barred. 30 Cr. L. J. 1153=1930 A. L. J. 218=A. I. R. 1929 All. 940=120 Ind. Cas. 121; see also 40 B. 97=16 Cr. L. J. 761=17 Bom. L. R. 881=31 Ind. Cas. 361; 39 A. 293=18 Cr. L. J. 546=39 Ind. Cas. 690. Where Court trying first case is not competent to try subsequent case, second trial is not barred. 26 Cr. L. J. 1087=48 M. L. J. 490=A. I. R. 1925 Mad. 701=88 Ind. Cas. 31; see also 23 C. W. N. 518=20 Cr. L. J. 112=29 C. L. J. 30; 20 Cr. L. J. 533=51 Ind. Cas. 773; 29 Cr. L. J. 760=10 P. L. T. 446=A. I. R. 1928 Pat. 577=110 Ind. Cas. 792; 30 Cr. L. J. 54=53 B. 69=30. Bom. L. R. 1435=A. I. R. 1928 Bom. 530=113 Ind. Cas. 70; 29 P. L. R. 533=29 Cr. L. J. 701=A. I. R. 1928 Lah. 844=110 Ind. Cas. 333; A. I. R. 1934 Mad. 716. But illegal conviction is not conviction by incompetent court. A. I. R. 1931 Lah. 199=131 Ind. Cas. 373. Where absence of complaint under s. 195. renders first trial infructious, second trial is not barred. 21 S. L. R. 1=27 Cr. L. J. 1105=A. I. R. 1927 Sind. 10=97 Ind. Cas. 417; see also A. I. R. 1930 Lah. 1055=129 Ind. Cas. 224. But in case of acquittal by Court wanting in territorial jurisdiction, accused can plead *autre fois acquit* unless failure of justice is caused. 1933 M. W. N. 713=65 M. L. J. 529=38 M. L. W. 562=A. I. R. 1933 Mad. 765 (F.B.). Accused must show on second occasion that former Court was competent to try and acquit or convict him. Words "competent to try" mean Court is in a legal position to have tried and acquitted or convicted. They refer narrowly to the legal position of Court at time of former trial in relation to particular offence committed by accused and not broadly to the jurisdiction of Court with regard to the class of offence in general. 30 Cr. L. J. 806=9 Pat. 585=A. I. R. 1930 Pat. 26=11 P. L. T. 722=117 Ind. Cas. 625.

Discharge of accused.—Section 403 applies of acquittal to conviction and not a case of discharge. 17 A. L. J. 867=20 Cr. L. J. 403=51 Ind Cas. 163 ; see also 2 P. L. J. 34=18 Cr. L. J. 296=3 P. L. W. 432=38 Ind. Cas. 328 ; 8 Rang. 1=A. I. R. 1930 Rang. 156=125 Ind. Cas. 341 ; 26 Cr. L. J. 129=83 Ind. Cas. 689 ; 25 Cr. L. J. 385=83 Ind. Cas. 345 ; 30 Cr. L. J. 594=116 Ind. Cas. 251 ; 30 Cr. L. J. 1153=1930 A. L. J. 218=A. I. R. 1929 All. 940=120 Ind. Cas. 121 ; 31 Cr. L. J. 687=A. I. R. 1929 Sind. 242=124 Ind. Cas. 384 ; 4 Pat. 24=6 P. L. T. 225=26 Cr. L. J. 170=A. I. R. 1925 Pat. 330. Where one Magistrate discharged the accused, another Magistrate of a different Court cannot entertain fresh complaint on same facts for same offence. 28 Cr. L. J. 236=A. I. R. 1927 All. 815=102 Ind. Cas. 344 ; see also 56 A. 425=A, I. R. 1934 All. 87. Persons once charged and discharged should not be harrassed again on same charge except on very strong grounds. 18 Cr. L. J. 329=38 Ind. Cas. 441 ; see also 21 P. L. J. 215=24 Cr. L. J. 232=71 Ind. Cas. 696 ; 37 C. L. J. 327=50 C. 482=24 Cr. L. J. 710=73 Ind. Cas. 934. The explanation of s. 403 Cr. Pro. Code as to what do not constitute acquittal for the purposes of that section specifically includes discharge of the accused. A. I. R. 1934 Nag. 215 ; see also A. I. R. 1932 All. 340=1934 Cr. C. 418.

Burden of proof.—Accused must show that he has been acquitted to raise the plea of *autre fois acquit*. He can raise the plea at any stage of proceedings. 29 Cr. L. J. 760=10 P. L. T. 446=A. I. R. 1928 Pat. 577=110 Ind. Cas 792 ; see also 98 Ind. Cas. 104=21 S. L. R. 154=27 Cr. L. J. 1256=A. I. R. 1927 Sind. 53.

Dismissal of complaint—S. 403 Cr. P. Code does not apply to dismissal of complaint under s. 203 Cr. P. Code. A fresh complaint on the same facts can be entertained. 21 Cr. L. J. 660=1 P. L. T. 293=57 Ind. Cas. 820 ; see also 27 Cr. L. J. 383=A. I. R. 1926 All. 298=92 Ind. Cas. 895 ; 28 Cr. L. J. 304=100 Ind. Cas 384 ; 26 Cr. L. J. 1040=87 Ind. Cas. 928 ; 5 Rang. 697=6 Bur. L. J. 200=28 Cr. L. J. 912=A. I. R. 1927 Rang. 328. Where a complaint was dismissed under s. 204 (3) for failure to pay the process fee, it does not amount in law to an order of acquittal. 27 N. L. R. 13.=A. I. R 1932 Nag. 39=130 Ind. Cas. 825. Summary dismissal of a complaint or discharge of accused does not invariably bar inquiry on a second complaint on the same facts. A. I. R. 1934 All. 514=35 Cr. L. J. 1059=1934 A. L. J. 241 ; see also A. I. R. 1934 All. 877=1934 A. L. J. 648=35 Cr. L. J. 1177 : 35 Cr. L. J. 802=A. I. R. 1934 Rang. 40 ; A. I. R. 1932 Mad. 369 (F. B.)=62 M. L. J. 469=55 M. 622=33 Cr. L. J. 454.

Fresh trial barred.—Composition has the effect of acquittal only as between the person who is entitled to compound and the accused. 1930 M. W. N. 692. Order of acquittal can be passed if complainant is absent, even though summons to accused have not been served, 53 B. 693=31 Bom. L. R. 795=A. I. R. 1929 B. 408. Trial need not be on merits, acquittal under s. 247 for further trial. 49 C. L. J. 119=33 C. W. N. 260=30 Cr. L. J. 585=116 Ind. Cas. 174. In case of cheating different deceptions should form subject of one trial. 28 Cr. L. J. 235=A. I. R. 1927 Mad. 444=99 Ind. Cas. 1035. Acquittal under s. 160 I. P. Code bars trial under Bombay District Police Act, s. 61 (o). 29 Bom. L. R. 478=28 Cr. L. J, 1032=A. I. R. 1927 Bom. 629=106 Ind. Cas. 216. In case of conviction under s. 68, Calcutta Police Act for drinking and disorderly behaviour, subsequent trial under s. 103 (4) Merchant Shipping Act on the same facts barred. 31 C. W. N. 195=28 Cr. L. J. 233=A. I. R. 1927 Cal. 224=99 Ind. Cas. 1033. After acquittal on a charge under s. 297 of I. P. Code for entering and cutting trees in a grave yard, charge for theft on the same facts cannot be based. 8 Lah. 52=28 P. R. 518=27 Cr. L. J. 1019=96 Ind. Cas. 875. An accused once acquitted cannot be convicted for another offence in respect of the same facts. 29 Cr. L. J. 282=A. I. R. 1928 Lah. 332=107 Ind. Cas. 766. In case of acquittal when the complaint is by one person, fresh trial on complaint by another person on the same facts is barred. L. R. 1 A. Cr. 57. Where a person is acquitted of a charge of abduction, this subsequent prosecution for alleged rape of some final during abduction is barred. 32 Cr. L. J. 205=A. I. R. 1930 Rang. 360=128 Ind. Cas. 843. Breaches of trust or misappropriation of different sums of money are different offences. But trial for these offences, wherever possible, should be one. 49 C. L. J. 378=33 C. W. N. 454=57 C. 17=A. I. R. 1929 Cal. 457. Under s. 40 (2) Cr. Pro. Code a previous acquittal is no bar to a trial for any distinct offence for which a separate charge might have been made in the former trial under section 235 (1) of the Cr. Pro. Code. 35 Cr. L. J. 1503=1934=M. W. N. A. I. R. 1934 Mad. 673=67 M. L. J. 583 ; see also 1929 A. L. J. 1056=30 Cr. L. J. 1089=51 A. 977=A. I. R. 1929 All. 899. *Autre fois acquit* bars second trial on same facts. *Autre fois acquit* is based on same principle as *autre fois* convict. A. I. R. 1934 Mad. 311=66 M. L. J. 653=35 Cr. L. J. 783=57 M. 552 ; see also 33 C. W. N

948=31 Cr. L. J. 613=A. I. R. 1930 Cal. 60=124 Ind. Cas. 69; A. I. R. 1928 Cal. 240; 67 M. L. J. 873. Acquittal under s. 247 bars a complaint on the same facts. 152 Ind. Cas. 156=A. I. R. 1934 Lah. 211; see also 2 Pat. L. T. 170; 22 Cr. L. J. 331. When accused has been acquitted under s. 397 I. P. Code, trial again under s. 307 I. P. Code is barred. A. I. R. 1934 Mad. 311; see also 35 Cr. L. J. 570=A. I. R. 1934 Oudh. 259; 38 C. W. N. 1128. Conviction for specific offence under a special Act bars a separate conviction under general law. 60 C. 1477=148 Ind. Cas. 925=35 Cr. L. J. 766=38 C. W. N. 84=A. I. R. 1934 Cal. 368. Section 403 bars trial of accused under s. 16 of Motor Vehicles Act, so long as acquittal under s. 338, on the same fact remains. 2 P. L. T. 31=22. Cr. L. J. 63=59 Ind. Cas. 207. Verdict of acquittal is immune from challange only when "tried" and acquitted. 43 C. L. J. 110=30 C. W. N. 382=27 Cr. L. J. 751=A. I. R. 1926 Cal. 691; see also 19 M. L. W. 31=25 Cr. L. J. 244=A. I. R. 1924 Mad. 478=76 Ind. Cas. 708. Trial and acquittal of forgery and abetment thereof bars fresh trial under Registration Act. 1 Rang. 299=25 Cr. L. J. 291=76 Ind. Cas. 431. Previous acquittal under s. 247 Cr. Pro. Code bars conviction on the same facts. 37 C. L. J. 253=25 Cr. L. J. 149=76 Ind. Cas. 293; see also 45 A. 58=24 Cr. L. J. 862=74 Ind. Cas. 1054; 5 Pat. L. T. 15=2 Pat. L. R. Cr. 10=24 Cr. L. J. 815=74 Ind. Cas. 719; 40 M, 976=30 M. L. J. 121=19 Cr. L. J. 501=45 Ind. Cas. 261. Acquittal even under a wrong section is a bar to further trial on same facts. 26 O. C. 282=25 Cr. L. J. 794=A. I. R. 1924 Oudh. 64=81 Ind. Cas. 314. Trial and acquittal of the charge of abetment of theft bars trial for receiving stolen property as the later charge could have been joined with former. 26 Bom. L. R. 440=26 Cr. L. J. 831=A. I. R. 1924 Bom. 448. In case of acquittal on charge under s. 193, charge under ss. 467 and 471 on the same facts cannot be tried. 40 C. W. N. 384=26 Cr. L. J. 1023=A. I. R. 1926 Cal. 450=87 Ind. Cas. 847. Trial and acquittal for mischief on certain facts precludes fresh charge for rioting on practically the same facts. 19 M. L. W. 31=25 Cr. L. J. 244=A. I. R. 1924 Mad. 478=76 Ind. Cas. 708. Acquittal on trial for criminal breach of trust bars fresh trial for falsification of accounts on the same facts. 49 C. 924=24 Cr. L. J. 509=A. I. R. 1923 Cal. 179=72 Ind. Cas. 973; see also 25 Cr. L. J. 1241=A. I. R. 1925 Lah. 157; 26 Cr. L. J. 1=A. I. R. 1925 Oudh. 298=83 Ind. Cas. 481; 22 Cr. L. J. 63=59 Ind. Cas. 207; 20 Cr. L. J. 667=52 Ind. 491; 20 Cr. L. J. 526=51 Ind. Cas. 686.

Where fresh trial is not barred.—Where two charges are distinct and relate to independent transactions acquittal of one does not bar trial in respect of another. 1930 A. L. J. 85=30 Cr. L. J. 1149=A. I. R. 1930 All. 92=120 Ind. Cas. 117. Where offences are distinct s. 403 is no bar to trial of second offence. 30 Cr. L. J. 1153=1930 A. L. J. 218=A. I. R 1929 All. 940; see also 7 O. W. N. 862=A. I. R. 1930 Oudh. 455=128 Ind. Cas. 739; A. I. R. 1931 All. 209=1931 A. L. J. 98=32 Cr. L. J. 376; A. I. R. 1934 All. 61; A. I R. 1934 All. 141; A. I. R. 1934 Cal. 240=35 Cr. L. J. 1270; 36 C. W. M. 926. Person can be convicted for any distinct offence for which separate charge might be framed, although he may be convicted or acquitted of another offence in same transaction. 33 Cr. L. J. 522=55 M. 788=A. I. R. 1932 Mad. 362; 19 C. R. L. J. 388=44 Ind. Cas. 740; 43 Ind. Cas. 409=19 Cr. L. J. 121=4 Ph. W. 211; 40 B. 97=16 Cr. L. J. 761=17 Bom. L. R. 881. Where first trial fails for want of sanction, second trial after sanction is valid. 24 A. L. R. 180=27 Cr. L. J. 795=94 Ind. Cas. 897=A. I. R 1926 All. 231. Acquittal for abduction is no bar to trial for detention. 24 Cr. L. J. 780=74 Ind. Cas. 444. Conviction for affray is no bar to subsequent conviction for causing hurt in the affray. 47 A. 284=23 A. L. J. 8=26 Cr. L. J. 688=86 Ind. Cas. 64. S. 19 (e) Arms Act and s. 324 I. P. Code are distinct offences. 53 B. 609=31 Bom. L. R. 536=30 Cr. L. J. 1059=119 Ind. Cas. 641.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

OF APPEALS. *

Unless otherwise provided, no appeal to lie.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

* For periods of limitation, see the Indian Limitation Act, 1908 (IX of 1908), Sch, I, second division.

Notes—The words "except as provided for by this Code" must include cases in which the power to alter or annul the order of a Magistrate is expressly given 3 C. 379=1 C. L. R. 339. An order of acquittal cannot be interfered with except upon appeal by the Local Government. 22 C. 377 ; 6 C. L. R. 245 ; 14 M. 369 ; 3B. 150. Having regard to this section an order directing restoration of possession is not appealable. 25 C. 630=2 C. W. N. 225. Learn to appeal to Privy Council from death sentence can be entertained by chartered High Court only. 145 Ind. Cas. 246=29 N. L. R. 340=34 Cr. L. J. 934=A. J. R. 1933 Nag. 216. Section 31 is applicable to disposal of appeals. 41 M. L. J. 172=22 Cr. L. J. 583=62 Ind. Cas. 823. Where several accused are convicted, form of appeal depends upon individual sentence. 43 M. L. J. 561=24 Cr. L. J. 89=71 Ind. cas. 217. Time spent in obtaining copies of diary orders in the case cannot be deducted for appeal. 26 Cr. L. J. 137=4 Bar. L. J. 44=3 Rang. 220=A. I. R. 1925 Rang. 239=89 Ind. Cas. 459.

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Notes.—Vide, 11 B. 438 ; 21 Cr. L. J. 210=54 Ind. Cas, 954 ; 21 Cr. L, J. 309.

Appeal from order requiring security for keeping the peace or for good behaviour.

*[**406.** Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

(*a*) if made by a Presidency Magistrate, to the High Court ;

(*b*) if made by any other Magistrate, to the Court of Session ;

Provided that the Local Government may, by notification in the local official Gazette, direct that in any District specified in the notification, appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session ;

Provided, further, that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123.]

Notes.—In an appeal from an order under s. 107, the Appellate Court has got power to order a retrial. 48 A. 501=27 Cr. L. J. 945. Sessions Judge has no jurisdiction to hear appeal from order of Assistant District Magistrate under S. 118. A I. R. 1932 Lah 463=13 Lah. 254=32 Cr. L. J. 849. Orders for security for good behaviours are appealable and those for keeping the peace are not. 25 Cr. L J. 67=19 N. L. R. 160=75 Ind. Cas. 979 ; see also 48 A. 501=27 Cal J. 945.

Appeal from order refusing to accept or rejecting a surety.

†[**406A.** Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

(*a*) if made by a Presidency Magistrate, to the High Court ;

(*b*) if made by the District Magistrate to the Court of Session ; or

(*c*) if made by a Magistrate other than the District Magistrate, to the District Magistrate].

Appeal from sentence of magistrate of the second or third class.

407. (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349‡ (or in respect of whom an order has been made or a sentence has been passed by section 380) by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

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* Section 406 was substituted by s. 109 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Section 406A was inserted by s. 110, *ibid*

‡ These words and figures were inserted by s. 111. *ibid.*

(2) The District Magistrate may direct that any appeal under this section or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Transfer of appeals to first class Magistrate.

Notes—This section does not entitle a District Magistrate to send appeals under s. 195 to a Magistrate of the first class subordinate to him. That section deals with appeals from convictions. 34 A. 244=14 Ind. Cas. 657=13 Cr. L. J. 273 ; 30 C. 394. A District Magistrate cannot delegate revisional work. 2 Bom. L. R. 536. A District Magistrate has jurisdiction to withdraw a postponed appeal to his own file from the file of a Sub-divisional Magistrate, by whom it has been heard in part. 31 M. 277=18 M. L. J. 89. When a second class Magistrate is gazetted to be a first class Magistrate during the pending of a trial of a criminal case, an appeal from the decision in that case by that Magistrate lies to the Sessions Judge as one from the decision of a first class Magistrate. 99 Ind. Cas. 82=28 Cr. L. J. 50=A. I. R. 1927, Lah. 138 ; see 29 Bom. L. R. 482=28 Cr. L. J. 474 ; A. I. R. 1927 Bom. 366 ; 86 Ind. Cas. 978=A. I. R. 1925 Pat. 472=6 P. L. T. 554=26 Cr. L. J. 914 ; but see 8 Lah. 203=28 P. L. R. 489=A. I. R. 1927 Lah. 398, A. I. R. 1932 Cal. 460=36 C. W. N. 302.

* **408.** Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 † [or in respect of whom an order has been made or a sentence has been passed under section 380] by a Magistrate of the first class, may appeal to the Court of Session :

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

Provided as follows :—

‡(*b*) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal § (of all or any of the accused convicted at such trial) shall lie to the High Court ;

(c) When any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code, the appeal shall lie to the High Court.

Notes.—Where at a trial some persons were convicted by an Assistant Sessions Judge and sentenced to over 4 years' imprisonment and others sentenced to less than 4 years' imprisonment, the appeal of the latter also lay to the High Court. 13 A. L. J. 272=16 Cr. L. J. 353=28 Ind. Cas. 737. When a Sessions Judge has confirmed the sentences passed by an Assistant Sessions Judge on some of the accused persons, he has no jurisdiction to hear the appeals preferred by any of the prisoners in the same case, as such appeals lie to the High Court under proviso (*a*) Rat. Un. Cr. C. 655. The object of proviso (*b*) is that, in a case in which a sentence of transportation or of imprisonment for more than four years is passed, any appeal or appeals in the case shall lie to the High Court. U. B. R. (1897-1901). Vol. I. 94. The word "sentence of imprisoment exceeding four years" must be taken to mean substantive

* As to appeals from decisions under the Frontier Crimes Regulation, 1901 (III of 1901), see Ch. III of that Regulation.

† These words and figures were inserted by s. 112 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ Clause (*a*) of the proviso to s 408 was omitted by s. 23 of the Criminal Law (Amendment) Act, 1923 (XII of 1923).

§ These words were inserted by s. 112 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

sentence of imprisonment, apart from any sentence of fine or imprisonment in default of payment of fine. An appeal in such cases lies to the Sessions Court. 1 L. B. R. 57 ; see also 19 P. R. 1918. The words "aggregate sentence" and in fact the whole of cl. 3, relate to a case of consecutive sentences. Where, therefore, two sentences have to run concurrently, there is no aggregation of sentences within the meaning of s. 408 (3). 11 A. L. J. 111=14 Cr. L. J. 119=18 Ind. Cas. 679=35 A. 154 ; 3 P. L. J. 138 ; 23 C. L. J. 595 ; 11 Bom. L. R. 544 ; 25 P. R. 1901. Appeal lies against an order under s. 562 clause (1). 28 Bom. L. R. 671=96 Ind. Cas. 121. When a first class Magistrate passes two sentences of fine amounting in the aggregate to over Rupees 50 an appeal lies under this section. 28 Bom. L. R. 668=27 Cr. L. J. 926. Where the total term of imprisonment to which the accused has been sentenced either by an Assistant Sessions Judge or by a Magistrate under s. 30 does not exceed 4 years in the aggregate, the appeal undoubtedly lies to the Court of the Sessions Judge. 103 Ind. Cas. 208=18 Cr. L. J. 672. Courts of Session in British Indian Baluchistan have the same powers over European British subjects and other persons as are held by Courts of Session in British India. *Barus field* v. *Emperor*, 118 Ind. Cas. 438=30 Cr. L. J. 918. Where separate sentences are to run consecutively and the total exceed 4 years, appeal to High Court is maintainable. 1930. A. L. J. 1206, 1933 Pesh. 90. Where some accused are sentenced to less and some to more than four years at one trial, appeals of accused lie to High Court 24 A. L. J. 151=27 Cr. L. J. 175=A. I. R. 1926 All. 160=91 Ind. Cas 459. Restriction on right of appeal must be strictly constructed and in favour of subject. 33 Cr L. J. 90=59 C. 19=35 C. W. N. 752=A. I. R. 1931 Cal. 642. The mere fact that the accused has been sentenced to whipping does not alter the position. 35 Cr. L. J. 1288=11 O. W. N. 1133=A. I. R. 1934 Oudh. 433.

Appeal to the Court of Session how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge.

* [Provided that an Additional Sessions Judge shall hear only such appeals as the Local Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.]

Notes—This section distinctly lays down that any person convicted on a trial held by a Magistrate of the first class may appeal to a Court of Session. 33 A. 510=8 A. L. J. 524. An appeal can be transferred to the Additional Sessions Judge by the Sessions Judge. 37 A. 286. The proviso to s. 409 is not restricted to appeals arising within the jurisdiction of the Court of Session. 35 Cr. L. J. 1167=15 P. L. T. 318=A. I. R. 1934 Pat. 114.

Appeal from sentence of Court of Sessions.

410. Any person convicted on a trial held by a Sessions Judge, or an additional Sessions Judge, may appeal to the High Court.

Notes—*Vide*, 4 M. H. C. 146.

Appeal from sentence of Presidency Magistrate.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Notes—*Vide*, 16 C. 799 ; 20 B, 145 ; 2 M. 30 ; 3 Ind. Cas. 285; 17 C. L. J. 329.

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or any Presidency Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

Notes—*Vide*, 31 C. L. J. 122 ; Col. Dig. Cr. 31 of 1876 ; 4 N. L. R. 163 ; 12 Rang. 616 ; A. I. R. 1934 Pat. 330 ; 1931 A. L. J. 201=32 Cr. L. J. 576 ; 32 Cr. L. J. 1017=A. I. R. 1931 Pat. 351 ; 32 Cr. L. J. 1142=A. I. R. 1931 Sind. 151. High Court

* This proviso was added by s. 113 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1293).

in revision may examine record to see if plea of guilty was based on proper conception of facts. A. I. R. 1930 Rang. 346=128 Ind. Cas. 845. Conviction of accused on the plea of guilty does not bar an appeal on the point of legality of conviction. 28 Bom. L. R. 1023=27 Cr. L. J. 1148=A. I. R. 1927 Bom. 67=97 Ind. Cas. 668. When a person has pleaded guilty and had been convicted on such plea he waives his right to question the legality of the conviction. 31 C. L. J. 122=56 Ind. Cas. 851.

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session * passes a sentence of imprisonment not exceeding one month only or † [in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence] of fine not exceeding fifty rupees only.‡

Explanation—There is no appeal from a sentence of imprisonment passed by such Court of Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

Notes—No appeal lies to the Sessions Court against a sentence of fine of Rs. 50 passed by a first class Magistrate. 9 Ind. Cas. 340=9 M. L. T. 322=12 Cr. L. J. 63. This section must be construed strictly. If so construed, it will apply only to cases in which either imprisonment or fine has been awarded by the sentence to the extent specified in the section, and it will not apply to a case in which both punishments are awarded. In the latter case, the right of appeal is not barred. 1 N. W. P. 302. A Magistrate trying a case passed at first a non-appealable sentence on the accused; but shortly afterwards, at the request of the accused, added to the sentence passed so as to make it appealable. On appeal, the Sessions Judge struck out the added sentence, which being done he declined to go into the merits of the case, on ground that the original sentence passed was not open to appeal. *Held*, (1) that, when a Magistrate once passed a sentence exceeding one month, an appeal lay to the Sessions Court under s. 413 of the Criminal Pro. Code independently of the question whether the sentence was passed legally or illegally, (2) that the Sessions Judge being once seized of the appeal the whole appeal becomes open to his Court, and he ought, therefore, to have heard the appeal on the merits also. 13 Bom. L. R. 550=11 Ind. Cas. 615=12 Cr. L. J. 431=35 B. 418. In case of two sentences of fine, aggregate is to be looked into for determining right of appeal. 36 C. W. N. 407=138 Ind. Cas. 720=59 C. 1131=33 Cr. L. J. 704=A. I. R. 1932 Cal. 551; 136 Ind. Cas. 248=8 O. W. N. 1373=33 Cr. L. J. 278=7 Luck. 501=A. I. R. 1932 Oudh. 27. Where some accused was sentenced to non-appealable sentences while other accused sentenced to appealable sentences in a joint-trial, there is no right of appeal to accused who receive lesser sentence. 39 A. 293=18 Cr. L. J. 546=15 A. L. J. 136; see also 24 Cr. L. J. 679=73 Ind. Cas. 775.

No appeal from certain summary convictions.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence § of fine not exceeding two hundred rupees only.‡

Notes—*Vide*, 30 Cr L. J. 869=A. I. R. 1929 Pat. 716; see also 25 Cr. L. J. 1244.

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of, the punishments therein mentioned are combined but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

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* The words "or the District Magistrate or other Magistrate of the first class" were omitted by s. 24 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words were inserted by *ibid.*

‡ The words "or of whipping only" were omitted by s. 24 of Act XII of 1923.

§ The words "of imprisonment not exceeding three months only, or" were omitted by s. 25, *ibid.*

Explanation—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

*[**415A.** Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.]

Special right of appeal in certain cases.

Notes.—Where several accused are tried in one trial, though the sentence on one accused may not be appealable, still if the sentences on the others are appealable, all the accused persons have a right of appeal. 28 Bom. L. R. 671.

416. [Saving of sentences on European British subjects.] Omitted by s. 26 of Act XII of 1923.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on behalf of Government in case of acquittal.

Notes.—Under the Criminal Procedure Code the Local Government has the same right of appeal against an acquittal, as a person convicted has of appealing against his conviction and sentence, and there is no distinction between the mode of procedure and the principle upon which both classes of appeals are to be decided. 2 L. B. R. 303. See also U. B. R. (1892—1895), Vol. I, 47. It is not open to the Government under this section to appeal to the High Court on an interlocutory order, e. g. on the ground of the Sessions Judge's refusal to add new charges. 16 B. 414. The powers conferred by this section should be exceptionally used. 7 N. W. P. 196. The discovery of fresh evidence after an acquittal is not sufficient for setting aside an acquittal. U. B. R. (1902—1903) Criminal Procedure Code, 9. The procedure to be adopted by the Local Government in filing appeals from acquitting judgments is that laid down in 1 A. W. N. 1881, 159; A. W. N. 1882, 64. But the High Court has jurisdiction to interfere on revision with an acquittal, but it should ordinarily exercise this jurisdiction sparingly and only where it is urgently demanded in the interest of public justice. 17 M. L. T. 457=1915 M. W. N. 411. The High Court must be satisfied that the case is conclusively proved in the sense in which this has to be done before an appeal from an acquittal can be accepted. 27 P. L. R. 197. In an appeal from an acquittal as in the case of an appeal from a conviction the appellant is entitled to take a view of the facts different that taken by the trial Court. 8 Pat. 496=10 Pat. L. T. 838. Government alone has the right of appeal against acquittal. 2 Pat. L. R. Cr. 250=26 Cr. L. J. 516=A. I. R. 1925 Pat. 321=85 Ind. Cas. 356; see also 28 Cr. L. J. 523. Government can move otherwise than at District Magistrate's instance. 24 Cr. L. J. 433=A. I. R. 1923 Lah. 163=72 Ind. Cas. 593. Where the Government does not prefer appeal under s. 417 against acquittal, the High Court will not interfere under s. 439. Unless there is error of law or procedure on the face of the judgment. 15 S. L. R. 171=23 Cr. L. J. 343=A. I. R. 1922 Sind. 22=66 Ind. Cas. 999. High Court cannot interfere in appeal against acquittal unless trial Court's finding is manifestly wrong or perverse. 28 Cr. L. J. 55=A. I. R. 1927 Lah. 78=99 Ind. Cas. 87; see also 31 Cr. L. J. 897=A. I. R. 1930 Mad. 704=59 M. L. J. 520=125 Ind. Cas. 558; A. I. R. 1929 Mad. 846=52 M. L. J. 548=31 Cr. L. J. 449=122 Ind. Cas. 648; 30 Cr. L. J. 1116=A. I. R. 1929 Pat. 508=119 Ind. Cas. 901. When complainant is aggrieved by order of acquittal he should move District Magistrate to initiate appeal. 30 Cr. L. J. 251=A. I. R. 1928 Sind. 176=114 Ind. Cas. 110. In appeal against acquittal crown must show conclusively that inference of guilt is irresistable. 6 Pat. 678=29 Cr. L. J. 301=A. I. R. 1928 Pat. 146=107 Ind. Cas. 835. Interference is justified if finding is wrong it need not be perverse. 28 P. L. R. 313=28 Cr. L. J. 556=A. I. R. 1927 Lah. 549=102 Ind. Cas. 492. High Court will not ordinarily interfere to set aside acquittals in petty assaults. 52 M. L. J. 32=1927 M. W. N. 40=28 Cr. L. J. 138=A. I. R. 1927 Mad. 298=99 Ind. Cas. 396; see also A. I. R. 1931 Rang. 86=8 Rang. 671=1931 Cr. C. 374. There is no difference between an appeal from acquittal and one from conviction.

* Section 415A was inserted by s. 114 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

31 P. L. R. 1026=A. I. R. 1931 Lah. 18=130 Ind. Cas. 324. Reference by Sessions Judge to set aside erroneous acquittal is ordinarily acceptable but not one by District Magistrate as he can proceed under s. 417. 7 Pat. 579=30 Cr. L. J. 673= A. I. R. 1929 Pat. 139=116 Ind. Cas. 768 ; see also 30 Cr. L. J. 251=A. I. R. 1928 Sind. 176. Change of conviction from Penal Code s. 353 to one under s. 352 does not amount to acquittal under s. 353 and no appeal lies. 29 Cr. L. J. 905=A. I. R. 1928 Lah. 230=111 Ind. Cas. 665. Order under s. 118 is not a conviction or acquittal. 26 A. L. J. 99=106 Ind. Cas. 684. Order of acquittal should not be set aside unless wrong or perverse. 7 L. L. J. 528=26 Cr. L. J. 1141=26 P. L. R. 259=A. I. R 1925 Lah. 600=80 Ind. Cas. 453. High Court is very reluctant to interfere unless necessity is made out. 19 S. L. R. 111=26 Cr. L. J. 1028=A. I. R. 1925 Sind. 295=87 Ind. Cas. 916. Interference is justified in case of erroneous view of evidence. 21 Cr. L. J. 17=21 Bom. L. R. 1054=54 Ind. Cas. 161. Before the Appellate Court will interfere with the acquittal, the guilt of the accused must be very clear and indubitable. 19 Cr. L. J. 710 (Lah)=30 P. W. R. 1918 Cr.=46 Ind. Cas. 294 : see also 70 P. L. R. 1918=19 Cr. L. J. 275=44 Ind. Cas. 179 ; 17 Cr. L. J. 540=3 O. L. J. 477=36 Ind. Cas. 588 ; 15 P. R. 1916 Cr.=17 Cr. L. J. 194=46 P. W. R. 1916 Cr.=34 Ind. Cas. 306 ; 17 Cr. L. J. 97=32 Ind. Cas. 833. Appellate Court will not convict if lower court has taken an erroneous view of evidence. 27 Cr. L. J. 1317=28 S. L. R. 141=A. I. R. 1927 Sind. 92=98 Ind. Cas. 467. Right of appeal against acquittal is with Government and the Court cannot take it away. 19 Cr. L. J. 85=43 P. R. 1917 (Lah.)=43 Ind. Cas. 245.

The powers of revision should be sparingly used against the order of acquittal and specially when the Government has refused to appeal. 8 L. B. R. 356=17 Cr. L. J. 91=9 Bur. L. T. 47=32 Ind. Cas. 683. Interference should be made only if there is miscarriage of justice. A. I. R. 1932 Rang. 146=10 Rang. 312=33 Cr. L. J. 701=1932 Cr. C. 709 ; see also 59 C. L. J. 482=35 Cr. L. J. 1367=38 C. W. N. 854=A. I. R. 1934 Cal. 610 ; A. I. R. 1934 Lah. 212. Judgment need not be perverse or stupid. Even in spite of its not being perverse if Appellate Court is convinced from evidence that conclusion of trial Court is clearly wrong, it can set aside acquittal. A. I. R. 1934 Oudh. 229=1933 A. L. J. 1573=35 Cr. L. J. 364=56 A. 354 (F. B.) ; but see 17 N. L. J. 189 ; A. I. R. 1934 Pesh. 129. An appeal from an acquittal is not different with regard to consideration of evidence, from an appeal from a conviction. 17 Cr. L. J. 9=20 C. W. N. 128=32 Ind. Cas. 137 ; see also 35 P. L. R. 641=1934 Cr. C. 1020=A. I. R. 1934 Lah. 710. The provisions of s. 417 Cr. Pro. Code, are unqualified by any restriction which may be derived from a consideration of the terms of s. 414. 1934 A. L. J. 839=35 Cr. L. J. 1229=1934 Cr. C. 1028=A. I. R. 1934 All, 842. In *Sher Sworup* v. *King-Emperor*, 67 M. L. J. 664 (P. C.)=A. I. R. 1934 P. C. 227=60 C. L. J. 276=15 P. L. T. 607=39 C. W. N. 15=1934 A. L. J. 905=1934 M. W. N. 107=36 Bom. L. R. 1185=1934 Cr. C. 1134=11 O. W. N. 1119= 151 Ind. Cas. 322 (P. C.) *Lord Russel of Killowon* this laid down the law : "There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India that, the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has obstinately blundered or has 'though incompetence, stupidity or perversity' reached such 'distorted conclusions as to produce a positive miscarriage of justice" or has in some way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

Sections 417, 418 and 423 of the Code has given to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses ; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial ; (3) the right of the accused to the benefit of any doubt ; and (4) the slowness of an Appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice. See also 148 Ind. Cas. 1069=35 Cr. L. J. 855=A. I. R. 1934 Rang. 44 ; A. I. R. 1934 Oudh. 229=11 O. W. N. 568=35 Cr. L. J.

843=148 Ind. Cas. 1059 ; A. I. R. 1934 Lah. 523=35 P. L. R. 581 ; 35 Cr. L. J. 1229=A. I. R. 1934 All. 842 ; A. I. R. 1934 Sind. 84=35 Cr. L. J. 1142=150 Ind. Cas. 726. Onus is on the prosecution to prove that finding of lower Court is not justified. 32 Cr. L. J. 1073=1931 A. L. J. 1002=A. I. R. 1931 All. 712 ; A. I. R. 1931 All. 439. There is no difference between appeals from acquittal and conviction. 31 P. L. R. 1026=32 Cr. L. J. 485=A. I. R. 1931 Lah. 18 ; but see A. I. R. 1931 Lah. 465=32 Cr. L. J. 1079=32 P. L. R. 405. Appeal should be preferred by Government with all reasonable expedition possible. 33 Cr. L. J. 849=28 N. L. R. 233=A. I. R. 1932 Nag. 121 (F. B.) Appeal by Local Government from order of acquittal by Special Magistrate appointed under the Bengal Act is not competent. 141 Ind. Cas. 773=34 Cr. L. J. 1070=A. I. R. 1933 Cal. 776. To justify interference it is sufficient that a finding is clearly wrong and unreasonable. A. I. R. 1933 Lah. 871. Appeal under s. 417 from judgment of acquittal of graver offence is competent. A. I. R. 1932 Nag. 121 (F. B.) Appeal against acquittal should be brought as early as possible though limitation is six months. 33 Cr. L. J. 701=10 Rang. 312=A. I. R. 1932 Rang. 146.

Appeal on what matters admissible.

* **418.** (1) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

†[(2) Notwithstanding anything contained in sub-section (1) or in section 423, sub-section (2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.]

Explanation.—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

Notes.—The provisions of this section apply equally to all criminal appeals, whether made by the Government or by accused persons, 17 C. P. L. R. 75. The words "where the trial by a jury" mean "where the trial in fact was by a jury." 25 B. 680=3 Bom. L. R. 278 (F. B.) ; see also 2 C. W. N. 49. Verdict of jury based on genuiness of identification cannot be interfered with. 7 Pat. 55=9 Pat, 567=29 Cr. L. J. 466=A. I. R. 1928 Pat. 203=109 Ind. Cas. 114. Verdict on no evidence or inadmissible evidence is a matter of law. 1929 A. L. J. 1261=31 Cr. L. J. 33=A. I. R. 1933 All. 24=120 Ind. Cas. 264. Appeal from jury cases is only in matter of law A. I. R. 1931 Oudh. 171=132 Ind. Cas. 232. Accused should bring in record discrepancies in evidence in the Sessions Court. A. I. R. 1930 Cr. C. 1145=A. I. R. 1930 Sind. 308=32 Cr. L. J. 172=128 Ind. Cas. 673. Section 423 (2) only applies if the verdict of the jury was erroneous owing to a misdirection by the Judge. It does not narrow down s. 418 27 Cr. L. J. 793=A. I. R. 1926 Lah. 193. Where facts are in issue the absolute finality of the verdict of a jury on a question of fact must be given effect to. 39 A. 348=18 Cr. L. J. 491=15 A. L. J. 205. Person convicted in trial by jury along with others sentenced to death can appeal on matter of fact and law. 34 Cr. L. J. 83=13 P. L. T. 440=A. I. R. 1932 Pat. 302. Appellate Court should examine evidence and come to its own finding. A. I. R. 1931 Pat. 379=32 Cr. L. J. 1197=12 P. L. T. 601. Appeal lies both on matters of fact and of law except on trial by jury. A. I. R. 1931 Oudh. 171=32 Cr. L. J. 852. In case of trial by jury and conviction, High Court can set aside conviction without remanding case if there is not sufficient evidence. A. I. R. 1933 Cal. 426 (S. B.) ; see also A. I. R. 1932 Cal. 295=Cr. L. J. 477. When offence triable by assessor is tried by jury the trial is not vitiated. A. I. R. 1933 All. 128=55 A. 68.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

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* Section 418 was re-numbered by s. 115 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Sub-section (2) was added by *ibid.*

Notes.—This section applies as much to a person in jail, as to any other appellant, and requires that the petition shall be prepared in a certain form. 13 A. 171. Appellate Court may dispense with a copy of the order appealed against. 1924 Cr. C. 183=A. I. R. 1929 Lah. 614. No difference in judgments on appeals under s. 420 and s. 419. 9 O.L.J. 1=23 Cr. L. J. 148=24 O. C. 304=65 Ind. Cas. 612. Where copy of order is not attached appeal should not be dismissed. 30 Cr. L. J. 235. In joint trial appeal should be seperate. 97 Ind. Cas. 38.

Procedure when appeallant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Notes.—This section is not derogatory to the rules laid down in s. 419. 13 A. 171. Under the provisions of this section presentation of the petition of appeal by an appellant in jail, to the officer in charge of the jail is equivalent to presentation in Court. 9 M. 258. The proviso to section 421, Cr. Pro. Code does not strictly apply to a jail appeal under s. 420. A. I. R. 1934 All. 988=1934 Cr. C. 1305. Jail appeals under s. 420 may be dismissed summarily even without calling on the appellant. 20 S. L. R. 189=27 Cr. L. J. 933=A. I. R. 1927 Sind. 223=96 Ind. Cas. 389. Not allowing convict appellants to argue in person is in their own interests. 2 Luck. 631=A. I. R. 1927 Oudh. 369=106 Ind. Cas. 721. Counsel engaged by crown for the accused is to argue appeal even if accused refuses instructions. 4 O. W. N. 638=28 Cr. L. J 679.

Summery dismissal of appeal.

421. (1) On receiving the petition and a copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily.

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notes.—Although a judge would be acting within his powers under s. 421, in rejecting an appeal without sending for the record, such a course is ordinarily very inconvenient and should not be adopted. A. W. N. 1883, 145. This section lays down that the appellant in a criminal appeal or his pleader should have a reasonable opportunity of being heard in support of the appeal. 9 Ind. Cas. 65=12 Cr. L. J. 9=38 C. 307 ; see also 29 M. 236=4 Cr. L. J. 57 ; 42 C. L. J. 551=92 Ind. Cas. 894 ; 42 C. L. J. 554 ; 93 Ind. Cas. 76=27 Cr. L. J. 412 ; 12 C. W. N. 248 ; 3 A. L. J. 693 ; 18 Cr. L. J. 639 ; 1925 Lah. 355 ; 2 P. L. T. 10 ; 36 C. 385. The proviso to this section is limited to appeals which have not been presented from jail. 13 A. 171 ; see also 3 A. L. J. 693=4 Cr. L. J. 373. It is not competent to a District Magistrate to dismiss criminal appeal on the ground that no one appeared to support a petition. He must consider the facts and write a judgment. Rat. Un. Cr. C. 593 ; see also, 32 C. 178 ; 9 C. W. N. 623=2 Cr. L. J. 334 ; 14 A. L. J. 327. 46 M. 382 ; 24 Cr. L. J. 475; 73 Ind. Cas. 694; 17 A. 241; 19 A. 500 (F. B); 25 M. 534 ; 25 Cr. L. J. 237; 72 Ind Cas. 893. Where the Appellate Court rejects an appeal summarily acting under this section without giving the notices required by s. 422, it is not competent to alter the nature of the sentence. Rat. Un. Cr. C. 384. An order of summary rejection of an appeal under the provision of this section does not amount to a judgment and s. 424 has no application to such an order. 6 C. P. L. R. 24 Cr, After the record is sent for and received the Sessions judge is bound to hear the pleader for the appellant and ought not to dismiss the appeal summarily without hearing him. 42 C. L. J. 551=27 Cr. L. J. 382. It is not an absolute rule that under this section, appellant or his pleader must be heard after the record is sent for. 101 Ind. Cas. 595=29 Bom. L. R. 488. Section 421 applies to all appeals unless specifically provided otherwise. A. I. R. 1931 Pat. 144=1931 Cr. C. 360. Appeals under s. 476B. are subject to s. 419 and following sections and may be dismissed summarily. 34 C. W. N. 923 : see also 12 P. L. T. 336. Though Appellate Court may summarily dismiss appeals under s. 421, High Court may remand them if satisfied that arguments were not properly considered. 1930 Cr. C. 1016=A. I. R. 1930 Pat. 520=127 Ind. Cas. 847. Court has complete discretion to dismiss summarily jail appeals without showing

cause. A. I. R. 1931 All. 555=53A. 797=33 Cr. L. J. 259=1931 A. L. J. 644=136 Ind. Cas. 281. Powers are to be exercised with care. A. I. R. 1933 Pat. 160=34 Cr. L. J. 1017=1933 Cr. C. 402=145 Ind. Cas. 652. Practice of admitting appeals without any hearing cannot be defended. 37 C. W. N. 235=1933 Cr. C. 859=34 Cr. L. J. 812=A. I. R. 1933 Cal. 515=144 Ind. Cas. 704. Records need not be sent for before Court taking action under section 425. 1930 M. W. N. 886=32 M. L. W. 203=53 M. 865=A. I. R. 1930 Mad. 863=58 M. L. J. 836. Reasons to be given for summary dismissals of appeals except in exceptional cases. 31 Cr. L. J. 760=11 P. L. T. 242=A. I. R. 1930 Pat. 331=125 Ind. Cas. 121 ; see also 50 C. L. J. 285 =A. I. R. 1929 Cal. 773=31 Cr. L. J. 474 ; 23 Cr. L. J. 733 ; 19 Cr. L. J. 151=43 Ind. Cas. 439 ; 25 Cr. L. J. 1237=82 Ind. Cas. 165 ; 30 Cr. L. J. 791=117 Ind. Cas. 279 ; 26 Cr. L. J. 4=83 Ind. Cas. 484 ; 37 C. W. N. 235. 2 P. L. T. 10=61 Ind. Cas. 49 ; 21 Cr. L. J. 139=54 Ind. Cas. 619 ; 44 Ind. Cas. 332=19 Cr. L. J. 316 ; 19 Cr. L. J. 304=44 Ind. Cas. 208. The powers under s. 421 should be exercised with considerable cautions. 24 Cr. L. J. 477=A. I. R. 1922 Pat. 552=72 Ind. Cas. 893. Appeal cannot be dismissed for non-appearance of appellant. 11 Lah. 242=31 P. L. R. 501=1930 Cr. C. 803=31 Cr. L. J. 979=126 Ind. Cas. 77 ; see also A. I. R. 1934 Pesh. 21. The provisions of s. 421 (1) are mandatory. 30 Cr. L. J. 791=1929 Cr. C. 19=A. I. R. 1929 150=117 Ind. Cas. 279. Where appellant's pleader was heard at presentation of appeal and record was sent for, summary disposal thereafter wituout hearing is illegal. 138 Ind. Cas. 384=1932 Cr. C. 344=33 Cr. L. J. 602=A. I. R. 1932 Cal. 397. Where jail appeal is dismissed appeal through counsel does not lie. 11 S. L. R. 536=25 Cr. L. J. 1313=A. I. R. 1924 Oudh. 425=82 Ind. Cas. 545 ; but see 17 Cr. L. J. 453=36 Ind. Cas. 133. Appeal once admitted cannot be summarily dismissed. 3 Bur. L. J. 18=25 Cr. L. J. 933=A. I. R. 1924 Rang. 294=81 Ind. Cas. 549 ; see also 23 Cr. L. J. 733=69 Ind. Cas. 461 ; 4 P. L. T. 552=24 Cr. L. J. 453=72 Ind. Cas. 613. Court to decide criminal appeals on merits though no one appears for the appellant. 1 Pat. L. R. Cr. 29=24 Cr. L. J. 475=A. I. R. 1924 Pat. 376=72 Ind. Cas. 891. Appeal not to be summarily dismissed on the face of a finding on disputed question of facts and a large number of documents. 22 Cr. L. J. 349=61 Ind. Cas. 173 ; see also 19 Cr. L. J. 228=43 Ind. Cas. 820 ; 19 Cr. L. J. 209=4 P. L. W. 39=43 Ind. Cas. 785. No second appeal lies where appeal through jail superintendent has already been summarily dismissed. 44A. 759=20 A. L. J. 734=23 Cr. L. J. 505=68 Ind. Cas. 47. Special posting for hearing appeals under s. 421 to be made after reasonable time. 26 Cr. L. J. 411=84 Ind. Cas. 1051. Court is not bound but should give reasons for summary dismissal. 18 Cr. L. J. 993 ; 27 Cr. L. J. 23. Before summary dismissal opportunity to be given to pleader when appeal is filed after expiry of limitation. 29 Bom. L. R. 701=28 Cr. L. J. 653. Disposal of appeal piece meal is undesirable but not illegal. 5 Rang. 274=28 Cr. L. J. 765. Court may hear appellant's pleader when appeal is filed if so desired. 29 Bom. L. R. 488=28 Cr. L. J. 467 ; see also 48A. 208=23 A. L. J. 1051=26 Cr. L. J. 1621. Reasons for summary dismissal of appeal on consideration of points raised by appellant must be given. A. I. R. 1935 Pat. 32 ; see also A. I. R. 1932 Pat. 37.

422. If the Appellate Court does not dismiss the appeal summarily it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf of the time and place at which such appeal will be heard, and shall on the application of such officer, furnish him with a copy of the grounds of appeal ;

Notice of appeal.

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Notes.—Where an appeal is disposed of under ss. 422 and 423 notice to the appellants is obligatory. 2 Weir, 475 ; 2 Weir, 474. Where the stage has been reached of an appellant from jail being given notice under s. 422, he is entitled, if he so desires, to appear in person, if he is not represented by a pleader, to argue his case. 50 A. 543=26 A. L. J. 275. Notice to complainant is not compulsory. 1932 M. W. N. 722=33 Cr. L. J. 596=A. I. R. 1938 Mad. 277. But a court hearing the appeal is to give notice to the complainant who has been awarded compensation. 53 C. 969=43 C. L. J. 583=27 Cr. L. J. 1086=A. I. R. 1926 Cal. 1054=97 Ind. Cas. 62 ; see also 25 Cr. L. J. 209=A. I. R. 1924 Lah. 675=76 Ind. Cas. 641. Failure to give notice to complainant who has been awarded compensation is no ground for interference in revision. 19 Cr. L. J. 927=14 M. L. R. 131=47 Ind. Cas.

443. Court to issue notice to crown under s. 422. Failure vitiates appellate order. 53 C. 969=43 C. L. J. 583=27 Cr. L. J. 1086=97 Ind. Cas. 62 ; see also 24 Bom. L. R. 1150=24 Cr. L. J. 700=73 Ind. Cas. 812 ; 25 Cr. L. J. 1389=83 Ind. Cas. 349 ; but see 33 Cr. L. J. 596=A. I. R. 1933 Mad. 277. Appeal cannot be admitted on ground of sentence only. A. I. R. 1931 Pat. 351=12 P. L. T. 539=133 Ind. Cas 163 ; see also 86 Ind. Cas. 718=4 Pat. 254. When appellant from jail is given notice under s. 422, he should be heard in person if so desired. 50 A. 543=29 Cr. L. J. 334=26 A. L. J. 275=A. I. R. 1928 All. 84. It is doubtful if no giving notice to officer mentioned in the section is illegal or irregular. 25 Cr. L. J. 1389=83 Ind. Cas. 349. Appellate order of acquittal is revisable when no notice to the District Magistrate but not at complainant's instance. 25 Bom. L. R. 251=26 Cr. L. J. 751=86 Ind. Cas. 287. In appeals against compensation orders the District Magistrate should be given notice but not when he is hearing appeal judicially. A. I. R. 1921 Mad. 281=62 Ind. Cas. 823. Where appeal is dismissed when the appellants are absent and there was insufficient notice to their pleader of date and place of hearing, the dismissal order should be set aside. 21 Cr. L. J. 373=22 Bom. L. R. 188=55 Ind. Cas. 853.

Powers of Appellate Court in disposing of appeal.

423. (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law.

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial or, (2) alter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence, or (3), with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 105, sub-section (3), not so as to enhance the same ;

(*c*) in an appeal from any other order, alter or reverse such order ;

(*d*) make any amendment or any consequential or incidental order that may be just or proper.

(2) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Scope.—This section does not authorize an Appellate Court to order the re-trial of an appellant with reference to a matter extraneous to the proceedings before him as an Appellate Court. Col. Dig. Cr. 26 of 1875. The words "Court of competent jurisdiction subordinate to such Appeallate Court" in this section do not appear to exclude the power of such latter Court to order a new trial before itself. 2 Weir 281. Under this section, the Appellate Court can, in an appeal from conviction, alter the finding of the lower Court and find the appellant guilty of any offence of which he may have been acquitted by that Court, but not enhance it. 23 C. 975. The addition of a sentence of whipping by the Appellate Court, although the sentence of imprisonment is reduced, amounts to an enhancement of the sentence. 2 Weir, 487. The Appellate Court has power under this section to alter the conviction from one under s. 333 I. P. C. to oneunder s. 183. 1912 M. W. N. 1110=19 Ind. Cas. 335=14 Cr. L. J. 239. Under s. 423 (b), an Appellate Court has power to alter the finding of the lower Court, while maintaining the sentence. 10 M. L. T. 66=10 Ind. Cas. 372=21 M. L. J 805=35 M. 243. Clause (d) empowers the High Court as a Court of appeal to excrcise the powers

conferred by s. 562 24 A. 306. Sub-section (2) only applies if it becomes necessary to consider whether the verdict of the jury was erroneous owing to the misdirection by the Judge. It does not narrow down s. 418 which allows an appeal in a jury trial on a question of law. 95 Ind. Cas. 393=27 Cr. L. J. 793=A. I. R. 1926 Lah. 193. A Sessions Judge who sets aside a verdict of the jury and orders a re-trial must not direct the re-trial before himself, for it is contrary to the provisions of s. 423 (8) (b). 24 A. L.J. 506=95 Ind. Cas. 385=27 Cr. L. J. 785. It is not open to an Appellate Court to find a man guilty of abetment of an offence on a charge of the offence itself. 27 Cr. L. J. 1118. This section requires that the Court is bound to peruse the record in a criminal appeal and hear the appellant or his pleader if he appears before disposing of the appeal. 6 Pat. 16=100 Ind. Cas. 831. In every case of trial by jury and especially in murder cases, it is imperative that the High Court in appeal should be satisfied that the Judge's charge to the jury was adequate. A. I. R. 1929 Cal. 742. Person guilty of major offence is guilty of minor offence. A. I. R. 1932 Nag. 121 (F. B.)=28 N. L. R. 233=33 Cr. L. J. 849. A Session's Judge cannot dismiss an appeal for default under the provisions of s. 423, but should enquire into the merits of the case and see if there is any force in it. 7 O. W. N. 208=31 Cr. L. J. 939=A. I. R. 1930 Oudh. 334=125 Ind. Cas. 848; see also 20 Cr. L. J. 744=6 O. L. J. 370=53 Ind. Cas. 152; 6 Pat. 16=28 Cr. L. J. 351=8 P. L. T. 376=100 Ind. Cas. 831; 50 B. 673=28 Bom. L. R. 1022=27 Cr. L. J. 1167=A. I. R. 1926 Bom. 548; 50 c. 972=27 C. W. N. 947=39 C. L. J.278=25 Cr. L J. 1150. An appellant must be given notice of the adjourned hearing before the appeal is summarily dismissed. 20 Cr. L. J. 271=50 Ind. Cas 31. Appellants' counsel has no right to reply to opposite party's argument, but generally he should be permitted to do so as a previlege. 11 O. L. J. 693=25 Cr. L. J. 1169=25 Cr. L. J. 1173=82 Ind. Cas. 33; see also 80 Ind. Cas. 543=A. I. R, 1925 Oudh. 250; 18 Cr. L. J. 3. Section 423 is not exhaustive as to powers of Appellate Court. A. I. R. 1935 Mad. 157. Whipping in addition to imprisonment cannot be awarded for theft. Appellate Court has power to alter nature of sentence but not to enhance it. Substitution of legal sentence in lieu of whipping is enhancing sentence. A. I. R. 1935 Rang. 64. High Court having proceedings in appeal before it, can proceed to exercise its powers of revision and enhance sentence. A. I. R. 1935 P. C. 35. Sessions Judge can convert conviction from ss. 405 to 403. Penal Code. A. I. R. 1935 Oudh. 4.

Appeal against acquittal.—In case of appeal against acquittal High Court in appeal would not interfere unless it is unreasonable. A. I. R. 1931 Oudh. 116=8 O. W. N. 101=32 Cr. L. J. 694=131 Ind. Cas. 436; see also A. I. R. 1931 All. 712=32 Cr. L. J. 1073=1931 A. L. J. 1002. Where Magistrate acquits on grounds irrelevant and unsupported by evidence, acquittal must be set aside. 32 Cr. L. J. 1130=32 P. L. R. 877=A. I. R. 1932 Lah. 12. Errors in judgment of acquittal ought to be clear and evidence more cogent and convincing to justify its setting aside than in case of judgment of conviction. A. I. R. 1933 Lah. 296. Order under s. 423 can be passed on appeal by Government. A. I. R. 1932 Nag. 121=28 N. L. R. 233 =33 Cr. L. J. 849.

Alteration of conviction.—High Court can alter conviction for principal offence to one of abetment thereof. 8 O. W. N. 755=32 Cr. L. J. 905=7 Luck 102 =A. I. R. 1931 Oudh. 274. Conviction can be altered from one of cheating to one of criminal breach of trust. A. I. R. 1933 Pat. 26=34 Cr. L. J. 419=142 Ind. Cas. 704. Under the combined provisions of ss. 423 and 439 High Court has power to alter a conviction under s. 326 to one under s. 302 Penal Code. 1933 Cr. C. 883= A. I. R. 1933 Lah. 661; see also 34 Cr. L. J. 266=142 Ind. Cas. 182=1933 Cr. C. 151. In a trial under s. 368, Penal Code, accused cannot be convicted under s. 366A. 146 Ind. Cas. 332=1938 Cr. C. 930=A. I. R. 1933 Nag. 259. Where accused is charged of higher offence but was acquitted of it by trying Magistrate he cannot be convicted of that offence in appeal. A. I. R. 1932 Oudh. 25=33 Cr. L. J. 162. It is prejudicial to accused if Appellate Court alters conviction under s. 325 to one under s. 323. 24 Cr. L. J. 312=A. I. R. 1924 Cal. 532=72 Ind. Cas. 72. Appellate Court cannot alter conviction under s. 302. I. P. Code to one relating to property. 7 Lah. 561=27 P. L. R. 611=27 Cr. L. J. 1004=9 L. L. J. 39=A. I. R. 1926 Lah. 691=96 Ind. Cas. 860. Conviction under s. 468 I. P. Code is not alterable by Appellate Court to one under s. 471 I. P. Code. 8 N. L. J. 87=26 Cr. L. J. 1358=A. I. R. 1925 Nag. 294=89 Ind. Cas. 398. Appellate Court can inflict a sentence which the trial Court is incapable of passing. 31 P. L. R. 264=31 Cr. L. J. 166=A. I. R. 1930 Lah. 318=120 Ind. Cas. 787. Appellate Court can alter conviction

from one under s. 380 to one under s. 403, Penal Code. 30 Cr. L. J. 413=1929 Cr. C. 61=A. I. R. 1929 Lah. 508=115 Ind. Cas. 25. High Court cannot inflict sentence for abetment if its proof in material particulars differs from that of the substantive offence and if the accused's attention was not drawn to it in the trial Court. 30 Cr. L. J. 18=A. I. R. 1928 Lah. 382=112 Ind. Cas. 850. Where the difference of opinion between the Appellate Court and the trial Court is in application of the law but not as to the accused's act, Appellate Court may maintain trial Courts' sentence. 39 M. L. T. 20=53 M. L. J. 694=28 Cr. L. J. 824=A. I. R. 1927 Mad. 789=104 Ind. Cas. 440. Appellate Court cannot alter sentence to the prejudice of the accused. 54 C. 476=31 C. W. N. 527=28 Cr. L. J. 404=A. I. R. 1927 Cal. 520=101 Ind. Cas. 180. Sessions Judge can alter finding under ss. 205/109 to one under s. 419, Penal Code, maintaining the sentence. 28 Cr. L. J. 529=A. I. R. 1927 Pat. 199=102 Ind. Cas. 337. Appellate Court may convict for abetment only if the charge is under s. 423. 49A. 120=24 A. L. J. 998=27 Cr. L. J. 1118=A. I. R. 1927 All. 35=97 Ind. Cas. 430. Where the charge is under s. 398 I. P. Code but conviction was under abetment of the offence, Appellate Court may alter conviction to one under s. 393/114 I. P. Code. 5 Bar. L. J. 103=27 Cr. L. J. 1285=A. I. R. 1926 Rang. 207=98 Ind. Cas. 181. Appellate Court can alter conviction to one under a graver charge if the accused is not prejudiced thereby. 19 S. L. R. 183=25 Cr. L. J. 1057=A. I. R. 1925 Sind. 105=81 Ind. Cas. 881. Appellate Court can under s. 423 Cr. Pro. Code alter conviction from under one section to another of the I. P. Code and s. 238 I. P. Code is no bar to such alteration. 20 A. L. J. 213=23 Cr. L. J. 198=65 Ind. Cas. 854; see also 46B. 79=23 Bom. L. R. 745=64 Ind. Cas. 156. Alteration of conviction under ss. 147 and 323 Penal Code, into one under s. 160 is not justifiable. 47 M. 61=25 Cr. L. J. 554=A. I. R. 1924 Mad. 375=46 M. L. J. 120=81 Ind. Cas. 42. "Altering conviction" does not include setting aside an acquittal though the sentence is maintained. 27 C. W. N. 555=37 C. L. J. 409=24 Cr. L. J. 938=75 Ind. Cas. 362. Sessions judge has power to alter sentence of imprisonment. A. I. R. 1931 Nag. 179=32 Cr. L. J. 1268=27 N. L. R. 242=134 Ind. Cas. 864. Sentence of imprisonment can be altered into sentence of whipping. But period of imprisonment already undergone should be considered by Appellate Court in inflicting sentence of whipping. A. I. R. 1932 Rang. 150=33 Cr. L. J. 758=10 Rang. 317=1932 Cr. L. J. 711.

Enhancement of sentence.—Altering imprisonment to whipping amounts to enhancement. A. I. R. 1928 Rang. 265=114 Ind. Cas. 523; see 7 Rang. 319=30 Cr. L. J. 986=A. I. R. 1929 Rang. 117=119 Ind. Cas. 209. It is desirable before sending notice of enhancement of sentence that record of case is sent for. 53 M. 585=A. I. R. 1930 Mad. 446=58 M. L. J. 490=127 Ind. Cas. 290. There is no enhancement of sentence when aggregate period of imprisonment is less than period of original sentence although fine is imposed in addition by Appellate Court. A. I. R. 1931 Lah. 159=A. I. R. 1930 Mad. 193=32 P. L. R. 165=121 Ind. Cas. 125. Where conviction on one charge is set aside, but on others it is affirmed and the sentence is not reduced, there is no enhancement of sentence. 10 P. L. T. 587=31 Cr. L. J. 173=A. I. R. 1930 Pat. 79=120 Ind. Cas. 764. In case of conviction under s. 384 and 420 of the Penal Code, where Appellate Court sets aside conviction under s. 420 and yet maintains original aggregate sentence, the sentence is enhanced and so illegal. 30 Bom. L. R. 967=29 Cr. L. J. 1082=A. I. R. 1928 Bom. 346=112 Ind. Cas. 586; see also 27 Cr. L. J. 812=95 Ind. Cas. 476=A. I. R. 1926 Lah. 543. Imprisonment in default of fine can't be increased to exceed the aggregate punishment awarded in lower Court. 3 Pat. 638=5 Pat. L. T. 622=25 Cr. L. J. 1186=A. I. R. 1924 Pat. 563=82 Ind. Cas. 50. Appellate Court can make any alteration in terms of order of Court below, but it cannot increase severity of penalty. 9 O. L. J. 28=24 O. C. 286=A. I. R. 1923 Oudh. 44=64 Ind. Cas. 286; see also 18 Cr. L. J. 372=31 P. R. 1916=38 Ind. Cas. 756. Order under s. 31 does not ordinarily amount to enhancement of sentence but may be made incidentally to bring the judgments into conformity with the law. For though made recoverable as if they were fines are not part of the sentence. 47 M. 914=20 M. L. W. 293=25 Cr. L. J 1213=A. I. R. 1925 Mad. 136=82 Ind. Cas. 141. Where in case of conviction under ss. 379 and 341 Penal Code, Appellate Court set aside conviction under s. 379 but maintains the same sentence the procedure is illegal. 25 A L. J. 396=28 Cr. L. J. 495=49A 484=A. I. R. 1927 All. 375=101 Ind. Cas. 671; see also 17 Cr. L. J. 212=34 Ind. Cas. 324; 1933 Cr. C. 1932=A. I. R. 1933 Lah. 933. There is no enhancement of sentence when aggregate period of imprisonment is less than period of original sentence although fine is imposed in addition. 32 P. L. R. 165=12 Lah. 449=32

Cr. L. J. 1217=A. I. R. 1931 Lah. 159. No general rule can be laid down to determine what is or what is not an enhancement of sentence. A. I. R. 1934 All. 1031=1934 Cr. C. 1338. Substitution of a legal sentence for the illegal part does amount to an enhancement. 12 Rang. 607. High Court can alter the finding which maintaining the sentence without enhancing it. A. I. R. 1934 Oudh. 200=35 Cr. L. J. 973=11 O. W. N. 534.

Powers of Appellate Court.—Appellate Court has power to alter finding while keeping conviction. Omission to frame charges is not illegality. 17 Cr. L. J. 384=2 M. W. N. 267=35 Ind. Cas. 816; 46 Ind. Cas. 415. Appellate Court can convict accused for abetment where charge was only for principal offence. 19 C. W. N. 1239=17 Cr. L. J. 113=42 C. 1094. Severe sentence may be reduced. 31 P. L. R. 990=A. I. R. 1931 Lah. 97. There is no restriction on powers of Appellate Court. 26 Cr. L. J. 1090=A. I. R. 1926 Nag. 53=88 Ind. Cas. 178. Powers of Appellate Court to vary sentence must be measured by those of Court of first instance. 45 A. 594=25 Cr. L. J. 312=A.I. R. 1924 All. 130=76 Ind. Cas. 1032; see also 18 Cr. L. J. 511=4 P. R. Cr. 1917=39 Ind. Cas. 479. Section 379 and provisions of clause (b) of sub-section (1) of s. 423 Cr. Pro. Code, are very wide, and enable a Court in disposing of appeal from conviction to alter finding upon facts. There is no restriction that finding of acquittal cannot be converted into one of conviction upon facts which have resulted in conviction in the first Court under another provision of law. 2 Pat. L. W. 188=18 Cr. L. J. 982=42 Ind. Cas. 598. Appellate Court may record conviction for offence for which trial Court found accused not guilty. 2 Cr. L. J. 22=16 A. L. J. 918=48 Ind. Cas. 502. Appellate Court ought not to alter finding of lower Court while maintaining sentence, if accused would thereby be prejudiced. 20 Cr. L. J. 780=53 Ind. Cas. 620. Appellate Court cannot excuse delay in presenting an appeal. 16 M. L. W. 704=43 M. L. J. 561=24 Cr. L. J. 89=A. I. R. 1923 Mad. 95=71 Ind. Cas. 217. Where person is convicted of particular offence, it is illegal for Appellate Court to alterfinding to one for different offence. 1 Pat. L. T. 221=21 Cr. L. J. 496=56 Ind. Cas. 592. Appellate Court may take further evidence but cannot direct an enquiry. 19 A. L. J. 961=23 Cr. L. J. 402=67 Ind. Cas. 498. Sessions Judge cannot review his predecessor's order but only can refer case to High Court under Cr. Pro. Code s. 938. 31 Cr. L. J. 309=53 B. 578=31 Bom. L. R 593=A. I. R. 1929 Bom. 309=121 Ind. Cas. 583. Where no charge is framed in the trial Court, conviction by Appellate Court is unsustainable. 25 P. L. T. 243=22 Cr L. J. 485=A. I. R. 1921 Pat. 496=62 Ind. Cas. 181. It is doubtful whether Appellate Court can, under s. 423 (1) (b) pass order making appellant's position worse. 28 P. L. R. 166=28 Cr. L. J. 575=102 Ind. Cas. 511=A. I. R. 1927 Lah. 753. Appellate Court cannot alter charge so as to make out a different case altogether. 23 A. L. J. 924=26 Cr. L. J. 1494=A I. R. 1926 All. 33=90 Ind. Cas. 150. Where in a trial for rioting Appellate Court refused to believe part of prosecution story as to theft and house-breaking but believed story of rioting, conviction for rioting was right. 25 M. L. W. 325=28 Cr. L. J. 238=A. I. R. 1927 Mad. 410=99 Ind. Cas. 1038. Where trial Court omits to pass an order under s. 517 Appellate Court can do so under s. 520 or s. 423 (1) (d). 10 Lah, 187=29 Cr. L. J. 810=A. I. R. 1928 Lah. 567=111 Ind. Cas. 314. There is no distinction in the Code between an appeal from an acquittal and from conviction. 17 Cr. L. J. 9=20 C. W. N. 128=32 Ind. Cas. 137. Appellate Court is to consider evidence both oral and documentary before recording judgment. 21 Cr. L. J. 618=1 Pat. L. T. 716=57 Ind. Cas. 664. Appellate Court is to come to a definite finding of its own. 22 Cr. L. J. 414=61 Ind. Cas. 654. Appellate Court is to consider definitely the case of each accused. 26 Cr. L. J. 1089=A. I. R. 1925 Mad. 712=48 M. L. J. 504=88 Ind. Cas. 177. Where plea of illegality is not raised in trial Court or memorandum of appeal, Appellate Court should hear that plea as preliminary objection. A. I. R. 1931 Oudh. 113=7 O. W. N. 2=32 Cr. L. J. 218=128 Ind. Cas. 209. Where the accused are charged under ss. 304 and 147, Penal Code and Sessions Judge finds them guilty under both sections but convicts them under section 304 only, the High Court can convict them under s. 147 also. 145 Ind. Cas. 849=1933 A. L. J. 1377=34 Cr. L. J. 1064=1933 Cr. C. 897=A. I. R. 1933 All. 565. In appeal by co-accused, sentence of non-appealing accused can be reduced. 34 Cr. L. J. 458=34 P. L. R. 433=1932 Cr. C. 921=A. I. R. 1932 Lah. 615. Competency of trial Court to try a case does not affect powers of Sessions Judge under s. 423. 1933 Cr. C. 242=34 Cr. L. J. 640=A. I. R. 1933 Lah. 128. Sentence which is severe may be reduced. 31 P. L. R. 990=12 L. L. J. 512=32 Cr. L. J. 732=A. I. R. 1931 Lah. 97. District Magistrate cannot in appeal under s. 423, order stay of criminal proceedings pending decision of

civil suit. 33 Cr. L. J. 147=A. I. R. 1931 Pat. 411. When the Court issues notice to show cause why the sentence should not be enhanced, it ought not to dispose of the appeal before the appeal is heard. 58B. 392=36 Bom. L. R. 382=A. I. R. 1934 Bom. 198. In case of acquittal by the lower Appellate Court of an only charge, the High Court on further appeal should not convict him for a different offence. A. I. R. 1934 Lah. 843=1934 Cr. C. 1184. Even when no appeal has been preferred the High Court can on revision acquit an innocent person. A. I. R. 1934 Lah. 346=36 P. L. R. 121=35 Cr. L. J. 1046.

Retrial.—High Court should exercise caution in ordering retrial on revision against acquittal. 22 Cr. L. J. 337=19 A. L. J. 589=61 Ind. Cas. 161; see also 25 Cr. L. J. 1292=A. I. R. 1924 All. 766 =82 Ind. Cas. 364. In an appeal from order under s. 110, no retrial can be ordered. 30 P. L. R. 416=30 Cr. L. J. 491=A. I. R. 1929 Lah. 28=115 Ind. Cas. 544. Where Appellate Court held complaint to be *ultra vires* it had no jurisdiction to order retrial. 21 Cr. L. J. 660=1 Pat. L. T. 293=57 Ind. Cas. 820. Where there is no reasonable probability of conviction, retrial should not be ordered. 50 M. 274=27 Cr. L. J. 394=A. I. R. 1926 Mad. 638=93 Ind. Cas. 42; see also 26 Cr. L. J. 1090=A. I. R. 1926 Nag. 953=88 Ind. Cas. 178; 30 M. L. T. 18=A. I. R. 1921 Mad. 687=69 Ind. Cas. 380. Where prosecution case is incomplete retrial should not be ordered. 9 P. L. T. 723=29 Cr. L. J. 258=A. I. R. 1928 Pat. 293=107 Ind. Cas. 529. Where record of lower Court is full but some evidence is inadmissible, order for retrial is bad. 1 Bar. L. J. 32=24 Cr. L. J. 744=A. I. R. 1923 Rang. 65=74 Ind. Cas. 72. Perfunctory cross-examination of prosecution witness is good ground for ordering retrial. 28 C. W. N. 170=30 C. L. J. 411=25 Cr. L. J. 817=A. I. R. 1924 Cal. 257 (F. B.)=81 Ind. Cas. 353. In a trial by jury, where a juror gave but his opinion outside Court before conclusion of trial, retrial was ordered. 33 C. L. J. 122=25 C. W. N. 240=22 Cr. L. J. 510=A. I. R. 1921 Cal. 631=62 Ind. Cas. 334. If in the opinion of the Court thers is a reasonable possibility that a jury might either acquit or convict, the only proper course would be to order retrial. 18 Cr. L. J. 929=10 Bar. L. J. 123 (F. B.)=9 L. B. R. 16=42 Ind. Cas. 161. In appeal from order under s. 107 retrial can be ordered apart from s. 423. 48 A. 501=24 A. L. J. 566=27 Cr. L. J. 945=A. I. R. 1926 All. 403=96 Ind. Cas. 497. Where the reason for rejecting prosecution evidence is not satisfactory, there is no ground for ordering retrial. 28 Cr. L. J. 946=26 A. L. J. 76=A. I. R. 1927 All. 727=105 Ind. Cas. 658. Where there is appeal from acquittal in a jury case, High Court can dispose of the case instead of remanding it for new trial. 21 S. L. R. 356=28 Cr. L. J. 66=A. I. R. 1927 Sind. 104=99 Ind. Cas. 98. Appellate Court cannot order retrial when prosecution has hopelessly broken down. A. I. R. 1931 Mad. 227=1930 M. W. N. 1215=131 Ind. Cas. 454; see also 31 Cr. L. J. 422=A. I. R. 1930 Mad. 189. Order of notice to accused is essential for retrial. 9 P. L. R. 1918=6 P. W. R. Cr. 1918. Retrial is unnecessary where complainant's story is improbable, and accused has already served out more than half the sentence. A. I. R. 1930 Nag. 255=31 Cr. L. J. 705=124 Ind. Cas. 619. Retrial should not be ordered if ends of justice have been otherwise met. 36 C. W. N 305=1932 Cr. C. 337=55 C. L. J. 349=59 C. 1233=33 Cr. L. J. 685=A. I. R. 1932 Cal. 399. Where there was acquittal on two charges and conviction on two other charges and no appeal from acquittals, retrial may be ordered on appeal from conviction. But Lower Court Judge cannot frame charge for offences of which accused has been already acquitted. 1933 A. L. J. 1446=A. I. R. 1933 All. 941. Retrial can be ordered if evidence is not sufficient to pronounce judgment. A. I. R. 1933 Bom. 153. Where in an appeal against order of Special Magistrate under ordinance 1931, s. 30 retrial is ordered, Magistrate has jurisdiction until he finishes retrial. 144 Ind. Cas. 90=37 C. W. N. 906=34 Cr. L. J. 684=A. I. R. 1933 Cal. 551. As regards principles of ordering retrial, vide 35 Cr. L. J. 1477=36 Bom. L. R. 639=A. I. R. 1934 Bom. 303.

Compensation.—Whether an order awarding compensation under s. 250 is "order consequential" or "incidental" to order of discharge or acquittal depends on the terms of the order and circumstances in which it is made. 11 Rang. 361=1933 Cr. C. 1084=A. I. R. 1933 Rang. 288 (F. B.) Order for costs is "incidental" to order for possession and such can be passed by High Court in revision where Magistrate has failed to make any order. A. I. R. 1933 Rang. 288 (F. B.) Order dispensing with security pending appeal may be said to be incidental order that may be just and proper. 33 Cr. L. J. 731=1932 Cr. C. 856=54 All. 861=1932 A. L. J. 624=A. I. R. 1932 All. 680. Appellate Court can set aside order under s. 250. 35 C. W. N. 1151=58 C. 1436=33 Cr. L. J. 269=A. I. R. 1932 Cal. 120.

Finding of fact.—Where finding of Appellate Court is not perverse or unreasonable High Court can refuse to interfere. 9 O.W.N. 1198=1935 Cr. C. 113=34 Cr. L. J. 545=A. I. R. 1033 Oudh. 85. under s. 423 (b) facts are before Court and Courts' powers are not limited for altering finding. 36 C. W. N. 1152=34 Cr. L. J. 177=60 C. 179=A. I. R. 1922 Cal. 723. In ordinary circumstances the findings of trial Court should not be disturbed. A. I. R. 1933 Oudh. 62=34 Cr. L. J. 377=1933 Cr. C. 102.

Practice.—Where private complainants' pleader was not heard in appeal and the accused was acquitted order of acquittal is not bad in law. 35 C. W. N. 976=54 C. L. J. 144=83 Cr. L. J. 305=A. I. R. 1932 Cal. 61. In case of appeal by accused, Court should issue notice to advocate for accused or accused before altering finding. 60 C. 179=34 Cr. L. J. 177=36 C. W. N. 1152=A. I. R. 1932 Cal. 723. Parties in appeal should be heard in each other's present. After respondent is heard, appellant has a right to reply. A. I. R. 1932 Cal. 856=33 Cr. L. J. 775=36 C. W. N. 699.

Revision.—The High Court has no power to set aside judgment of court below merely because pleader of petitioner was not heard. 4 P. L. J. 98=24 Cr. L. J. 118=A. I. R. 1922 Pat. 587=71 Ind. Cas. 246. Appeal cannot be treated as revision. 20 S. L. R. 90.=27 Cr. L. J. 780=A. I. R. 1926 Sind. 215=95 Ind. Cas. 316. Award of costs is not incidental to disposal of revision petition. 48 M. 262=26 Cr. L. J. 707=A. I. R. 1925 Mad. 438=48 M. L. J. 106 (F. B.)=86 Ind. Cas. 147 ; sea also A. I. R. 1933 All. 264 (F. B.)=55 A. 301=34 Cr. L. J. 414=1933 A. L. J. 188. In case of appeal by convict and revision by High Court conviction for murder in place of conviction for lesser offence is justified. 1 Rang. 436=25 Cr. L. J. 247=76 Ind. Cas. 711.

Reversal of finding.—High Court cannot convert acquittal into conviction unless it is acting both as appellate and revisional court. 4 Rang. 140=5 Bur. L. J. 80=27 Cr. L. J. 1393=A. I. R. 1926 Rang. 154=98 Ind. Cas. 705. Appellate Court can reverse finding and sentence of death if there is no evidence to justify conclusion that there has been murder. 31 Cr. L. J. 230=A. I. R. 1929 All. 710=121 Ind. Cas. 248. Where the trial is not satisfactory Appellate Court can remand case for hearing *de novo*. 21 Cr. L. J. 52=54 Ind, Cas. 404. In case of acquittal on a charge under s. 302, Penal Code, High Court in appeal convict under s. 193, Penal Code. 52 B. 385=30 Bom. L. R. 330=29 Cr. L. J. 403=A. I. R. 1928 B. 130=103 Ind. Cas. 501.

Verdict of Jury—High Court cannot interfere with verdict of jury unless Sessions Court had misdirected and such misdirection has caused wrong conclusion. 55 C. L. J. 439=59 C. 1361=33 Cr. L. J. 854=A. I. R. 1932 Cal. 474=139 Ind. Cas. 873. It is misdirection where there is posibility of jury returning different verdict if then attention was called to those facts, A. I. R. 1932 Oudh. 23=7 Luck. 390=33 Cr. L. J. 167 ; see also A. I. R. 1934 Oudh. 354=35 Cr. L. J. 1066=11 O. W. N. 831. Even if there was a misdirection the Appellate Court is not entitled to interfere unless there has been a failure of justice or such failure has in fact been occasioned by the Judge's misdirection. 13 Pat. 529=150 Ind. Cas. 687=35 Cr. L. J. 1104=15 P. L. T. 264=A. I. R. 1934 Pat. 309 ; see also A. I. R. 1934 Cal. 847=1934 Cr. C. 1364 ; 60 C. L. J. 45 ; A. I. R. 1934 All. 1932=A. L. J. 1160. The High Court's power of interference in an appeal from the verdict of the jury, are strictly limited to misdirections in the Judge's charge to the jury. 1930 Cr. C. 1112=51 C. L. J. 352=129 Ind. Cas. 834 ; see also 30 Cr. L. J. 622=A. I. R. 1929 All. 364=116 Ind. Cas. 297 ; 129 Ind. Cas. 109 ; 10 P. L. T. 409=30 Cr. L. J. 721=A. I. R. 1929 Pat. 313=117 Ind. Cas. 173 ; 8 P. L. T. 691=28 Cr. L. J. 692=7 P. 15=103 Ind. Cas. 548 ; 50 C, 539=28 Cr. L. J. 689=A. I. R. 1927 Cal. 680=103 Ind. Cas. 545 ; 29 Cr. L. J. 325=A. I. R. 1928 Pat. 326=108 Ind. Cas. 81 ; 27 Cr. L. J. 217=A. I. R. 1925 Nag. 154 ; 27 Cr. L. J. 176=A. I. R. 1926 Mad. 370=91 Ind. Cas. 960 ; 28 Cr. L. J. 937=A. I. R. 1927 Oudh. 549=105 Ind. Cas. 457. High Court can interfere where the jury is not properly constituted. 32 C. W. N. 1172=30 Cr. L. J. 484=115 Ind. Cas. 522. Appellate Court having all materials before it can deal with the case itself. A. I. R. 1930 Cal. 370=127 Ind. Cas. 657. In trial by assessor, appeal is restricted by provisions of ss. 423 (2) and 537 Cr. P. Code, whereas in trials by jury the whole case is before the Appellate Court. 29 Cr. L. J. 325=A. I. R. 1928 Pat. 326=108 Ind. Cas. 81. Where jury accurately directed in matters of law, High Court will not interfere with their verdict. 27 Cr. L. J. 1355=A. I. R. 1927 All. 201=98 Ind. Cas. 475. Finding of Judge or jury as to simple issue of fact cannot

be disturbed unless opposed to evidence. A. I. R. 1930 Cal. 199=31 Cr. L. J. 737=124 Ind. Cas. 818. Perverse verdict can be set aside. A. I. R. 1934 Oudh. 299=35 Cr. L. J. 1130=11 O. W. N. 905.

Judgment of subordinate Appellate Court.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Notes.—The Appellate Court should decide both on the sufficiency of the prosecution evidence to warrant a conviction, and on its reliability. 2 Weir, 536. An Appellate Court cannot alter a conviction of an accused to one of abetment. 15 Cr. L. J. 694. An Appellate Court should write such a judgment as can be followed without reference to the judgment of the trial Court. 29 Cr. L. J. 705= A. I. R. 1928 Lah. 863=110 Ind. Cas. 449; see also 2 Lah. 408=23 Cr. L. J. 9=24 P. L. R. 1922=611 Ind. Cas. 377. Rules contained in s. 367 as to judgment of original court apply to all Appellate Courts except High Court. 25 Cr. L. J. 246= A. I. R. 1923 Lah. 344=76 Ind. Cas. 719; see also 25 Cr. L. J. 901=A. I. R. 1925 Cal. 266=81 Ind. Cas. 1007. Where in appeal by two accused judge only dealt with case of one, his judgment is not according to law. 24 O. C. 230=A. I. R. 1921 Oudh. 102=65 Ind. Cas. 287. Appellate Court must record proper judgment. 3 Pat. L. T. 203=23 Cr. L. J. 261=A. I. R. 1922 Pat. 157=66 Ind. Cas. 325. Duty of the Appellate Court is to deal with evidence. So where law and evidence were not discussed, judgment is not in accordance with law. 2 Lah. 308=28 Cr. L. J. 9=24 P. L. R. 1922=64 Ind. Cas. 377. Where Appellate Court merely states that it adopts reasons given by the trial court to support conviction by an accused person, the judgment is erroneous in form. 20 Cr. L. J. 645=52 Ind. Cas. 421. Appellate Court's judgment is not a mere supplement to the trial Courts judgment but should be adequate in itself. 1 Rang. 301=2 Bur. L. J. 101=24 Cr. L. J. 920=75 Ind. Cas. 296. Where evidence has not been properly considered, the disposal is not in accordance with law. 23 Cr. L. J. 378=19 P. L. J. 921=67 Ind. Cas. 202. Where appeal is dismissed High Court need not give reasons. A. I. R. 1933 Pat. 38=34 Cr. L. J. 118=11 Pat. 697. Judgment written by outgoing Magistrate but delivered by presiding Magistrate is without jurisdiction. 35 C. W. N. 838=33 Cr. L. J. 60. Where judgment was delivered in open Court by High Court Judge and taken down by his writer, omission to initial fair copy is not serious defect. A. I. R. 1933 All 40=55 A 132=1933 A. L. 13=24 Cr. L. J. 793.

Order by High Court on appeal to be certified to lower Court.

425. (1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate, shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or orders shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending appeal. Release of appellant on bail.

426. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Notes.—The only Courts which have power to suspend the execution of a sentence or order, are the Court to which an appeal has and the High Court. 2 Weir 536. Mere previous respectability of a man is *per see* no sufficient ground for granting bail when he has been convicted of an offence. An order suspending the sentence under section 426 should not be passed unless very special case is shown. 92 Ind. Cas. 703=27 Cr. L. J. 319=A. I. R. 1926 Nag. 279. Appeal by "convicted person" is condition precedent to granting trial. 1930 Cr. C. 455=31 Cr. L. J. 958=125 Ind. Cas. 792. Person called upon to furnish security is not deemed to be "convicted" *ibid*; but see A. I. R. 1932 All. 680=1932 A. L. J. 624=54 A. 861=1932 Cr. C. 856=33 Cr. L. J. 731; A. I. R. 1934. All. 845=1934 Cr. C. Section 426 applies only to appeal by convicted person. A. I. R. 1932 Mad. 720=56 M. 149=33 Cr. L. J. 826.

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Appellate Court may take further evidence or direct it to be taken.

428. (1) In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reason, and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall be subjected to the provisions of Chapter XXV, as if it were an inquiry.

Notes.—A Court of criminal appeal can take additional evidence at any time, only it must record its reason for so doing. 8 M. L. T. 418=8 Ind. Cas. 145=1910 M. W. N. 419. The failure of a Deputy Magistrate to state his reason for recording fresh evidence under s. 428 is an irregularity that is cured by s. 537. 9 M. L. T. 406=10 Ind. Cas. 290=12 Cr. L. J. 240. Under this section, an Appellate Court dealing with an appeal may direct additional evidence to be taken and itself record such evidence. 6 C. L. J. 251=6 Cr. L. J. 357; see also 11 Cr. L. J. 734=8 Ind. Cas. 943 This section does not empower an Appellate Magistrate to call for a fresh finding from a Subordinate Magistrate. 1914 M. W. N. 778=16 Cr. L. J. 79=26 Ind. Cas. 671. An appellant whose appeal is dismissed by an Appellate Court after it has taken additional evidence under this section has no right of appeal to the High Court. 27 C. 372=4 C. W. N. 497. This section does not authorise an Appellate Court to send a case to the police for further investigation, the case having been originally started by a complaint in Court. A.W.N. 1900, 130. This section gives an Appellate Court wide discretion. The Court recording reason can direct further evidence to be taken on the side of prosecution. But it does not warrant the taking of evidence of a co-accused, who has not appealed against his conviction. 93 Ind. Cas. 255=27 Cr. L. J. 463=27 P.L.R. 327=A.I.R. 1926 Lah. 309. As regards power of High Court to call for further evidence, vide 53 C. W. N. 632. Wording of section 421 is not restricted to nature of evidence. 25 Cr. L. J 401=A. I. R. 1925 Mad. 106=77 Ind. Cas. 481. Power of Appellate Court to take additional evidence under s. 428 should be exercised against accused only in very exceptional cases. 42 M. 885=37 M. L. J. 81=20 Cr. L. J. 455=51 Ind. Cas. 343. Section 342 does not apply to s. 428 (1). Fresh opportunity to accused to make statement may be essential in some cases. 4 Pat. 488=6 P. L. T. 154=26 Cr. L. J. 811=86 Ind. Cas. 459. Section 342 does not apply to evidence taken under s. 428. In itself s. 342 applies only to case of original trial. 52 B. 699

=30 Bom. L. R. 651=29 Cr. L. J. 972=A. I. R. 1928 Bom. 200=112 Ind. Cas. 60. High Court has power under s. 307 read with s. 428 to call further evidence. 33 C. W. N. 632=56 C. 566=50 C. L. J. 1=30 Cr. L. J. 1031=A. I. R. 1929 Cal. 244=119 Ind. Cas. 378. Appellate Court is not precluded from taking additional evidence to ascertain value of statement made by defence witness. 28 M. L. W. 785=30 Cr. L. J. 133=55 M. L. J. 676=113 Ind. Cas. 325. Order allowing additional evidence will not be inferred with in revision, except in case of error of law affecting merits of the case. 3 Pat. L. R. Cr. 101=6 P. L. T. 931=26 Cr. L. J. 1171=88 Ind. Cas. 595. Appellate Court is competent to record additional evidence under s. 428 Cr. Pro. Code. 31 Cr. L. J. 602=A. I. R. 1930 Mad. 483=123 Ind. Cas. 809. Negligence on the part of the prosecution is no ground for not taking additional evidence against the accused where justice will fail if such additional evidence is not taken. 6 P. L. T. 431=26 Cr. L. J. 1171=A. I. R. 1925 Pat. 526=88 Ind. Cas. 595. Appellate Court can send down records to Sessions Court to take down action under s. 288, whenever Appellate Court finds additional evidence is necessary. 19 A. L. J. 947=A. I. R. 1921 All. 215=95 Ind. Cas. 477. Where Sessions Court remands case for allowing accused to cross-examine prosecution witnesses and for recording further evidence, order is not justified under s. 428. 53 B. 578=31 Bom. L. R. 593=A. I. R. 1929 Bom. 309. Where additional evidence taken without recording reason the trial is not vitiated if failure of justice is not caused. 31 M. L. W. 524=31 Cr. L. J. 602=58 M. L. J. 414=A. I. R. 1930 Mad. 483=123 Ind. Cas. 809. In a trial by jury where medical evidence is not given *viva voce* before jury, trial is invalid. 33 C. W. N. 532. Order of remand for taking additional evidence must include the setting aside of conviction by the town Court. 40 C. L. J. 319=26 Cr. L. J. 312=26 Cr. L. J. 313=A. I. R. 1925 Cal. 172=84 Ind. Cas. 457. Appellate Court can take additional evidence. 25 S. L. R. 68=33 Cr. L. J. 43=A. I. R. 1931 Sind. 115. High Court cannot act under s. 48 (2) ordinance No. 10 of 1932, 8428 is not applicable. 37 C. W. N. 481 =34 Cr. L. J. 320=60 C. 814.

Procedure where Judges of Court of Appeal are equally divided

429. When the judges composing the Court of Appeal are equaly divided in opinion, the case with their opinions thereon shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion and the judgment or order shall follow such opinion.

Notes—The third Judge to whom case is referred will not differ in a point on which both the Judges agree. 22 C. W. N. 745=19 Cr. L. J. 753=28 C. L. J. 32=46 Ind. Cas. 593 ; see also A. I. R. 1930 Sind. 225=126 Ind. Cas. 449. A third Judge to whom reference is made cannot make a reference to a Full Bench. 41 C. L. J. 357=29 C. W. N. 475=76 Cr. L. J. 915=A. I. R. 1925 Cal. 1040=86 Ind. Cas. 979. "Case" means case of prisoner as to whom Judges were divided. 32 Cr. L. J. 868.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXI.

Notes.—Although section 430 has no application to judments passed in revision yet the principle laid down in this section is applicable to such judgment. 36 Bom. L. R. 954=A. I. R. 1934 Bom. 471.

Abetment of appeals.

431. Every appeal under section 417 shall finally abate on the death of this accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Notes.—No revision can be entertained against sentence where accused has since died, except fine. 95 P. L. R. 1918=8 P. R. Cr. 1919. Mere conflict of opinion on value of evidence is no ground for reference. 1933 A. L. J. 272=14 L. R. A. Cr. 45. Where the trying Magistrate tenders explanation, Sessions Judge referring case to High Court must make comment on explanation. 34 Cr. L. J. 480=1932 Cr. C. 938=A. I. R. 1932 All. 683.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference, and pending such decision may either commit the accused to jail or release him on bail to appear for judgment when called upon.

Notes.—A reference is to be made by a Presidency Magistrate. 1 Bom. L. R. 52. The reference must be on a point of law only. 33 C. 103. Rat. Un. Cr. C. 539 ; 838. The High Court should not express any opinion except on reference. 9 Cr. L. J. 248 ; 1 S. L. R. Cr. 4. In reference the sentence can be enhanced. 93 Ind. Cas. 1053 ; 27 Cr. L. J. 537. Orders passed on reference are conclusive. 1890 A. W. N. 225. A District Magistrate has no power to refer a case to High Court. A. I. R. 1928 Sind. 69=22 S. L. R. 201. Reference by Presidency Magistrate under this section is confined to question of law necessary to dispose of cases before him. 50 C. L. J. 408=34 C. W. N. 13 (F. B.) Presidency Magistrate cannot refer a point of law which is covered by authority. 31 Bom. L. R. 1349=54 B. 146=31 Cr. L. J. 633.

Disposal of case according to decision of High Court.

433. (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

(2) The High Court may direct by whom the costs of such reference shall be paid.

Power to reserve questions arising in original jurisdiction of High Court.

434. (1) When any person has, in a trial before a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

(2) If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail ; and the High Court shall have power to review the case or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

Notes.—The power which the High Court exercises under this section is that of review, and the Court is a Court of reference and revision. 8 B. 200. The High Court can review the whole case, *vide* 9 B. H. C. R. 358 ; 1 C. 207 ; 4 C. W.N. 433. A reference is allowable only on a point of law. 28 C. 211. The Counsel of the accused cannot ask the Court to reserve points. 22 B. 112. It is discretionary with the Judge. 10 B. H. C. R. 75. The power of a single Judge is controlled by this section. 9 C. L. J. 306 ; 9 Cr. L. J. 378. A High Court can refer under this section while trying a sessions case. 28 Cr. L. J. 213=99 Ind. Cas. 1013. But the point of law must arise in the course of the trial. 28 C. 111.

Power to call for records of inferior Courts.

435. (1) The High Court or any Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and may examine the record of any proceeding,

before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court,* [and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.]

† [*Explanation*—All Magistrates whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 437.]

(2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate. ‡

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the either of them.

Scope of the section—The wordings of this section are very general. So the High Court can interfere under this section with any order passed without jurisdiction, even where there is no provision for appeal or revision. Vide, 15 C. 608 ; 20 B. 543 ; 10 Cr. L. J. 233 ; 2 S. L. R. 20 ; 31 M. 133. Such examination is allowable in cases of finding of facts as well as finding of law. 10 B. 131 ; 12 B. 377 ; 14 B. 331 ; 28 B. 479 ; A. W. N. 1899, 135. In the cases of abuse of process of Court, the High Court should interfere. 40 C. L. J. 283 ; 2 Weir 538. Such interference is allowable where the Court has refused to exercise a discretion vested in him by law. 19 C. 52. A District Magistrate is justified under this section in calling for and examining the proceedings of any Magistrate of whatever class in his own district. L. B. R. (1872—1892), 387 ; see also S. C. 88, Oudh ; 12 C. 475 (F. B.) ; 9 B. 100 ; 8 M. 18 (F. B.) ; 7A. 853 ; 38 P. R. Cr. 1885. 9 Cr. L. J. 104. A District Magistrate is inferior to the Sessions Judge while exercising an original criminal jurisdiction. 89 Ind. Cas. 146 ; 26 Cr. L. J 1282 ; 24 Cr. L. J. 616 ; 12 C. 473 ; 15 P. R. 1904, 12 C. 473 ; 10 C. 268 ; 7 A. 134. No hard and fast rule can be laid down as regards the class of cases in which the High Court will interfere. 22 C. 151 ; 25 C. 233 ; 26 C. 786 ; 20 B. 548 ; 28 M. L. J. 505=29 Ind. Cas. 109. A District Magistrate while exercising his revisional powers to take evidence under section 438. 12 A. L. J. 461=15 Cr. L. J. 575=25 Ind. Cas. 327. High Court can act on any information. 20 A. L. J. 909=45A. 128=24 Cr. L. J. 115=71 Ind. Cas. 243. Section 438 must be read with s. 435. 21 S.L.R. 48=27 Cr. L. J. 1253=A. I. R. 1927 Sind. 45=98 Ind. Cas. 101. Section 439 is to be read along with and subject to s. 435. If a case is out side s. 435, s. 439 cannot apply. 47 C. 438=31 C. L. J. 183=21 Cr. L. J. 25=25 C. W. N. 97=54 Ind. Cas. 169 ; see also 3 O. L. J. 546=18 Cr. L J 100=19 O. C. 136=37 Ind. Cas. 308. This section is not applicable merely to finding sentence or order but to proceedings generally. 47 M. 722=20 M L. W. 234=25 Cr. L. J. 1009=A. I. R. 1925 Mad. 39=81 Ind. Cas. 785. Only Acts which are excepted from the revisional jurisdiction of High Court are Press Act, Extradition Act and Reformatory Schools Act, and these only in regard to certain orders passed by lower Courts. 26 Cr. L. J. 289=3 Bur. L. J. 168=2 Rang. 321=A. I. R. 1925 Rang. 12=84 Ind. Cas. 433. Orders passed under Upper Burma Ruby Regulations of 1887. s. 6 are within scope of Cr. Pro. Code as regards appeal and revision though no provision is made in the Regulation therefor. 2 Rang. 321=3 Bur. L. J. 168=26 Cr. L. J. 289=A. I. R. 1925 Rang. 12=84 Ind. Cas. 433. The Court may, when calling for record direct suspension of sentence or release of accused. The words "legality and propriety" in section 435 would both include questions of law as to whether a finding, sentence or order is legal, or proper having regard to evidence. The word 'correctness' does not mean that the High Court

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* These words were added by s. 116 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This Explanation was added by Act XVIII of 1923.

‡ Sub-section (3) was omitted by *ibid.*

may inquire whether the finding was acceptable to it on a balance of the evidence recorded in the trial Court. The correctness of the finding, sentence or order also implies a legal defence. 1929 A. L. J. 775=30 Cr. L. J. 756=A. I. R. 1929 All. 587=117 Ind. Cas. 346. High Court on reference or revision can pass substantive period of imprisonment even though accused has served sentence of imprisonment passed on him by lower Court. 28 Bom. L. R. 300=28 Cr. L. J. 557=A. I. R. 1926 Bom. 256=93 Ind. Cas. 1053 ; see also 49B. 530=27 Bom. L. R. 350=26 Cr. L. J 996=A. I. R. 1925 Bom. 247=87 Ind. Cas. 596. An Additional Sessions Judge can exercise the revisional powers of the Sessions Judge. 1 L. B. R. 119. The High Court can interfere even in pending proceedings. 39 C. L. J. 236=25 Cr. L. J. 1258 (F. B.) ; 40 C. L. J. 283. It can interfere at any stage of a criminal proceeding. 25 Cr. L. J. 1009=47 M. 722 ; 28 C. W. N. 23=38. C. L. J. 198 ; 29 Ind. Cas. 109 ; 22 C. 131 ; 20 B. 543 ; 28 M. L. J. 505 ; 1925 M. W. N. 365. But the power of revision is not co-extensive with the power of appeal. 1927 M. W. N. 716. The High Court cannot interfere with the order of a Civil Court passed under section 195 or s. 476. 8 C. W. N. 78 ; 31 A. 38 ; 26 B. 785 ; 26 M. 98. Under ss. 435, 439, the High Court can examine the records of cases for the purpose of satisfying itself as to the correctness or propriety, as well as the legality of any finding, sentence or order. 14 B. 331. The Sessions Judge can call for the record of a proceeding under section 110, Cr. Pro. Code. 73 Ind. Cas. 33=24 Cr. L. J. 593. Sessions Judge can call for the record directly if he suspects of irregularity irrespective of the source of information. A. I. R. 1931 Lah. 107=131 Ind. Cas. 108. Revision application filed before Sessions Judge or District Magistrate bars another application before another Court. 1930 A. L. J. 521=52A. 257=31 Cr. L. J. 995=A. I. R. 1930 All. 257=126 Ind. Cas. 253. New point involving question of fact cannot be raised in revision. 1933 A. L. J. 188=34 Cr. L. J. 414=1933 Cr. C. 434=55 A. 301=A. I. R. 1933 All. 264 (F.B.) In case of appeal to District Magistrate from order of Octroi Superintendent, order of District Magistrate is not open to revision by High Court. 145 Ind. Cas. 959=1933 A. L. J. 469=A. I. R. 1933 All. 281. Findings of fact of Lower Courts are not usually interfered with in revision. 1933 Cr. C. 356=A. I. R. 1933 Lah. 236. Powers of Superintendence under s. 107, Government of India Act cannot be controlled by the Governor-General. But he can control those under ss. 435 to 439. A. I. R. 1933 Bom. (S. B.)=57 C. 93=34 Cr. L. J. 199=34 Bom. L. R. 1523. Findings of fact for which there is evidence would not be interfered with in revision. A. I. R. 1933 Mad. 279=34 Cr. L. J. 524=1933 Cr. C. 346=1933 M. W. N. 1153. High Court will not interfere with judgment of acquittal in the absence of stay and cogent grounds. 10 O. W. N. 999. In case of concurrent revisional jurisdiction, High Court will not interfere except for special grounds. 8 O. W. N. 1027=33 Cr. L. J. 195=A. I. R. 1931 Oudh. 418.

When there can be interfernce—Powers of High Court are very wide and it can interfere even when certain order though illegal is improper. 26 N. L. R. 50=12 N. L. J. 180=31 Cr. L. J. 284=A. I. R. 1930 Nag. 61. High Court is precluded from interfering if finding has basis in some evidence. 1929 A. L. J. 775=30 Cr. L J. 756=A. I. R. 1929 All. 587=117 Ind. Cas. 346. Order refusing to grant a copy under s. 165 (5) is illegal, and can be set aside under s. 435. 26 A. L. J. 703=29 Cr. L. J. 663=A. I. R. 1928 All. 402=110 Ind. Cas. 215. Where charge is framed where none is necessary, interference by the High Court is proper. 23 A. L. J. 21=26 Cr. L. J. 749=A. I. R. 1925 All. 311. Impropriety of finding is ground of interference. 28 Cr. L. J. 967=A. I. R. 1927 All. 647.

When revision lies.—High Court can interfere in cases of erroneous finding by Magistrates. A. I. R. 1932 Pat. 185=13 P. L. T. 178=34 Cr. L. J. 259. Even when application is not entertained by the District Magistrate, the Sessions Judge may allow such application. A. I. R. 1931 Mad. 772=1931 M. W. N. 771=61 M. L. J. 123=32 Cr. L. J. 1278. Order of Magistrate under s. 144 is open to revision. 34 Cr. L. J. 334=A. I. R. 1933 Cal. 348. High Court will not interfere where the case is not complete in trial Court. 1933 A. L. J. 30=1933 Cr. C. 367=34 Cr. L. J. 956=A. I. R. 1933 All. 211. Failure to take in revision to Sessions Judge or District Magistrate is a bar to such application being entertained by High Court. 145 Ind. Cas. 726=1933 A. L. J. 119=1933 Cr. C. 523=55 A. 261=34 Cr. L. J. 1048=A. I. R. 1933 All. 283. Magistrate's order declining to stay proceedings in his Court is an order covered by s. 435. 35 Bom. L. R. 1054=A. I. R. 1933 Bom. 485. In revision the finding as to the credibility of witness should be accepted. 140 Ind.

Cas. 246=33 Cr. L. J. 943=1933 Cr. C. 201=1932 A. L. J. 104=A. I. R. 1932 All. 185. Grounds challenging findings of fact are not proper grounds for revision. 143 Ind. Cas. 835=10 O. W. N. 47=34 Cr. L. J. 649=A. I. R. 1933 Oudh. 117. Sessions Judge can call for record directly if he suspects of irregularity, irrespective of information. 32 P. L. R. 130=32 Cr. L. J. 653=12 Lah. 471=A. I. R. 1931 Lah. 107 ; see also A. I. R. 1931 Lah. 145=32 P. L. R. 71=32 Cr. L. J. 700. High Court has power to revise proceedings either under s. 435 or s. 439 apart from its inherent powers under s. 561 A. 30 Bom. L. R. 1050=29 Cr. L. J. 1063=112 Ind. Cas. 567. Jurisdiction of High Court and Sessions Judge under s. 435 is concurrent and in such cases, the aggrieved party has to first seek his remedy in subordinate court. 4 Pat. L. W. 327=29 Cr. L. J. 589=3 Pat. L. J. 302=45 Ind. Cas. 397. Order of Magistrate acting under s. 144 is not order of Court. No revision lies against such order under s. 435. 28 M. L. W. 506=52 M. 69=A. I. R. 1928 Mad. 1108=55 M. L. T. 621. Revision on assumption that Sub-Magistrate is better judge of fact than Sub-Divisional Magistrate cannot be granted. 29 Cr. L. J. 325=A. I. R. 1928 Mad. 369=108 Ind. Cas. 80. Further revision does not lie from revisional order passed by the Sessions Judge on an order under Bombay City Municipalities Act, s. 110. 30 Bom. L. R. 1084=A. I. R. 1928 Bom. 376=112 Ind. Cas. 585. Proceeding under Chapter 12 become liable to revision. 31 M. L. W. 104=31 Cr. L. J. 190=A. I. R. 1920 Mad. 817=120 Ind. Cas. 895. High Court has merely to satisfy itself that facts found fall within the section 80 as to give jurisdiction to Magistrate. 22 Cr. L. J. 521=22 Bom. L. R. 157=62 Ind. Cas. 409 ; see also 18 Cr. L. J. 418=38 Ind. Cas. 478. High Court will not interfere in revision on motive for offence. 28 Cr. L. J. 383=100 Ind. Cas. 991. Sessions Judge can take up at the instance of a private person any revision of Magistrate order under s. 476. 25 A. L. J. 42=27 Cr. L. J. 1130=49 A. 230=A. I. R. 1927 All. 38=97 Ind. Cas. 650. Revision application is entertainable by District Magistrate or Sessions Judge. Such application was not entertained by High Court unless District Magistrate or Sessions Judge has been previously removed in the matter under s. 435. 29 Cr. L. J. 618=A. I. R. 1929 Nag. 13=109 Ind. Cas. 810. Powers of Sessions Judge of revision are not restricted by High Court. 49A. 230=25 A. L. J. 42=27 Cr. L. J. 1136=A. I. R. 1927 All. 38=97 Ind. Cas. 650. High Court can revise any preliminary or final order passed by inferior court. 18 Cr. L. J. 46=14 A. L. J. 851=36 Ind. Cas. 878. Sessions Judge is not required to examine record of any proceeding before an inferior Criminal Court. 17 Cr. L. J. 145=14 A. L. J. 146=33 Ind. Cas. 625. Period of limitation for application in revision to Patna High Court is 60 days, and the period as intended to cover proceedings of normal length before Sessions Judge. 8 pat. 468=30 Cr. L. J. 1053=11 P. L. T. 18=119 Ind. Cas. 401. High Court under s. 107 of Government of India Act can set aside proceedings instituted without jurisdiction by subordinate Court under s. 145, notwithstanding s. 435 (3) and can make consequential or incidental orders under same section. 48 C. 522=22 Cr. L. J. 213=32 Cr. L. J. 270=60 Ind. Cas. 325. Revision lies from order of Sessions Judge revoking or upholding sanction granted by inferior Court. L. R. I. A. 41 Cr. If a declaratory order is passed under s. 145 (6) the order can be revised, but if the Magistrate on the facts refuses to proceed under s. 145, such order cannot be revised. 18 S. L. R. 278=26 Cr. L. J. 1333=A. I. R. 1926 Sind. 85=89 Ind. Cas. 309. Order under s. 888 is a proceeding subject to the jurisdiction of High Court. 25 Cr. L. J. 82=A. I. R. 1924 Lah. 617=76 Ind. Cas. 18. Revision of appellate order under s. 144 (5) is entertainable even after two months. 42 M. L. J. 252=23 Cr. L. J. 404=A. I. R. 1922 Mad. 76=67 Ind. Cas. 500. Order for demolition is a judicial order open to revision by the High Court. 52 C. 962=26 Cr. L. J. 1535=29 C. W. N. 898=A. I. R. 1925 Cal. 1231=90 Ind. Cas. 317. An application for revision of an order under s. is not entertainable under the provisions of s. 435 and 438. Criminal Procedure Code. 23 Cr. L. J. 238=24 O. C. 367=A. I. R. 1922 Oudh. 220=66 Ind. Cas. 68.

Inferior Court.—Where a District Magistrate passes order as Court of original jurisdiction, he is subordinate to Sessions Judge who can exercise revisional power. 24 C. R. L. J. 616=A. I. R. 1924 Oudh. 241=17 Cr. L. J. 223=19 O. C. 108=3 O. L. J. 38=73 Ind. Cas. 504. District Magistrate exercising jurisdiction under Election Rules does not act as Criminal Court and no revision lies from his order. 30 Cr. L. J. 1159=1930 A. L. J. 216=A. I. R. 1929 All. 931=120 Ind. Cas. 128. Where Magistrate acts under s. 221, Madras Local Board Act. District Magistrate can interfere. 27 M. L. W. 329=29 Cr. L. J. 389=A. I. R. 1928 Mad. 495=108 Ind. Cas. 414. Secretary to Local Government exercising powers conferred

by Goondas Act (Bom. Act I of 1923) is not a Criminal Court. 51C. 460= 26 Cr. L. J. 20=83 Ind. Cas. 500. Where Magistrate passes order as Revenue Court the District Magistrate cannot interfere. 5 Luck. 425=6 O. W. N. 953=31 Cr. L. J. 679=A. I. R. 1930 Oudh. 58=144 Ind. Cas. 364. District Magistrate is inferior Court to Sessions Judge. 137 Ind. Cas. 125=Cr. L. J. 474=1932 A. L. J. 67=A. I. R. 5932 All. 124.

Reference.—Sessions Judge can make reference to High Court against order of District Magistrate. 23 A. L. J. 891=26 Cr. L. J. 1282=A. I. R. 1925 All. 592= 89 Ind. Cas. 146. District Magistrate must not refer directly to High Court. 22 A. L. J. 772=46 A 851=25 Cr. L. J. 1277=A. I. R. 1924 All. 770=82 Ind. Cas. 285. Sessions Judge can call for record of proceedings in Inferior Court and can refer matter to High Court. 21 A. L. J. 613=24 Cr. L. J. 593=A. I. R. 1923 All. 556 76 Ind. Cas. 337.

Power of District Magistrate.—District Magistrate cannot question on the propriety of order by Court of Session. 24 A. L. J. 224=27 Cr. L. J. 227=92 Ind. Cas. 743. District Magistrate cannot order retrial. He can act under s. 426 only. High Court alone can order retrial. 1230 A. L. J. 521=A. I. R. 1930 All. 257=52 A. 25=30 Cr. L. J. 995=126 Ind. Cas. 253. District Magistrate can either reject or report to High Court but cannot set aside. 11 O. L. J. 59=25 Cr. L. J. 440=A. I. R. 1924 Oudh. 331=77 Ind. Cas. 728. District Magistrate should not make the work of persons entitled to appeal difficult, by calling for proceedings and taking action upon them within the period allowed for appeal. 25 Bur. (1915) 124=18 Cr. L. J. 355=10 Bur. L. T. 166=38 Ind. Cas. 739. District Magistrate cannot recommend revision of orders passed by Session Judge on appeal. 14 A. L. J. 364=34 Cr. L. J. 947=A. I. R. 1933 Pat. 335.

[*436.] On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrate subordinate to him to make, and the District Magistrate may himself make or direct any Subordinate Magistrate to make further enquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any †[person accused of an offence] who has been discharged.

Power to order inquiry.

‡[Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.]

Scope.—This section contemplates a case where a Superior Court thinks that a further enquiry should be made into any complaint which has been dismissed, or into the case of an accused person who has been discharged. 1 C. W. N. 65. Under this section the Sessions Judge has no power to order re-opening of the proceedings merely because in his opinion the Subordinate Magistrate failed rightly to appreciate the credit due to the witnesses. 12 C. 522. The section is the only law which authorizes a Magistrate to re-open the proceedings in which a person has been released. 6 C. W. N. 163. It is competent to the High Court under this section to direct a further enquiry into a complaint which has been dismissed under s. 203, 14 P. R. 1891 Cr. Before setting aside an order of discharge notice should ordinarily be given to the accused to show cause why the order should not be set aside. 101 P. I. R. 1902; see also 17 P. R. 1195, Cr.; 9A 52; 20 A. 339=A. W. N. 1898, 60; 15 C. 908 (F. B.); 11 C. W. N. 173=5 Cr. L. J. 16; 8 Bom. L. R. 994; 2 Weir. 234; 2 O. C. 363; 13 C. L. R. Cr. 189; U. B. C. (1897—1901) Vol. 1. 96; 2 Bom. L. R. 586; 10 B, 131; 16 Cr. L. J. 214=4 P. W. R. 1915 Cr.=16 Cr. L. J. 214=27 Ind. Cas. 831=130 P. L. R. 1915; 39 C. 238=14 Ind. Cas. 768=13 Cr. L. J. 304. The term "accused person" in this section includes persons against whom proceedings under s. 110 have been taken. Where the Magistrate of the District dismissed a complaint under s. 203, an application for further enquiry

* This section which was ordinarily numbered 427 was re-numbered 436 by s. 117 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Substituted by *ibid.*

‡ Added by *ibid.*

should be made to the Sessions Judge. A. W. N. 1905, 279=3 Cr. L. J. 53=28 A. 268. The words "further enquiry" mean the taking of additional evidence, and not a mere re-hearing, or a further consideration of the case on the same evidence. 63 P. R. 1887 Cr ; see also 9 A. L. J. 310=13 Cr. L. J. 255=14 Ind. Cas. 607 ; 10C. 207. Where the nature of the case is such that Courts are liable to take different views of the evidence and of the probabilities, the case is not one which calls for any further enquiry. 8 A. L. J. 45=9 Ind. Cas. 274=12 Cr. L. J. 45. Where the Sessions Judge passed order under this section, the District Magistrate will not be justified in passing orders of an exactly opposite kind in the same matter. 12A. 434=A. W. N. 1890, 99. A District Magistrate has jurisdiction to order further enquiry when a Subordinate Magistrate has improperly discharged an accused under section 253. Rat. Un. Cr. C. 218 ; 3 L. B. R. 97 (F. B)=4 Cr. L. J. 490 ; see 394 P. L. R. 1902 ; 3 Lah. L. J. 97 ; 20 P. W. R. 1916 ; 26 Cr. L. J. 1357 ; 21 Cr. L. J. 571 ; 12 Cr. L. J. 364 : 26 Cr. L. J. 1393 ; 27 Cr. L. J. 567. In such a case no reference to the High Court is necessary. Rat. Un. Cr. C. 213 ; 988. This section applies where an accused is discharged under section 203, 253 or 259. 33 M. 85. In case of acquittal no order for further inquiry can be made. 20 C. 633 ; 4 C. W. N. 346 ; 5 C. W. N. 72 ; 7 C. W. N. 494 ; 1 A. L. J. 415 ; 17 Cr. L. J. 95 ; 88 Ind. Cas. 995 ; 25 Cr. L. J. 359 ; 38 M. 585 ; 4 Lah. L. J. 331. Where on the evidence a revising authority comes to a different conclusion from that of the Court a further enquiry should not be ordered. 26 Cr. L. J. 382=85 Ind. Cas. 726. Where a complaint has been summarily dismissed without notice to the party complained against there is no discharge within the meaning of this section and further inquiry can be ordered without giving notice to him. 47 A. 722. The present section contains the words 'any person accused of an offence" instead of "any accused person" and hence does not include persons against whom proceedings were taken under Chapter VIII. 2 Bur. L. J. 285. Section 436, Cr. Pro. Code does not include persons against whom action was taken under Chapter VIII. 2 Bur. L. J. 285=A. I. R. 1924 Rang. 207=81 Ind. Cas. 970. As application under s. 107 is not a complaint, s. 436 does dot apply to persons discharged. 1930 A. L. J. 1475=A. I. R. 1931 All. 53=130 Ind. Cas. 630 ; see also 46 A. 235=22 A. L. J. 129=25 Cr. L. J. 467=77 Ind. Cas. Cr. 819. Proceedings under s. 133 and Chapter X are not covered by s. 436 and the Sessions Judge cannot have power to order further enquiry. 2 O. W. N. 549=26 Cr. L. J. 1251= A. I. R. 1925 Oudh. 736=88 Ind. Cas. 995. The District Magistrate cannot order a further inquiry under Chapter VIII. 2 Rang. 30=2 Bur. L. J. 285=26 Cr. L. J. 1146=A. I. R. 1924 Rang. 207=81 Ind. Cas. 970. Section 436, Cr. Pr. Code does not limit at all grounds on which further enquiry is to be ordered. Discharge whether upon or after hearing all prosecution evidence is not an acquittal so as to bar further trial, for the same offence under s. 403 and 436 empowers the Magistrate to order further enquiry when he thinks that a *prima facie* case has been made out against the accused. An order of discharge should only be set aside very sparingly and wrongly when it can be said either to be perverse or *prima facie* incorrect when there is a suggestion that any further evidence may be both coming. A. I. R. 1934 All. 944= 1934 Cr. C. 1256. In order directing further enquiry, Judge ought to give reasons for such order. A. I. R. 1934 All. 51=56A. 285=35 Cr. L. J. 418=1934 A. L. J. 69=A. L. J. 418=1934 A. L. J. 69=A. L. J. 1934 All. 235 s. 436 does not apply to trials, but relates to proceedings preliminary to trial. A. I. R. 1931 Rang. 225 (F. B.) =9 Rang. 239=32 Cr. L. J. 950. Application under s. 107 is complaint, consequently s. 436 does not apply to persons discharged. 1930 A. L. J. 1475=32 Cr. L. J. 570 =53 A. 148=A. I. R. 1931 All. 53. Further enquiry should not be ordered merely in the interests of justice. 144 Ind. Cas. 331=34 P. L. R. 719=A. I. R. 1933 Lah. 561. Burden lies on prosecution to show why further enquiry should be ordered. 1933 Cr. C. 819=34 P. L. R. 719=24 Cr. L. J. 735=A. I. R. 1933 Lah. 166. Further enquiry under s. 436 is not confirmed to one under s. 202. A. I. R. 1931 Pat. 50=32 Cr. L. J. 548=12 P. L. T. 729. Revision Court cannot direct further inquiry into an offence under s. 193, without sanction of the Court concerned. 1929 A. L. J. 512=A. I. R. 1929 All. 374=118 Ind. Cas. 232. A District Magistrate cannot order further inquiry in a case where an application under s. 145 has been rejected but can refer to High Court under section 438. 30 Cr. L. J. 709=117 Ind. Cas. 59.

Grounds for interference.—Further enquiry cannot be ordered on bare chance of offence being disclosed. 23 Cr. L. J. 592=A. I. R. 1933 Mad. 59=43 M. L. J. 564=68 Ind. Cas. 624. Further enquiry need not be ordered where no fresh evidence is possible. 25 Cr. L. J. 491=38 C. L. J. 206=A. I. R. 1924 Cal. 229=76 Ind. Cas.

431. Where district Magistrate takes different view of evidence it is no reason for ordering further enquiry. 44 A. 691=24 Cr. L. J. 176=71 Ind. Cas. 528=A. I. R. 1922 All. 929. Order for retrial without stating reasons, merely "in the interests of justice" is bad. 24 Cr. L. J. 474=72 Ind. Cas. 893. Where there is no prospect of public advantage, order for further enquiry is not called for. 16 M. L. W. 583=23 Cr. L. J. 600=A. I. R. 1923 Mad. 134=43 M. L. J. 555=68 Ind. Cas. 829. Further enquiry is not called for, where the evidence permits of different views. 28 Cr L. J. 342=A. I. R. 4927 All. 754=100 Ind. Cas. 122 ; but see 23 A. L. J. 79=26 Cr. L. J. 736=A. I. R. 1925 All. 298=86 Ind. Cas. 224. No further enquiry is to be ordered where the revising authority and the trial Court differ on the evidence. 26 Cr. L. J. 582=A. I. R. 1925 All 477=85 Ind. Cas. 726. Further enquiry need not be ordered where what happened was a mere irregularity as allowing cross-examination in the enquiry. 7 P. L. T. 36 Cr. C. J. 1394=89 Ind. Cas. 706. Disbelieving witness is no reason for ordering retrial. 27 P. L. R. 307=27 Cr. L. J. 565=94 Ind. Cas. 133. Power under this section used sparingly 49 A. 879=25 A. L. J. 703=28 Cr. L. J. 601=A. I. R. 1927 All. 804=102 Ind. 777. Further enquiry should not be ordered unless there is palpable error in the lower Court. 50 C. L. J. 284=A. I. R. 1929 Cal. 755=31 Cr. L. J. 475. Further enquiry cannot be ordered in a case where a petition under s. 106 Cr. Pro. Code is dismissed *in limite.* A. I. R. 1981 Lah. 185= 31 P. L. R. 350=127 Ind. Cas. 716. Not misappreciation of evidence, but irregularity or irregularity in proceedings should be considered by the District Magistrate in setting aside order of disclause. 31 Cr. L. J. 417=A. I. R. 1930 Nag. 108=122 Ind. Cas. 434.

Notice.—Notice to accused is necessary before directing further enquiry. 19 A. L. J. 71 ; see also 21 A. L. J. 194=24 Cr. L. J. 184=A. I. R. 1928 All. 484=71 Ind. Cas. 600 ; 200 A. L. J. 91=23 Cr. L. J. 70=65 Ind. Cas. 421 Notice to accused before ordering further enquiry is not necessary after the dismissal of a complaint under s. 203. 49 C. L. J. 422=30 Cr. L. J. 1030=119 Ind. Cas. 376 ; see also 2 Luck 573=28 Cr. L. J. 650=A. I. R. 1927 Oudh. 264=103 Ind. Car. 106 ; 29 Bom. L. R. 713=28 Cr. L. J. 575=A. I. R. 1927 Bom. 436=102 Ind. Cas. 511. 47 A. 722=23 A. L. J. 451=26 Cr. L, J. 1176=88 Ind. Cas. 600 ; 49 M. 918=51 M. L. J. 605. No notice to accused is necessary if he is not prejudiced. 24 Cr. L. J. 412= A. I. R. 1923 Mad. 327=72 Ind. Cas. 525. Notice should be issued as a general rule, but failure to give it is not illegal. 4 Lah. L. J. 411=23 Cr. L. J. 693=A. I. R. 1922 Lah. 54=69 Ind. Cas. 373. The order for further enquiry should not be passed without notice to the accused and then only when the discharge is perverse. 24 Cr. L. J. 622=A. I. R. 1923 Lah. 158=73 Ind. Cas. 510 ; see also 25 Cr. L. J. 523= A. I. R. 1923 Lah. 689=77 Ind. Cas. 987. Where the order is one of discharge under s. 253 (2) and not under s. 203 it cannot be set aside without notice to accused. A. I. R. 1934 All. 51=1934 A. L. J. 69=35 Cr. L. J. 418=56 A. 285=147 Ind. Cas. 335. Before order under section 436 is made notice must issue against person discharged. A. I. R. 1933 Lah. 1018 ; see aleo A. I. R. 1933 Sind. 299=1933 Cr. 1036=146 Ind. Cas. 35 ; see A. I. R. 1134 Rang. 181=35 Cr. L. J. 1408.

Contents of order.—Court must give reasons for setting aside order of discharge. 27 Cr. L. J. 728=A. I. R. 1926 Nag. 374=95 Ind. Cas. 56. No direction can be given to Magistrate as to manner in which he should conduct inquiry. 32 Cr. L. J. 950=9 Rang. 239=A. I. R. 1931 Rang. 225 (F. B.). Detailed order is not necessary. 30 P. L. R. 449=30 Cr. L. J. 490=A. I. R. 1929 Lah. 238= 115 Ind. Cas. 540. Where a revision has been admitted against an order for further enquiry which does not give detailed reasons it must be established that the order is manifestly preverse. 30 P. L. R. 449=30 Cr. L. J. 490=A. I. R. 1929 Lah. 28= 115 Ind. Cas. 540. Court proceeding under this section should not try accused. 27 Cr. L. J. 728=A. I. R. 1926 Nag. 373=95 Ind. Cas. 56 ; see also 22 Cr. L. J. 49=18 A. L. J. 1135=Ind. Cas. 193. A Sessions Judge has no power to make an order directing further enquiry by a particular Magistrate subordinate to a District Magistrate. 4930 M. W. N. 919=A. I. R. 1930 Mad. 983=129 Ind. Cas. 79. Discretion by the Sessions Court to a Magistrate to convict an accused for an offence uuder s. 471 I. P. Code is illegal. 42 M. 561=36 M. L. J. 296=20 Cr. L. J. 339= 50 Ind. Cas. 987. Where a graver charge is not pressed by prosecution, District Magistrate cannot direct its committal. 41M. 982=19 Cr. L. J. 945=47 Ind. Cas. 669. Judge who makes an order s. 436, cannot himself try the case. 17 Bom. L. R. 599=16 Cr. L. J. 754=31 Ind. Cas. 354.

Proceedings for further enquiry.—Further enquiry means an enquiry of the same nature as was previously held under s. 202. 9 P. L. T. 459=29 Cr. L. J. 372=108 Ind. Cas. 328. Further enquiry is not confined to a further enquiry under s. 202. A. I. R. 1931 Pat. 50=130 Ind. Cas. 529; 1929 Cr. C. 372=A. I. R. 1929 Pat. 644=31 Cr. L. J. 961=126 Ind. Cas. 146. District Magistrate holding further enquiry can proceed to trial. A. I. R. 1934 Mad. 209=148 Ind. Cas. 573=35 Cr. L. J. 691=66 M. L. J. 318. Burden lies on prosecution to show why further inquiry should be ordered. 34 P. L. R. 719=34 Cr. L. J. 735=A. I. R. 1933 Lah. 561. Sessions Judge is empowered to direct only further enquiry and not framing charge. 33 Cr. L. J. 341=13 Lah. 599=33 P. L. R. 267=A. I. R. 1932 Lah. 362.

Order of discharge.—Where the accused is discharged after a complete enquiry further enquiry should not be ordered. 12 N. L. J. 173=31 Cr. L. J. 279=A. I. R. 1929 Nag. 360; see also 4 L. L. J. 331=A. I. R. 1921 Lah. 288. Further enquiry can be ordered only if discharge order is perverse or foolish. 28 P. L. R. 593=28 Cr. L. J. 860=A. I. R. 1928 Lah. 42=104 Ind. Cas. 636; see also 9 L. L. J. 508=29 Cr. L. J. 39=A. I. R. 1928 Lah. 97=106 Ind. Cas. 455; 30 P. L. R. 58=30 Cr. L. J. 238=A. I. R. 1929 Lah. 315=114 Ind. Cas. 50; 28 Cr. L. J. 607=A. I. R. 1927 Lah. 815=102 Ind. Cas. 783; 33 Cr. L. J. 571; 33 Cr. L. J. 362; 27 Cr. L. J. 1018=96 Ind. Cas. 869; 95 Ind. Cas. 307=27 Cr. L. J. 771=27 P. L. R. 488; 34 P. L. R. 833; A I. R. 1932 Oudh. 114; 27 Cr. L J. 661=A. I. R. 1926 Lah. 130=94 Ind. Cas. 709; 27 P. L. R. 397=27 Cr. L. J. 565=94 Ind. Cas. 133; 21 N. L. R. 88=26 Cr. L. J. 1537=A. I. R, 1926 Nag. 117 =90 Ind. Cas. 385; 7 L. L. J. 252=26 P. L. R. 353=26 Cr. L. J. 1508; 26 P. L R. 291=26 Cr. L. J. 1393=A. I. R. 1925 Lah. 50; 11 O. L. J. 611=26 Cr. L. J. 959=A. I. R. 1925 Oudh. 180=87 Ind. Cas. 111; A. I. R. 1934 Bom. 48=35 Cr. L. J. 644=35 Bom. L. R. 1181. The District Magistrate can revise the order of discharge in a Sessions case. 17 Cr. L. J. 245=12 N. L. R. 94=34 Ind. Cas. 965. When a Magistrate has discharged an accused generally speaking further enquiry should not be directed. 24 Cr. L. J. 369=A, I. R. 1923 Lah. 329=72 Ind. Cas. 369. A District Magistrate cannot set aside an order of discharge on the ground of expediency. 1 P. L. J. 97=35 Ind. Cas. 506, District Magistrate cannot revise discharge under s. 119 Cr. Pro. Code. 51 A 408=1929 A. L. J. 146=30 Cr. L. J. 63=113 Ind. 79. The circumstances under which an order of discharge under s. 209 Cr. Pro. Code is set aside are exactly similar to those in which an order would be set aside which had been passed under s. 253, Cr. Pro. Code. 35 Cr. L. J. 1282=A. I. R. 1934 Pesh. 52. An order under s. 249 is neither order for dismissal nor order of discharge. District Magistrate has no jurisdiction to quash such order and direct further enquiry. A. I. R. 1934 All. 17. Order of discharge can be set aside though no additional evidence is to be produced. 34 P. L. R. 446=34 Cr. L. J. 735=A. I. R. 1933 Lah. 561. Where discharge amounts to acquittal, further inquiry should generally be not ordered. 1933 Cr. C. 819=34 P. L. R. 719=34 Cr. L. J. 735=A. I. R. 1933 Lah. 561. Magistrate discharging accused on ground that he has no jurisdiction to entertain complaint is not order of discharge and Sessions Judge is not competent to deal with it under s. 436. 144 Ind. Cas. 519=1933 M. W. N. 217=34 Cr. L. J. 800=A. I. R. 1933 Mad. 413. Further enquiry under s. 436 is not confined to one under s. 202. 130 Ind. Cas. 529=32 Cr. L. J. 548=12 P. L. T. 729=A. I. R. 1931 Pat. 50. In case of discharge under s. 494 further enquiry can be ordered under s. 436. A. I. R. 1933 Nag. 78=29 N. L. R. 201=34 Cr. L. J. 519. Discharge under s. 119 is discharge after full enquiry is made and not one as contemplated by s. 436, whereunder person is discharged before complete trial. 34 Cr. L. J. 519=29 N. L. R. 201=A. I. R. 1933 Nag. 78. Any case which is before Magistrate is under inquiry. 1933 Cr. C. 315=34 Cr. L. J. 519=29 N. L. R. 201=A. I. R. 1933 Nag. 78.

Power to order commitment.

*[437]. When, on examining the record of any case under section 435 or otherwise, the Session Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has

* This section which was originaly numbered 436 was renumbered 437 by s. 117 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged :

Provided as follows :—

(*a*) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;

(*b*) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

Scope.—This section gives the fullest discretion to a District Magistrate or a Sessions Judge to order a commitment where he considers that an accused person has been improperly discharged. 26 A. 564=A. W. N. 1904, 125=1 A. L. J. 292=1 Cr. L. J. 510. Both the Sessions Judge and the District Magistrate can order a commitment under this section. 28 C. 397 ; Rat. Un. Cr. C. 837. A case does not come within the purview of this section merely because in the opinion of the District Magistrate the offence alleged to have been committed could not be adequately punished by a Magistrate. A. W. N. 1908. 89=8 Cr. L. J. 47. It is an essential condition precedent to a valid order under this section that the accused should have an opportunity of showing cause against his commitment. A. W. N. 1888, 236. The discretion given to the Sessions Judge under this section is very wide, and when in the exercise of that discretion, he commits the accused to the Sessions, the High Court should be slow to interfere. 13 A. L. J. 111=16 Cr. L. J. 139=27 Ind. Cas. 203.

The High Court can revise an order of commitment on points of fact as well as on questions of law. 81 Ind. Cas. 913=25 Cr. L. J. 1089. The High Court has to weigh both the opinions and consider the entire evidence on the record just as it would consider in any criminal matter coming before it for decision. 25 Cr. L. J. 785=1924 Oudh. 314. The High Court can interfere in revision with wrong inference, even of fact, from proved facts. 25 Cr. L. J. 1073=81 Ind. Cas. 897=1925 Nag. 123. Under this section the Sessions Judge has jurisdiction to commit an accused for trial in the Sessions Court if he is of opinion that the case against the accused is triable exclusively by the Court of Session, or it is intimately connected with a charge exclusively triable by the Sessions Court and forms part of the same transaction. 53 C. 645=97 Ind. Cas. 659.=27 Cr. L. J. 1139. An order of the Sessions Judge in the exercise of his revisional jurisdiction under this section cannot form the subject-matter of a reference to the High Court at the instance of the Magistrate whose order has been interfered with. 49 A. 443=25 A. L. J. 191=28 Cr. L. J. 281. Competency of trial Court to try a case does not affect powers of Sessions Judge under s. 423. A. I. R. 1933 Lah. 128=34 Cr. L. J. 640=1933 Cr. C. 242.

Grounds of interference.—Discharge cannot be set aside unless it is perverse and not merely wrong. 6 P. L. T. 570=26 Cr. L. J. 886=86 Ind. Cas. 822 ; see also 22 Cr. L. J. 199=3 Lah. L. J. 97=60 Ind. Cas. 55.

Notice.—Notice to show cause should be given before order to the prejudice of accused is passed. 15 P. L. J. 627 ; see also 17 P. L. R. 1919 ; 49 M. L. J. 155=48 M. 874=26 Cr. L. J. 1573=90 Ind. Cas. 530 ; 71 Ind. Cas. 360 ; 21 Cr. L. J. 847 ; 21 Cr. L. J. 521=109 P. L. R. 1920=56 Ind. Cas. 777 ; 20 Cr. L. J. 835=53 Ind. Cas. 931 ; 20 Cr. L. J. 770 ; 20 Cr. L. J. 769=53 Ind. Cas. 609 ; 19 Cr. L. J. 399=44 Ind. Cas. 751.

Order of discharge.—"Discharged" means also partially discharged *e.g.*, not charged with offence exclusively triable by Sessions. A. I. R. 1934 Lah. 164=13 Lah. 138=P. L. R. 1934 Lah. 513. When an accused is discharged after framing of charge it virtually tantamonts to an acquittal. 150 Ind. Cas 852=35 Cr. L. J. 1151=A. I. R. 1934 Oudh. 327. The District Magistrate has no jurisdiction to take action under this section when no irregularity or illegality has been committed by the discharging Magistrate. *Ibid.* Proceedings under this section can be taken against implied order of discharge by Magistrate. A. I. R. 1934 All. 141=1934 P. L. J. 478=35 Cr. L. J. 865=56 A. 529. In case of commitment order passed by District Magistrate under s. 437, High Court will not interfere if there is some evidence to go to the jury. A. I. R. 1934 Sind. 27=35 Cr. L. J. 884=1934 Cr. C. 225. An offence under section 304A I. P. Code is an offence triable by a Court of

Session as well as by a Magistrate of the first class, as such the District Magistrate has no jurisdiction to order a further enquiry under s. 437. 35 Cr L. J. 1151=11 O. W. N. 818=A. I. R. 1934 Oudh. 327. Order of discharge should not be lightly set aside in revision. 35 Bom. L. R. 245=34 Cr. L. J. 564=57 B. 430=A. I. R. 1933 Bom. 158 ; see also A. I. R. 1933 All. 482=1933 A. L. J. 1115=146 Ind. Cas. 160. Person discharged under s. 119 is not accused within meaning of s. 437 and District Magistrate cannot order further enquiry. 31 P.L.R. 350=32 Cr. L.J. 21=A. I. R. 1931 Lah. 185. Where accused is charged under s. 366, Penal Code and prosecution evidence discloses offence under s. 376 and the application to amend discharge is rejected, the order amounts to a discharge under s. 376 and can be revised. 137 Ind. Cas. 904=15 N. L J. 26=33 Cr. L. J. 558=A. I. R. 1932 Nag. 85. Where person was committed to Sessions Court for offence under s. 201 I. P. Code but on subsequent examination of witnesses under s. 219, Cr. Pro. Code by committing Magistrate, Sessions Judge, added charge under s. 302 I. P. Code, on the the basis of such evidence, such charge must be quashed. 34 Cr. L. J. 278=65 M. L. J. 6=A. I. R. 1933 Mad. 247. In case of discharge of accused by Magistrate, Sessions Judge's power to set aside discharge order is not limited to cases where order is perverse or manifestly contrary to evidence, but he can do so even on ground that he disagrees with appreciation of evidence by Magistrate. A. I. R. 1935 Bom. 137 (F. B.)=37 Bom. L. R. 16 ; see also A. I. R. 1935 Pat. 52.

Report to High Court.

438. (1) The Sessions Judge or District Magistrate may, if he thinks fit on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him* (by or under any general or special order of the Sessions Judge.)

Notes.—This section enables a District Magistrate to report to the High Court for orders the proceedings of any inferior Criminal Court whose records he has examined under s. 435 ; but the law gives him no power to criticise or refer the proceedings of a Court superior to his own, *e. g.*, the Sessions Court. 2 weir ; 565 Weir. 500 ; Rat. Un. Cr. C. 212 ; 2 A. L. J. 589=28 A. 91=A.W.N. 1905 ; 198=2 Cr. L.J. 515 ; 12 A.L.J. 519=36 A. 378 ; 12 A.L.J. 255 ; 6 Bom. L R. 1039=1 Cr. L.J. 115 ; 9 A. 362=A. W. N. 1887, 64. Where the object of the reference under this section by a District Magistrate, is to induce the High Court to set aside an order of acquittal by an inferior Court, the reference will not be entertained by the High Court. If the Local Government desires to appeal from the acquittal s. 417 is open to it. 25 A. 128=A. W. N. 1902, 200. A Subordinate Magistrate has no jurisdiction to revise his own order. Where a sentence passed by him is illegal, he should refer the matter to the District Magistrate under this section. 2 L. B. R. 43. If the District Magistrate considers the order passed by the Sessions Judge to be illegal, he should ask the public Prosecutor to bring it before the High Court. 12 M. L. T. 170=1912 M. W. N. 812=16 Ind. Cas. 552=13 Cr. L. J. 714=23 M. L J. 732. A District Magistrate is not competent to refer to a High Court, under s. 438, a point of law actually arising in a case pending before him. 15 Cr. L. J. 472=24 Ind. Cas. 352. Where no appeal has been preferred by the Government, it is very rarely correct to interfere, on revision with an acquittal. 13 P. W. R. 1907 Cr.=72 P. L. R. 1908=5 Cr. L. J. 438. A District Magistrate is competent to make a reference under this section recommending that a sentence passed by a Sessions Judge should be enhanced. 15 Lah. 11=25 Cr. L. J. 928=81 Ind. Cas. 544=1924 Lah. 451. A District Magistrate is not empowered to make a reference to the High Court questioning the propriety of a judgment by a Court of Session. 26 P. L. R. 801=93 Ind. Cas. 158=27 Cr. L. J. 430. The Code of Criminal Procedure does not contemplate that a representation made by the Police to the District Magistrate in the form of an official letter should be taken into consideration by the Court as embodying the grounds for setting aside an order by a Criminal Court. 105 Ind. Cas. 658=28 Cr. L. J. 946=A. I. R. 1927 All. 720. Under this section the District Magistrate and the District Judge have concurrent jurisdic-

* Substituted by Act XVIII of 1923.

tion as such direct reference by the District Magistrate is competent. A. I. R. 1934 Sind. 154. In case of illegal order passed the Additional Judge a reference by him is competent. 15 P. L. T. 475=A. I. R. 1934 Pat. 551. Sessions Judge or Magistrate cannot refer his own order with recommendation that it be altered. A. I. R. 1933 Pat. 697 ; but see A. I. R. 1934 Lah. 155 ; 1930 A. L. J. 1076. District Magistrate cannot make reference for enhancement of sentence passed by Sessions Judge, 32 Cr. L. J. 1125=9 Rang. 352=A. I. R. 1931 Rang. 251.

No reference should be made only with regard to findings on merits. Only point of law should be referred. 35 C. W. N. 374=32 Cr. L. J. 1237=58 C. 1081=A. I. R. 1931 Cal. 619 ; see also A. I. R. 1934 Oudh. 280=35 Cr. L. J. 951=11 O. W. N. 719=149 Ind. Cas. 364 ; A. I. R. 1934 Oudh. 278=11 O. W. N. 718 ; A. I. R. 1934 Oudh. 276=1934 Cr. C. 773 ; A. I. R. 1931 Rang. 225=9 Rang. 239=32 Cr. L. J. 950. Some substantial error of law is necessary. 38 M. L. T. 15=28 Cr. L. J. 207=A. I. R. 1927 Mad. 434=99 Ind. Cas. 943 ; see also 20 Cr. L. J.651=A. I. R. 1925 Cal. 1068=85 Ind. Cas. 939 ; but see 24 C. W. N. 549.

Sessions Judge cannot review a wrong order by his predecessor. The proper course is to refer case to High Court. 31 Bom. L. R. 593=53 B. 578=31 Cr. L. J. 309=121 Ind. Cas. 588. Under ss. 435 and 438 the powers of Sessions Judge to call for and examine record and (if he thinks fit) submit report to High Court are very wide and can be exercised even when convict has not moved. A. I. R, 1931 Lah. 145=32 P. L. R. 71=131 Ind. Cas. 353 ; see also 1930 A. L. J. 1475. Where application under s 145 is rejected, the proper procedure for the District Magistrate is under s. 438, to make reference to High Court. 30 Cr. L. J. 709=A. I. R. 1928 Rang. 292=117 Ind. Cas. 59. Reference by Sessions Judge to set aside erroneous acquittal is ordinarily acceptable but not one by District Magistrate as he can proceed under s. 417 for an appeal against such acquittal. 7 Pat. 579=30 Cr. L. J. 673=A. I R. 1929 Pat. 139=116 Ind. Cas. 768. High Court would not go into merits unless there is material departure from legal principles. 51 A. 663=30 Cr. L. J. 562=A. I. R. 1929 All. 273=1929 P. L. J 361. Reference under s. 438 recommending revision of orders of acquittal stands on no higher footing than applications of private prosecutors for such revision. 33 C. W. N. 258=30 Cr. L. J. 579=56 C. 924=116 Ind. Cas. 164. District Magistrate setting on revision must give notice to complainant and bring on record all materials both parties may adduce. before he arrives at conclusion. 49 C. L. J. 62=30 Cr. L. J. 401=A. I. R. 1929 Cal. 204=115 Ind. Cas. 95. District Magistrate in the exercise of revisional powers cannot quash proceedings, if defence case is made out, but must refer to High Court for final order. 49 C. L. J. 62=30 Cr. L. J. 401. Where sentence is considered inadequate, District Magistrate or Sessions Judge should be moved by police at earliest movment. 9 Pat. L. T. 831=29 Cr. L. J. 261=A. I. R. 1928 Pat. 201=107 Ind. Cas. 536. In revision High Court need not examine whether evidence may lead to a different finding. 28 Cr. L. J. 901=9 P. L. T. 18=A. I. R. 1928=Pat 88=105 Ind. Cas. 229. Revision from order of acquittal under s. 438 should not ordinarily be allowed. 5 Lah. 16=29 Cr. L. J. 931=A. I. R. 1924 Lah. 451=81 Ind. Cas. 547. The District Magistrate cannot himself set aside the decision of lower Court under s. 145 Cr. Pro. Code. He must refer the case to the High Court. 26 Cr. L. J. 1166=A. I. R. 1925 Cal. 1234=88 Ind. Cas. 526. Reference in form of letter to Registrar of High Court. is not appropriate. 3 Bur. L. J. 27=25 Cr. L. J. 1300=A. I. R. 1924 Rang. 295=82 Ind. Cas. 471. It is not in accordance with practice of Allahabad High Court to interfere on reference by Sessions Judge where the Government could have appealed under s. 417 and has not done so. 26 Cr. L. J. 127=A. I. R. 1924 All. 624=83 Ind. Cas. 687. Court should not lightly set aside in revision dismissal of complaint but only when there has been miscarriage of justice. 26 Cr. L. J. 866=A. I. R. 1925 Pat. 447=86 Ind. Cas. 802. A District Magistrate cannot make direct reference on refusal of the Sessions Judge to forward it 49 A. 443=25 A. L. J. 191=28 Cr. L. J. 281=A. I. R. 1927 All. 279=100 Ind. Cas. 361 ; see 41 B. 47=17 Cr. L. J. 522=18 Bom. L. R. 796 ; 21 S. L. R. 48=27 Cr. L. J. 1253=A. I. R. 1927 Sind. 45 ; 26 P. L. R. 801=27 Cr. L. J. 430=93 Ind. Cas, 158. Section 438 must be read with s. 435. 27 Cr. L. J. 1253=21 S. L. R. 48=A. I. R. 1927 Sind. 45=95 Ind. Cas. 10 Sessions Judge, once refused to refer under s. 438 not debarred from making another reference in same case considering facts coming to his knowledge subsequently. 29 Bom. L. R. 480=58 Cr. L. J. 896 =A. I. R. 1927 Bom. 360=104 Ind. Cas. 912. Reference to Calcutta High Court under s. 438 Cr. Pro. Code should always be in form prescribed by General Rules and circular orders of the Calcutta, High Court Criminal App. Side. 26 Cr. L. J. 1055=30

C. W. N. 646=A. I. R. 1726 Cal. 316=87 Ind. Cas. Magistrate acquits accused of an offence under s. 447 I. P. Code on gronund that immovable property was not in any body's possession, High Court will not interfere in revision. 7 L. L. J. 42=26 Cr. L. J. 689=26 P. L. R. 38=86 Ind. Cas. 65. Reference merely with object of obtaining ruling on a question of law ought not to be made. 23 A. L. J. 189=26 Cr. L. J. 865=47 A. 409=A. I. R. 1925 All. 318=86 Ind. Cas. 801. High Court will not interfere with order of acquittal, passed by Magistrate of competent jurisdiction on a prosecution for s. 225 B. of Penal Code. 23 A. L. J. 189=26 Cr. L. J. 865=47 A. 409=A. I. R, 1925 All. 318=86 Ind. Cas. 801. Power to refer under s. 438 is not restricted to matters in revision under s. 439. 35 Bom. L. R. 1054=A. I. R. 1933 Bom. 485. Interference in revision in order to examine evidence will only be undertaken in special case. 35 C. W. N. 374=58 C. 1081=32 Cr. L. J. 1237=A. I. R. 1931 Cal. 619. Where appeal to Sessions Judge against conviction of Magistrate is dismissed, reference by District Magistrate to High Court for enhancement of sentence should not be entertained. 146 Ind. Cas. 354=57 C. L. J. 211=1933 Cr. C. 1358=A. I. R. 1933 Cal. 791. Practice as regards reference in case under s. 145 is same as it is in ordinary case. 32 Cr. L. J. 1237 134 Ind. Cas. 915=58 C. 1081=35 C. W. N. 374=A. I. R. 1931 Cal. 619. High Court should interfere where Judgment is perverse on question of sentence. 33 Cr. L. J. 500=30 P. L. R. 215=A. I. R 1932 Lah. 258. In case of acquittal Local Government not appealing, High Court will not entertain reference, 134 Ind. Cas. 208=32 Cr. L. J. 1128=32 P. L. R. 789=A. I. R. 1931 Lah. 533. Sessions Judge's powers are very wide, convict need not move him. 32 P. L. R. 71=32 Cr. L. J. 700=A. I. R. 1931 Lah. 145.

High Court's powers of revision.

439. (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections*†, 423, 426, 427, 428 and or on a Court by section 338, and may enhance the sentence; and when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

‡[(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.]

Powers of High Court.—The revisional powers though wide are purely discretionary and must be exercised to further ends of justice. A. I. R. 1931 Lah. 145=1931 Cr. C. 257=131 Ind. Cas. 353. High Court is to satisfy itself as to correctness, legality or property of order of lower Court and to pass such orders as may be necessary. The powers of the High Court in revision are general and cannot be cut down by any decision. A. I. R. 1931 Mad. 242=60 M. L. J. 370=131 Ind. Cas. 649.

* These words were substituted for the words "by the Sessions Judge" by s. 118 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The figures "195" were omitted by s. 119, *ibid.*

‡ This sub-section was added by *ibid.*

High Court will not interfere unless failure of justice is caused. A. I. R. 1933 Oudh. 421=10 O. W. N. 903=1933 Cr. C. 1294 ; see also 32 P. L. R. 71=32 Cr. L. J. 700= A. I. R. 1931 Lah. 145. High Court has widest powers of revision and Judges should not lay down rules restricting such powers. 35 Bom. L. R. 1040=A. I. R. 1933 Bom. 482 s. 439 is concerned with powers of revision when findings of fact are not open to review. 60 C. 179=34 Cr. L. J. 177=1932 Cr. C. 728=36 C. W. N. 1152=A. I. R. 1932 Cal. 723. High Court can rectify error of law. A. I. R. 1932 Lah. 362=33 P. L. R. 267=33 Cr. L. J. 341. High Court can set aside conviction of non-apealing accused even without issuing rule on prosecution where appeal by co-accused is allowed. 35 C. W. N. 347=581 ; 902=32 Cr. L. J. 1003=A. I. R. 1931 Cal. 618. Under the combined provisions of ss. 423 and 439. High Court has power to alter conviction under s. 326 to one under s. 302 Penal Code. A. I. R. 1933 Lah. 661= 1933 Cr. C. 883. The High Court has power to pass orders on a reference by a Judge in respect of his own order. 1930 A. L. J. 1076=A. I. R. 1930 All. 817=129 Ind. 260. Every irregularity or illegality does not *ipso facto* vitiate trial or call for exercise of powers of interference unless it has resulted in failure of justice. 1930 Cr. C. 1147= A. I. R. 1930 Sind. 315 ; see also 1930 M. W. N. 770. The powers of High Court are not intended for gratification of private malice, nor to vindicate position of private prosecutor where a merely technical offence has been committed. 9 Pat. 113=A. I. R 1930 Pat. 241=31 Cr. L. J. 789=11 P. L. T. 772=125 Ind. Cas. 134. High Court can interfere in case of excessive sentence even when case is before it on reference. 30 Cr. L. J. 918=A. I. R. 1929 Lah. 187=118 Ind. Cas. 438. Revision Court is not precluded from interfering with questions of fact. 31 Cr. L. J. 659=129 Ind. Cas. 449. High Court will interfere only when there is strong probability that further enquiry will result in conviction. 31 Cr. L. J. 413=A. I. R. 1930 Nag. 150=122 Ind. Cas. 384 ; see also 30 Cr. L. J. 755=1929 Cr. C. 176=A. I. R. 1929 All. 588=117 Ind. Cas. 345. Section 439 enacts that the powers possessed by High Court are the powers conferred on an Appellate Court. The High Court has power at any stage to quash proceedings. 47 M. 722=47 M. L. J. 1009=81 Ind. Cas. 785 ; see also 11 O. L. J. 748=25 Cr. L. J. 1375=82 Ind. Cas. 767. High Court is not precluded by Sub- section (5) from interfering with conviction of accused who had not preferred an appeal when case is before Court otherwise than at his instance. 29 Cr. L. J. 325=A. I. R. 1928 Pat. 326=108 Ind. Cas. 81. Where accused was charged under s. 304, before Sessions Judge and convicted under s. 304, the High Court cannot convict him under s. 302 in revision as the Sessions Judge's order amounted to an acquittal. 50 A. 722=55 I. A. 390=26 A. L. J. 1099=30 Bom. L. R. 1572 =48 C. L. J. 397=33 C. W. N. 1=29 Cr. L. J. 828=A. I. R. 1928 P. C. 254=55 M. L. J. 786=111 Ind. Cas. 332.

High Court will not interfere in cases of technical illegality which has not prejudiced accused. 27 Cr. L. J. 558=93 Ind. Cas. 1054. High Court will not interfere with questions of fact except in grave cases of doubt as to conviction, of accused. 9 O. L. J. 488=25 Cr. L. J. 278=A. I. R. 1923 Oudh. 8=76 Ind. Cas. 870. High Court can interfere with order of Magistrate calling upon applicant to show cause why prosecution under s. 193 I. P. Code should not be directed. 18 Cr. L. J. 46=P. L. J. 851= 36 Ind. Cas.878. Under s. 439, High Court exercising criminal jurisdiction has no power to revise the District Judge's order under s. 476 Cr. Pro. Code. 18 Cr. L. J. 121=10 Ber. L. T. 13=37 Ind. Cas. 473. Under s. 439 the chief Court has power to examine the records of a case and pass necessary orders. 18 Cr. L. J. 121=23 P. R. 1916 Cr.=37 Ind. Cas. 473. Both under s. 439 and s. 107 of Government of India Act, High Court has powers to direct a Sessions Judge to re-hear an appeal after obtaining additional evidence. 19 Cr. L. J. 902=3 P. L. J. 632=47 Ind. Cas. 274. High Court should freely exercise the powers of revision vested in it under s. 439. 40 M. 1130=33 M. L. J. 366=18 Cr. L. J. 612=39 Ind. Cas. 980. If courts below have committed accused under wrong section and no charge was framed, High Court can revise the section under which the conviction has been recorded without any further proceedings. 19 Cr. L. J. 884=3 Pat. L. J. 354=47 Ind. Cas. 80. High Court has jurisdiction to examine orders passed under s. 523 Cr. Pro. Code. 4 Lah. 38=24 Cr. L. J 670=A. I. R. 1929 Lah. 76=73 Ind. Cas. 702. Court in revision should not go behind the finding of lower Courts. A just order though technically wrong cannot be interfered with. 31 M. L. T. 388=24 Cr. L. J. 476=A. I. R. 1923 Mad. 237=72 Ind. Cas. 892. High Court's powers of revision are in express terms limited to those conferred by certain sections mentioned in s. 439. 1 Rang. 632=2 Bur. L. J. 286=25 Cr. L. J. 85=A. I. R, 1924 Rang. 100=77 Ind. Cas. 885. High Court has power to quash proceedings even at the stage when accused is merely summoned and no final order is passed. 23 Cr. L.J. 429=A.I.R. 1922 Lah. 452=67 Ind. Cas. 589. High Court

has power to set aside charge only in exceptional cases. 5 L. L. J. 36=24 Cr. L. J. 118=A.I.R. 1923 Lah. 278=71 Ind. Cas. 246. A criminal revision petition dismissed for default can be re-heard. A.I.R. 1924 Lah. 310=69 Ind. Cas. 638; see also 44 M.L. J. 27=23 Cr. L. J. 746=A. I. R. 1923 Mad. 276=69 Ind. Cas. 634. High Court has no power to award costs incurred before it on Criminal Revision against an order passed under Chapter XII of the Criminal Procedure Code. 48 M. 262=26 Cr. L. J. 707=A.I. R. 1925 Mad. 438=48 M. L. J. 106=86 Ind. Cas. 147 (F. B.). High Court cannot convert a binding of acquittal into conviction unless it is acting both as appellate and revisional Court. 4 Rang. 140=5 Ber. L. J. 80=27 Cr. L. J. 1393=A. I. R. 1926 Rang. 154=98 Ind. Cas. 705; see also 20 S. L. R. 352=27 Cr. L. J. 1121=A. I. R. 1927 Sind. 16; 8 L. L. J. 188=27 P. L. R. 244=27 Cr. L. J. 561=A. T. R. 1926 Lah. 361=94 Ind Cas. 134. The High Court cannot entertain petition on matter already disposed of, when the order is still in force and has not been set aside. 17 M. L. W. 23=1922 M. W. N. 821=23 Cr. L. 746=A. I. R. 1923 Mad. 276=44 M. L. W. 27=69 Ind. Cas. 634. High Court has extraordinary jurisdiction to set aside a charge framed by the lower Courts. 29 Cr. L. J. 1008=A. I. R. 1929 Lah. 67=112 Ind. Cas. 224. Powers of revision are given to second Appellate Court for the correction of injustices. 29 Cr. L. J. 486=A. I. R. 1928 Nag. 172=109 ind. Cas. 214. High Court would not as a rule, exercise those powers in a case where the Magistrate making the report has jurisdiction to dispose of matter himself. 22 S. L. R. 201=28 Cr. L. J. 978=A. I. R. 1928 Sind. 69=105 Ind. Cas. 802. High Court has no power of revision to convert a finding of acquittal into one of conviction whether the acquittal is partial or complete. 50 M. 259=28 Cr. L. J. 397=A. I. R. 1927 Mad. 582=52 M. L. J. 707. Costs of revision proceedings cannot be awarded. A. I. R. 1933 All. 264 (F. B.)=55 A. 301. High Court having proceedings in appeal before it, it can proceed to exercise its powers of revision and enhance sentence. A. I. R. 1935 P. C. 35. Where grounds that proceedings are barred under s. 403 (1) are not taken in revision petition, High Court can take notice of it *suo motu*. A. I. R. 1935 Nag. 23.

Acquittal.—In cases of acquittal revisional jurisdiction is to be sparingly used 32 Cr. L. J. 928=8 Rang. 663=A. I. R. 1931 Rang. 94; see also A. I. R. 1932 Pat. 276=13 P. L. T. 480=49 Cr. L. J. 263. Even in case of acquittal High Court. interferes where there is glaring defect in procedure of lower Court or wrong view of law is taken. 132 Ind. Cas. 50=8 O. W. N. 241=32 Cr. L. J. 828=A. I. R. 1931 Oudh. 273; see also A. I. R. 1932 All. 191=1932 A. L. J. 166=54 A. 413=33 Cr. L. J. 885; A. I. R. 1922 Oudh. 430=10 O. W. N. 1037=1933 Cr. C. 1315; A. I. R. 1933 Oudh. 257=9 O. W. N. 345=1933 Cr. C. 562=34 Cr. L. J. 661; A. I. R. 1934 All. 714=35 Cr. L. J. 1289=151 Ind. Cas. 350; A. I. R. 1934 All. 190=35 C. R. L. J. 908=1934 A. L. J. 541=149 Ind. Cas. 612=1934 Cr. C. 200; 20 C. W. N. 862; 14 A. L. J. 1075=36 Ind. Cas. 139; 17 Cr. L. J. 1=2 L. W. 1244; 23 Cr. L. J. 313=66 Ind. Cas. 999; 19 A. L. J. 382=22 Cr. L. J. 597; 47 C. 818; 12 Cr. L. J. 564; 19 Cr. L. J. 399; A. I. R. 1934 All. 846=1934 Cr. C. 1033; 35 Cr. L. J. 1236=150 Ind. Cas. 951=11 O. W. N. 810; 8 Rang. 663=A. I. R. 1931 Rang. 94; 29 Cr. L. J. 538=A. I. R. 1928 Lah. 844=109 Ind. Cas. 362. High Court can set aside improper order of acquittal either on appeal by Local Government or on reference by Sessions Judge. 31 Cr. L. J. 584=A. I. R. 1930 Lah. 159=12 L. L. J. 5=123 Ind. Cas. 841; see also 12 Lah. L. J. 33=A. I. R. 1930 Lah. 338=127 Ind. Cas. 885. Misappropriation of evidence is no ground for revision against acquittal. A. I. R. 1931 Nag. 102=31 Cr. L. J. 194=121 Ind. Cas. 51. Acquittal cannot be changed into conviction except by appeal by the Local Government. Revision by complainant does not lie. A. I. R. 1929 Nag. 128=30 Cr. L. J. 552=116 Ind. Cas. 79; see also 25 Bom. L. R. 488=24 Cr. L. J. 734=73 Ind. Cas. 974; see also 29 Cr. L. J. 1017=A. I. R. 1928 Pat. 193=112 Ind. Cas. 345; 35 P. L. R. 730; A. I. R. 1933 Nag. 259=1933 Cr. C. 930; A. I. R. 1933 Nag. 36=28 N. L. R. 298=34 Cr. L. J. 145; 30 Cr. L. J. 251=A. I. R. 1928 Sind. 176=114 Ind. Cas. 110; 110 Ind. Cas. 224=29 Cr. L. J. 672=A. I. R. 1928 Lah. 843. Where Crown does not move against order of acquittal in private prosecutions High Court interferes only on grounds of miscarriage of justice, error of law or public interest. 33 C. W. N. 576=30 Cr. L. J. 1013=A. I. R. 1929 Cal. 639=119 Ind. Cas. 130. No revision lies against acquittal based on erroneous view of law. 11 N. L. J. 242=30 Cr. L. J. 405=A. I. R. 1929 Nag. 87=115 Ind. Cas. 169. Where Court of Session entertains appeal without jurisdiction High Court would interfere. 5 Rang. 710=29 Cr. L. J. 115=A. I. R. 1928 Rang. 49=106 Ind. Cas. 707. Order of acquittal made without jurisdiction can be set aside. A. I. R. 1932 Oudh. 251=33 Cr. L. J. 511=1932 Cr.

C. 592. Order setting aside conviction amounts to an order of acquittal. A. I. R. 1932 Rang. 147=10 Rang. 315=33 Cr. L. J. 63. S. 439 is not to be construed as referring only to case where trial ends in complete acquittal. A. I. R. 1932 Oudh. 25= 33 Cr. L. J. 162=8 O. W. N. 1299. High Court would not interfere unless there are glaring defects either in procedure or in view of evidence taken. 4 O. W. N. 729= 28 Cr. L. J. 788=A. I. R. 1927 Oudh. 345=104 Ind. Cas. 228 ; see also 7 L. L. J. 367=26 P. L. R. 644=26 Cr. L. J. 1596=90 Ind. Cas. 668 ; 49 A. 254=25 A. L. J. 100=27 Cr. L. J. 1407=A. I. R. 1927 All. 193=98 Ind. Cas. 719 ; 22 Cr. L. J. 638= 24 O. C. 157=63 Ind. Cas. 334 ; 29 Cr. L. J. 34=A. I. R. 1928 Lah. 185=106 Ind. Cas. 450. Ordinarily the High Court will not revise acquittal at the instance of private party. But on question of public importance relating to personal status of a substantial part of a community it will interfere. 45 M. 946=24 Cr. L. J. 17= A. I. R. 1923 Mad. 171=43 M. L. J. 663=71 Ind. Cas 65 ; see also 45 M. 923=23 Cr. L. J. 583=A. I. R. 1922 Mad. 502=68 Ind. Cas. 115 ; 22 A. L. J. 820=26 Cr. L. J. 98=83 Ind. Cas. 658 ; 25 Cr. L. J. 1389=A. I. R. 1925 Mad. 375=83 Ind. Cas. 349 ; 1 Rang. 604=25 Cr. L. J. 270=75 Ind. Cas. 830 ; 3 Ber. L. J. 323=26 Cr. L. J. 511=85 Ind. Cas. 255. Revision against acquittal will not be entertained in view of the fact that Legislature has provided a special channel for appeals against acquittals being filed. A. I. R. 1927 Nag. 210=101 Ind. Cas. 895 ; see also 23 N. L. R. 99 =26 Cr. L. J. 1348. High Court will interfere with acquittal under s. 247 Cr. Pro. Code. Also where acquittal is result of improper clutching of jurisdiction. 26 O. C. 282=25 Cr. L. J. 794=81 Ind. Cas. 314. High Court will not interfere with order of acquittal where public interest is not involved. 6 L. L. J. 50=26 Cr. L. J. 337=A. I. R. 1923 Lah. 601=84 Ind. Cas. 641. High Court will interfere with acquittal if there is no legal disposal of case. 24 Bom. L. R. 1150=24 Cr. L. J. 700=73 Ind. Cas. 812. Revision from acquittal lies when based on misapprehension of law. A. I. R. 1924 Lah. 286=69 Ind. Cas. 379. Revision lies against acquittal on invalid composition of offence. 24 C. L. J. 120=71 Ind. Cas. 248. High Court will not go into evidence as a rule in revision against acquittal. 23 N. L. R. 40=28 Cr. L. J. 523=A. I. R. 1927 Nag. 170=102 Ind. Cas. 219. Where referring Court does not want to change acquittal into conviction but is anxious to point out erroneous view of law taken by lower Court, High Court will interfere. 26 Cr. L. J. 686=26 P. L. R. 35=A. I. R. 1925 Lah. 464. Where conviction under one section is altered to conviction under another section, it does not amount to acquittal. 48 B. 510=26 Bom. L. R. 438= 26 Cr. L. J. 830=A. I. R. 1924 Bom. 456=86 Ind. Cas. 478 ; but see 26 Cr. L. J. 755=48 M. 774=A. I. R. 1925 Mad. 480=86 Ind. Cas. 339. Revision against acquittal will not lie unless there is an error of law on the face of the record. 52 M. L. J. 173=28 Cr. L. J. 270=A. I. R. 1927 Mad. 473=100 Ind. Cas. 238. Acquittal means complete discharge of all the allegations charged. 8 Lah. 136=28 Cr. L. J. 508=A. I. R. 1927 Lah. 369=101 Ind. Cas. 892.

Exercise of discretion—High Court must exercise discretion in revision in cases clearly justified. 3 Pat. L. T. 93=23 Cr. L. J. 272=A. I. R. 1922 Pat. 160= 66 Ind. Cas. 336. Discretion should be exercised only to prevent injustice or where point of law of general importance is involved. A. I. R. 1932 Bom. 637=34 Cr. L. J. 142=34 Bom. L. R. 1444=56 B. 554=1932 Cr. C. 871 ; see also 33 Cr. L. J. 811= A. I. R. 1932 Oudh. 113=9 O. W. N. 116 ; A. I. R. 1934 Sind. 20=35 Cr. L. J. 891. Where Magistrate has exercised discretion, his action should not be lightly interfered with. A. I. R. 1933 Lah. 409=34 P. L. R. 368=1933 Cr. C. 650 ; see also A. I. R. 1934 Pat. 214=15 P. L. T. 196=35 Cr. L. J. 1327 ; 35 Cr. L. J. 1059=A. I. R. 1934 All. 514 ; A. I. R. 1932 Mad. 495=33 Cr. L. J. 783. High Court should not as far as possible interfere with order under s. 476 B. 34 C. W. N. 923=32 Cr. L. J. 325 ; 2 Pat. 708=77 Ind. Cas. 734. High Court should not interfere with a sentence unless it is so severe or lenient as to indicate an improper exercise of discretion. 23 Bom. L. R. 358=22 Cr. L. J. 324=61 Ind. Cas. 52 ; see also A. I. R. 1928 Pat. 491=60 Ind, Cas. 308 ; A. I. R. 1921 Pat. 472=61 Ind. Cas. 870. Power of revision is discretionary and should not be used on trifling occasions. 30 Cr. L. J. 799= A. I. R. 1929 Oudh. 240=117 Ind. Cas 452. High Court will not interfere where exercise of discretion is not arbitrary. 19 S. L. R. 353=25 Cr. L. J. 1368=A. I. R. 1925 Sind. 190=82 Ind. Cas. 760.

Appealable Cases.—Where appeal is triable but not filed no revision will be allowed. 55 M. L. J. 676=A. I. R. 4928 Mad. 1174=113 Ind. Cas. 525 ; see also 14 S. L. R. 173=22 Cr. L. J. 313=60 Ind. Cas. 1001 ; A. I. R. 1931 Mad. 419=60 M. L. J. 495=32 Cr. L. J. 895=54 M. 595 ; A. I. R. 1931 Mad. 240=60 M. L. J.

694=54 on 251=32 Cr. L. J. 719; A. I. R. 1932 Sind. 211=26 S. L. R. 345=30 Cr. L. J. 67; A. I. R. 1933 Rang. 329=1933 Cr. C. 1246; 32 Cr. L. J. 730=A. I. R. 1931 Lah. 145. Where the appealable cases, appeal is not preferred though allowed, still High Court can exercise its revisional powers when there is sessions miscarriage of justice. A I. R. 1931 Lah. 145=32 Cr. L. J. 700=32 P. L. R. 71=131 Ind, Cas. 354. But in appealable cases, the Court is not bond to trial application for revision as appeal. 146 Ind. Cas. 248=8 O. W. N. 1373=33 Cr. L. J. 278=7 Luck. 501=A. I. R. 1932 Oudh. 27. Since an appeal to superior Court lies against complaint under s. 476 there is no revision to High Court. 10 P. L. T. 161=30 Cr. L. J. 765=1929 Cr. C. 369=A. I. R. 1929 Pat. 640=117 Ind. Cas. 309. Appeal filed beyond limitation cannot be treated as revision as far as criminal procedure goes. 20 S. L. R. 90=27 Cr. L. J. 780=A. I. R. 1926 Sind. 215=95 Ind. Cas 316. Revision against appellate orders refusing to withdraw complaint under s. 476B is ordinarily not desirable. 27 Cr. L, J. 1101=96 Ind. Cas. 867. Right of appeal exists for complainant who is ordered to pay compensation exceeding Rs. 50 under s. 250, and so no revision lies. 1929 Cr. C. 452=30 Cr. L. J. 905=A. I. R. 1929 Sind. 176=118 Ind. Cas. 215. District Magistrate should move Local Government to prefer appeal against acquittal by trying Magistrate. 6 L. L. J. 50=26 Cr. L. J. 337=A. I. R. 1923 Lah. 601=84 Ind. Cas. 641. Competency of appeal excludes right to move for revision. High Court cannot interfere *suo motu*. 18 S. L. R. 262=25 Cr. L. J. 1362=A. I. R. 1925 Sind. 205=82 Ind. Cas. 744. Sessions Judge dealing with appealable sentences can deal with the application made by other accused who have received non-appealable sentences. 22 Cr. L. J. 297=34 P. L. R. Pat. 44=60 Ind. Cas. 793; see also 39 A. 549=18 Cr. L. J. 684=15 A. L. J. 574=40 Ind. Cas. 332. Order under s. 195 is appealable and therefore is not open to revision by High Court. But High Court will revise in respect of order under s. 476, if the order is shown to be perverse. 22 Cr. L. J. 151=59 Ind. Cas. 855.

When revision is allowed.—High Court may interfere in revision even if Sessions Court was already approached on the matter. 16 Cr. L. J. 794=31 Ind. Cas. 650. A private complainant can apply in revision to High Court for enhancement of a sentence. 1930 A. L J. 1324. Only in exceptional circumstances that Sind Judicial Commissioner's Court interferes in revision with findings of fact such as when the findings are supported by no legal evidence or are so manifestly erroneous resulting in a miscarriage of justice. 21 S. L. R. 130=27 Cr. L. J. 1276=A. I. R. 1927 Sind. 54=98 Ind. Cas. 124; see also 21 S. L. R. 107=27 Cr. L. J. 1233=A. I. R. 1927 Sind. 39=98 Ind. Cas. 49. It is not competent to the High Court to interfere in revision with proceedings under s. 145 Cr. Pro. Code. 41A. 302=20 Cr. L. J. 449=17 A. L J. 321=51 Ind. Cas. 337; see also 48 Ind. Cas. 987=20 Cr. L. J. 107. An order passed by Civil Court under s. 476 Cr. Pro. Code can be revised only under s. 115 C. P. Code and not under s. 439 Cr. Pro. Code. 21 Cr. L. J. 270=16 N. L. R. 23=55 Ind. Cas. 286. High Court does not interfere in revision on findings of fact. A. I. R. 1931 Sind. 113=1931 Cr. C. 61. It is not fair in revision to alter conviction under one Act, to one under another Act unless a conviction by the latter Act was obviously correct. 1930 A. L. J. 1467=A. I. R. 1931 All. 17=130 Ind. Cas. 626. A petition for revising proceedings under s. 195 of Cr. Pro. Code of a Civil Court should be made under s. 439 of the Criminal Procedure Code, and not under s. 115 C. P. Code. 17 Cr. L. J. 184=33 Ind. Cas. 824. In questions arising under ss. 110 and 107, if it is shown that Courts have done something either in excess of power or by a too summary exercise of it, revision application may be admitted but High Court should not interfere on the merits except in exceptional cases. 17 Cr. L. J. 461=36 Ind. Cas. 141; see also 15 A. L. J. 469=18 Cr. L. J. 630=39 A. 466=39 Ind. Cas. 998. Where Court having concurrent jurisdiction is not resorted to the High Court will decline to exercise jurisdiction but will direct the party to the lower Court unless there are special reasons to the contrary. 41 Ind. 831=18 Cr. L. J. 863; see also 43 A. 497=19 A. L. J. 425. The High Court on revision can direct the release of an offender who has been sentenced for pick-pocketing on his furnishing bond under s. 562. 23 Cr. L. J. 235=25 C. W. N. 720=66 Ind. Cas. 75. Where a party applies for revision and obtains an order issuing notice to show cause, he should confine himself to the ground on which the order was based. 42A. 646=18 A. L. J. 673=22 Cr. L. J. 228=60 Ind. Cas. 420. It is not fair in revision to alter conviction under one Act, to one under another Act unless a conviction by the latter Act was obviously correct. 1930 A. L. J. 1467=A. I. R. 1931 All. 17=130 Ind. Cas. 626. High Court in revision is not bound by s. 412 but may examine record for purpose of seeing whether accused had a fair trial and

whether their plea of guilty was based on a proper conception of the facts. A. I. R. 1930 Rang. 349=128 Ind. Cas. 845.

Question of law.—It is open to the High Court to revise a finding based on a misapprehension of the law. 30 Cr. L. J. 546=10 P.L.T. 483=A. I. R. 1929 Pat. 429=115 Ind. Cas. 895 ; see also 2 O. W. N. 823=26 Cr. L. J. 1619=A. I. R. 1925 Oudh. 739=90 Ind. Cas. 915 ; 29 C. L. J. 522=20 Cr. L. J. 574=46C. 986=52 Ind. Cas. 62 ; A. I. R. 1921 Pat. 415=22 Cr. L. J. 412=2 Pat. L. T. 455=61 Ind. Cas 794 ; A. I. R. 1930 Lah. 1051. Sufficiency of identification and propriety of conviction on evidence of one witness are questions of law. 32 Cr. L. J. 543=A. I. R. 1931 Sind. 13. Accused can contend in revision that he has been convicted on tainted evidence alone. A. I. R. 1932 Bom. 482=35 Bom. L. R. 1040. Interpretation of speech is question of law and High Court can interfere in revision. A. I. R. 1932 Lah. 559=32 P. L. R. 911=33 Cr. L. J. 831=1932 Cr. C. 713. Where Appellate Court wrongly considered that proceedings in the trial Court are without jurisdiction on a wrong application of law, order can be set-aside in revision. 27 Cr. L. J. 358=A. I. R. 1926 All. 368=92 Ind. Cas. 870. Where both the parties have tendered evidence the question of weight is not a question of law. 30 Cr. L. J. 1=1930 A. L. J. 254=A. I. R. 1930 All. 23. The question that there was no legally admissible evidence against the accused is a question of law. 35 Cr. L. J. 808=6 R. R. 258=148 Ind. Cas. 876 =A. I. R. 1934 Rang. 60.

Findings of fact.—In the absence of sufficient reason, High Court will not interfere with finding of fact. A. I. R. 1933 Oudh. 568 ; see also A. I. R. 1933 Oudh. 430=10 O. W. N. 1037=1933 Cr. C. 1315 ; A. I. R. 1934 Lah. 264=35 Cr. L. J. 1447=151 Ind. Cas. 943 ; A. I. R. 1934 Rang. 42=35 Cr. L. J. 849=148 Ind. Cas. 1035 ; A. I. R. 1934 Oudh. 179=35 Cr. L. J. 809=148 Ind. Cas. 899=11 O. W. N. 501. To justify interference Magistrate must have no evidence on which he could legally convict. 34 Bom. L. R. 278=56 B. 192=33 Cr. L. J. 385=A. I. R. 1932 Bom. 194. So also High Court is not bound by unfounded concurrent finding of facts by two lower Courts. A. I. R. 1933 Sind. 171=1933 Cr. C. 535=34 Cr. L. J. 1046=145 Ind. Cas. 621. High Court will not interfere unless there is failure of justice. A. I. R. 1933 Sind. 359 ; see also A. I. R. 1933 Sind. 139=34 Cr. L. J. 802. Finding based on evidence is not interfered with by Court of revision. A. I. R. 1932 Nag. 97=33 Cr. L. J. 835=28 N. L. R. 106 ; A. I. R. 1933 Nag. 33=34 Cr. L. J. 1038 ; A. I. R. 1933 Oudh. 195=34 Cr. L. J. 793=10 O.W.N. 233 ; A. I. R. 1932 Pat. 335=13 P. L. T. 588=34 Cr. L. J. 81 ; 50 Ind. Cas 983=20 Cr. L. J. 375 ; 18 Cr. L. J. 435=38 Ind. Cas. 995 ; 18 Cr. L. J. 915=42 Ind. Cas. 147 ; A. I. R. 1926 Mad. 154 ; 34 C. W. N. 580=A. I. R. 1930 Cal. 695 ; 30 Bom. L. R. 631=29 Cr. L. J. 977=A. I. R. 1928 Bom. 221 ; 26 Cr. L. J. 527=A. I. R. 1925 Oudh. 558=85 Ind. Cas. 367. In revision the High Court will not interfere with a finding of fact if it is within the competency of the Lower Court. 22 Cr. L. J. 230=60 Ind. Cas. 922. The High Court must see in revision if the evidence has been dealt with according to law. 21 Cr. L. J. 552=56 Ind. Cas. 856 ; see also 46 A. 64=25 Cr. L. J. 327. Revising Court will examine finding of fact only in exceptional cases. 1 Luck 301=29 O. C. 374=28 Cr. L. J. 321=A. I. R. 1927 Oudh. 132=100 Ind. Cas. 705 ; see also 6 Cr. L. J. 316=26 Cr. L. 393=84 Ind. Cas. 937 High Court does not consider facts in detail. 1933 Cr. C. 75=34 Cr. L. J. 1038=A. I. R. 1933 Nag. 33=145 Ind. Cas. 550. Ordinarily High Court will not go into facts unless conscience of the High Court has been touched. A. I. R. 1933 Pat. 697 : see also A. I. R. 1933 Sind. 396. Finding of fact can be interfered with in revision if not based on positive evidence but on inferences merely. 31 Cr. L. J. 249=11 P. L. T. 319=A. I. R. 1930 Pat. 209=112 Ind. Cas. 321 : 23 S. L. R. 216=30 Cr. L. J. 548=A. I. R. 1929 Sind. 90=116 Ind. Cas. 99. Where evidence has been considered by two courts, the High Court will not interfere in revision on the facts. 22 Cr. L. J. 647=24 O. C. 225=63 Ind. Cas. 407. High Court will interfere even with findings of fact to prevent a miscarriage of justice. 11 O. L. J. 330=25 Cr. L. J. 1066=27 O. C. 290=81 Ind. Cas. 890 ; see also 24 Cr. L. J. 203=A. I. R. 1923 Nag. 155=71 Ind. Cas. 667 ; 18 Cr. L. J. 993=13 N. L. R. 169=42 Ind. Cas. 721. High Court need not see if facts constitute another offence. Remedy must be sought in the Sessions Court or before District Magistrate before invoking the High Court. 20 Cr. L. J. 347=17 P. L. J. 800=50 Ind. Cas. 827. The High Court may be inclined to take a different view of the evidence is no ground for interference with finding of facts. 28 Cr. L. J. 834=A. I. R. 1928 Pat. 13=104 Ind. Cas. 550. Interference on findings of fact in revision is permissible only in case of manifest and gross miscarriage of justice. 22 S. L. R. 453=29 Cr. L. J. 936=A. I. R.

1929 Sind. 26=111 Ind. Cas. 856. Finding of fact based on false and inadmissible evidence will be interfered with. 28 Cr. L. J. 91=A. I. R. 1927 All. 147=99 Ind. Cas. 123. In revision High Court would weigh evidence and if the evidence for the defence is equally good as that of the prosecution the conviction would be quashed. 45 A. 109=24 Cr. L. J. 257=20 A. L. J. 881=A. I. R. 1923 All. 35=71 Ind. Cas. 865 The High Court in criminal revision will interfere with questions of fact in exceptional cases. 24 O. C. 225=22 Cr. L. J. 647=A. I. R. 1921 Oudh. 115=A. I. R. 1921 Oudh. 115=63 Ind. Cas. 407. Accused can challange finding of fact only when he has not appealed. 21 S. L. R. 107=27 Cr. L. J. 1233=A. I. R. 1927 Sind. 38=98 Ind. Cas. 40. Going into facts for finding out miscarriage of justice is within the power of the High Court. 5 P. L. T. 538= 26 Cr. L. J. 113=A. I. R. 1924 Pat. 758=83 Ind. Cas. 673. Finding can be revised when inference from proved facts is groundless. 25 Cr. L. J. 1073=A. I. R. 1925 Nag. 123=81 Ind. Cas. 897. Revisional Court will not decide by the balance of credibility between two sets of evidence or facts, but would interfere with a finding of fact, either perverse or arrived at contrary to law. 21 A. L. J. 765=46 A. 64=A. I. R. 1924 All. 299=72 Ind. Cas. 183 ; see also 3 O. W. N. Sup. 178=27 Cr. L. J. 1193=A. I. R. 1926 Oudh. 557= 97 Ind. Cas. 953. Whether a manager in the office of a Municipality is a public servant is a question of fact and should not be raised for the first time in revision. 51 M. 86=53 M. L. J. 723=39 M. L. T. 615=26 M. L. W. 529=28 Cr. L. J. 1005= 105 Ind. Cas. 829.

Evidence.—The High Court in revision has power to examine the evidence if *prima facie* grounds exist. 19 Cr. L. J. 666=45 Ind. Cas. 1002. It is not the duty of the High Court in revision to weigh the evidence to see if the conclusion drawn was justified. 30 Cr. L. J. 906=A. I. R. 1929 Sind. 150=118 Ind. Cas. 223. High Court can go into evidence when Magistrate's appreciation of oral evidence is influenced by an admission of inadmissible document. 1 Pat. L. T. 121=21 Cr. L. J. 374=55 Ind. Cas. 854. Where lower court fails to consider some important evidence and acted on others without ony critical examination ; High Court set aside its order in revision. 20 Cr. L. J. 551=23 C. W. N. 488=51 Ind. Cas. 839 ; see also 23 C. W. N. 1031=30 C. L. J. 132. A revision lies where the accused is prejudiced by inferences unwarranted by the evidence. 18 Cr. L. J. 116=37 Ind Cas. 468. The opinion of the trial court as to sufficiency or insufficiency of evidence will not be questioned in revision. 25 Cr. L. J. 366=A. I. R. 1925 Oudh. 49=77 Ind. Cas. 302 But the High Court could go into evidence to find out whether the order directing commitment was proper or not. 21 C. R. L. J. 328=1 P. L. T. 153=55 Ind. Cas. 600 ; but see 2 P. L. T. 681=22 Cr. L. J. 739=A. I. R. 1921 Pat. 227=64 Ind. Cas. 131. Omission to examine important defence witness without sufficient cause is ground for revision. 3 Pat. 592=25 Cr. L. J. 1255=A. I. R. 1925 Pat. 85=82 Ind. Cas. 263. Confession included by trial Magistrate wrongly or rightly cannot be relied on in revision. 31 Cr. L. J. 947=24 S. L. R. 338=A. I. R. 1930 Sind. 168= 126 Ind. Cas. 53.

Grounds for revision.—Every irregularity or illegality does not call for interference. 24 S. L. R. 446=A. I. R. 1933 Sind. 315. Error of law or principle prejudicially affecting the case must exist to justify interference. 26 A. L. J. 99=29 Cr. L. J. 92=A. I. R. 1928 All. 1=106 Ind. Cas. 684. High Court does not generally interfere on facts but may do so on particular cases. 20 A. L. J. 276=23 Cr. L. J. 241=A. I. R. 1922 All. 122=66 Ind. Cas. 177. Revision lies in case of disposal of case on extrajudicial grounds. 26 Cr. L. J. 1350=A. I. R. 1925 Nag. 412=89 Ind. Cas. 390. Accused must allege hardship on account of illegality of procedure as ground for revision. 27 Cr. L. J. 1391=A. I. R. 1927 Mad. 139=98 Ind. Cas. 607. Omission to draw adverse inference for non-production of available evidence is no ground for revision. 28 Cr. L. J. 704=A. I. R. 1927 Oudh 318=103 Ind. Cas. 560. Revision will not lie generally where the petitioner might have appealed but has failed to do so. 26 Cr. L. J. 747=A. I. R. 1925 Mad. 239=86 Ind Cas. 283. Revisional jurisdiction has been conferred in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or harrassness in sentence 29 Cr. L. J. 446=A. I. R. 1928 All. 287=108 Ind. Cas. 567. High Court can act *suo motu* in revision. A. I. R. 1924 Sind. 129. Mere delay in drawing formal proceeding is no ground for interference in revision unless substantial injustice is caused. A. I. R. 1933 Pat. 601=1933 Cr. C. 1363. Refusal to dismiss complaint is no ground for interference in revision. A. I. R. 1933 Oudh. 430. when case is proved, some witnesses were not examined is no ground of revision. 36 C. W. N. 1038.

Competency of revision.—The power of revision is to be used only for correcting injustice and not mere illegality. 29 Cr. L. J. 86=A. I. R. 1928 Nag. 113=106 Ind. Cas. 678. High Court can receive information from any body and can act *suo motu*. But where accused does not appeal, revision by third party at his instance is barred. A. I. R. 1933 All 678 (F. B.)=1933 A. L. J. 1059=1933 Cr. C. 1190. Where accused refuse to take part in his trial or refuse to give evidence, revision from his conviction is not barred. 1933 A. L. J. 1059=1933 Cr. C. 1190=A. I. R. 1933 All 678 (F. B.). Court cannot revise its own order. A. I. R. 1933 Mad. 247=65 M. L. J. 6=34 Cr. L. J. 278. High Court has power to revise order transferring case under s. 526. 1933 Cr. C. 573=34 Cr. L. J. 832=A. I. R. 1933 Rang. 89. ; see also A. I. R. 1933 Sind. 205. Powers under s. 439 are wide and cover petition by third party when accused did not co-operate or appeal. A. I. R. 1932 Lah. 559=33 Cr. L. J. 831=33 P. L. R. 911=1932 Cr. C. 713 ; see also 136 Ind. Cas. 717=33 P. L. R. 384=33 Cr. L. J. 339=A. I. R. 1932 Lah 364 ; A. I. R. 1932 Lah. 613=34 P. L. R. 32=34 Cr. L. J. 87. Unless Court is satisfied that there is miscarriage of justice in case of prisoner of age. educated and sane High Court will not interfere in revision petition brought by friend of prisoner. 35 C. W. N. 716=32 Cr. L. J. 844=A. I. R. 1931 Cal. 410 ; see also 33 Bom. L. R. 56=32 Cr. J. L. 471=55 B. 353=A. I. R. 1931 Bom. 140. Order of executive officer though is not order of inferior criminal court, it enforces exaction of penalty for breach of its propriety can be considered by High Court. A. I. R. 1931 Bom. 514=33 Cr. L. J. 169=33 Bom. L. R. 1164 where no application for revision or appeal filed before District Magistrate or Sessions Judge, High Court may entertain application and interefere. A. I. R. 1933 All 612=34 Cr. L. J. 1053=1933 Cr. C. 984. Under this section revision against order under s. 476, 476 A and 476 B by civil court does not lie. 34 C. W. N. 914=52 C. L. J. 87=A. I. R. 1931 Cal. 721=129 Ind. Cas. 561 ; see also 27 Cr. L. J. 1021=A. I. R. 1926 All. 577=96 Ind. Cas. 877 ; 1 Rang. 372=2 Bur. L. J. 154=26 Cr. L. J. 523=85 Ind. Cas. 362 ; 27 Cr. L. J. 339=24 A. L. J. 217=A. I. R. 1926 All. 229. No revision lies against administration or executive order. 20 M. L. T. 388=4 L. W. 535=36 Ind. Cas. 621 ; see also 19 Cr. L. J. 588=11 S. L. R. 113=45 Ind. Cas. 396 ; 27 P.W.R. 1918 (Cr.)=21 P.R. 1918 Cr.=19 Cr. L. J. 621=45 Ind. Cas. 525 ; 23 Cr. L. J. 113=4 P.W.R. 1922=35 P.L.R. 1922 ; 2 Lah. 305=65 Ind. Cas. 545 ; 24 S. L. R. 389=31 Cr. L. J. 952=A. I. R. 1930 Sind. 162=Ind. Cas. 58. Sessions Judge summarily dismissing revision application is no ground for revision. 2 Cr. L. J. 1452=A. I. R. 1926 Oudh 63=89 Ind. Cas. 972. Where Sessions Judge summarily dismisses revision application it is no ground for revision. 2 Cr. L. J. 1452=A. I. R. 1926 Oudh. 63=89 Ind. Cas. 972. Execution of order directing maintenance to be charged on joint estate which was not disturbed in appeal or revision cannot be revised. 27 Cr. L. J. 652=A. I. R. 1926 Bom. 103. The High Court has no jurisdiction under s. 439 to revise an order passed by Revenue Court under s. 476 of the Code. 2 Pat. L. T, 609=6 Pat. L. J. 178=22 Cr. L. J. 403=A. I. R. 1921 Pat. 94=61 Ind. Cas. 643 ; see also 21 Cr. L. J. 833=58 Ind. Cas. 913 When question involved is whether a place is a public place or not, it is a question of fact and no revision lies. 25 Cr. L. J. 1073=A. I. R. 1925 Nag. 123=81 Ind. Cas. 897. Where reference by Sessions Judge is not entertained right of revision by accused is not taken away thereby. 45 A. 11=20 A. L. J. 775=23 Cr. L. J. 496=A. I. R. 1922 All. 502=68 Ind. Cas. 32 Magistrate acting under s. 161 (2) of the Bombay District Municipal Act is an inferior criminal court and his orders are liable to revision by the High Court. 43 B. 864=20 Cr. L. J. 702=21 Bom. L. R. 755=52 Ind. Cas. 670. Oudh Chief Court does not entertain an application in revision against an order passed by a First class Magistrate where no application for revision has been made either to the District Magistrate or to the Sessions Judge. 147 Ind. Cas. 797=35 Cr. L. J. 475.

Whether Court can act suo motu.—Where the record of a case is before High Court it can exercise its power of revision even in the absence of any application. 28 S. L. R. 140=35 Cr. L. J. 1254=A. I. R. 1934 Sind. 72=1934 Cr. C. 625=A. L. R. 1934 Sind. 79 ; see also A. I. R. 1934 Oudh. 151=35 Cr. L. J. 915=149 Ind. Cas. 195=11 O. W. N. 444 ; 35 Cr. L. J. 1046=36 P. L. R. 121=A. I. R. 1934 Lah. 346.

Jurisdiction.—Jurisdiction by way of appeal or revision must be expressly given by statute. A. I. R. 1930 Bom. 486=32 Bom. L. R. 1138=129 Ind. Cas. 590. Where a lower Court finds that it has passed an illegal order and informs the High Court of the mistake, the High Court has power, if it is of opinion that the order is illegal to set right the mistake. 152 Ind. Cas. 291=15 Pat. L. T. 475=1934 Cr. C. 1195=A. I. R. 1934 Pat. 551. Conviction by a Judge of Judicial commissioners Court

cannot be altered by that Court in revision. 27 Cr. L. J. 339=92 Ind. Cas. 851. Where revision application is lying in a lower Court; revision cannot be entertained in the High Court. 25 O. C. 37=9 O. L. J. 280= 24 Cr. L. J. 275= A. I. R. 1922 Oudh. 147=71 Ind. Cas. 995. High Court cannot revise Order of its own Judge or Judges 46 M. 382=29 Cr. L. J. 439=44 M. L. J. 450=A. I. R. 1923 Mad. 426. Application to lower Court is essential before applying to High Court. 28 Cr. L. J. 475=A. I. R. 1927 All. 834=101 Ind. Cas. 603; see also 28 Cr. L. J. 544=A. I. R. 1927 All. 829=102 Ind. Cas. 352; 28 Cr. L. J. 815=A. I. R. 1927 Lah. 689=104 Ind. Cas. 255; 1929 A. L. J. 514=30 Cr. L. J. 1079=A. I. R. 1929 All. 272=119 Ind. Cas. 444; A. I. R. 1929 Nag. 13=109 Ind. Cas. 810. Where Magistrate deliberately ignores facts ousting his jurisdiction, High Court will interfere in revision. 25 M. L. W. 86=28 Cr. L. J. 164=A. I. R. 1627 Mad. 307=99 Ind. Cas. 596; 20 M. L. W. 919=25 Cr. L. J. 1193=82 Ind. Cas. 57. Though High Court has concurrent jurisdiction with the Lower Courts the party must exhaust all his remedies in the inferrior Court before he comes up to the High Court. 25 Cr. L. J. 310=A. I. R. 1924 Mad. 228=76 Ind. Cas. 1030. High Court has no jurisdiction to interfere in revision with an order passed by a Magistrate under the Police Act in his executive capacity. 1930 Cr. C. 687=A. I. R. 1930 Lah. 539=31 P. L. R. 725=129 Ind. Cas. 294. High Court will not go into merits of an order when it had no jurisdiction to revise this order. 24 S. L. R. 389=31 Cr. L. J. 652=A. I. R. 1930 Sind. 162=126 Ind. Cas. 58. High Court has no jurisdiction to convert acquittal into conviction, unless justice urgently demands it. 53 B. 364=31 Bom. L. R. 529= 30 Cr. L. J. 1062=A. I. R. 1929 Bom. 306. An appellate order by a Civil Court confirming refusal to lodge a complaint by his subordinate Court is not open to revision by High Court as the order is not of a Criminal Court. 3 O. W. N. 905=28 Cr. L. J. 16=A. I. R. 1927 Oudh. 14=99 Ind. Cas. 48. High Court will entertain revision application in special cases even when Sessions Court can do so. A. I. R. 1932 Sind. 28=33 Cr. L. J. 298=25 S. L. R. 395=136 Ind. Cas. 513. Revision to High Court where it lies to Sessions Judge or District Magistrate must not be entertained. 10 O. W. N. 733; see also 33 Cr. L. J. 195=8 O. W. N. 1027=1931 Cr. C. 1053=A. I. R. 1931 Oudh. 418; 1933 P. L. J. 1059=1933 Cr. C. 1190=A. I. R. 1933 All 678 (F. B.); but see A. I. R. 1932 All 125=54 A. 331=1932 Cr. C. 150.

Compounding of offences.—High Court can allow composition of an offence in revision in all cases in which a Court of appeal could do so. 45A. 17=24 Cr. L. J. 854=A. I. R. 1922 All. 488=74 Ind. Cas. 1046. Where a person is acquitted under an invalid composition, High Court can interfere and set-aside the acquittal. 24 Cr. L. J. 120=71 Ind. Cas. 248. High Court in revision has no power to sanction composition entered into after conviction. 23 Cr. L. J. 80=3 Pat. L. T. 458=A. I. R. 1923 Pat. 89=65 Ind. Cas. 432; 20 C. W. N. 1071=43 C. 1143. High Court can grant permission for compounding oflences under s. 345 (2). 30 Cr. L. J. 960=A. I. R. 1929 Nag. 278=118 Ind. Cas. 681; see also 11 P. L. T. 492=31 Cr. L. J. 607= A. I. R. 1929 Pat. 512=124 Ind. Cas. 95; 18 Cr. L. J. 329=38 Ind. Cas. 441.

Interlocutory order—Revision lies against an interlocutory order passed by a Criminal Court. 31 Cr. L. J. 479=6 O. W. N. 937=A. I. R. 1929 Oudh. 543=123 Ind. Cas. 222; but see 31 P. L. R. 893=A. I. R. 1930 Lah. 346=128 Ind. Cas. 50. Interlocutory orders should be interfered with only in exceptional circumstances. 22 N. L. R. 34=27 Cr. L. J. 707=A. I. R. 1926 Nag. 304=94 Ind. Cas. 899; see also 3 O. W. N. 720=27 Cr. L. J. 1191=97 Ind. Cas. 951; 28 Cr. L. J. 755=A. I. R. 1927 Lah. 731=103 Ind. Cas. 835.

Bail.—High Court has jurisdiction to revise Sessions Court's order allowing bail to accused. 33 P. L. R. 387=33 Cr. L. J. 335=1932 Cr. C. 579=A. I. R. 1932 Lah. 433. Where bail has been refused by Sessions Judge after considering all circumstances, High Court will not interfere unless he has exercised discretion improperly. A. I. R. 1933 Sind. 367=1933 Cr. C. 1339.

Defective judgment.—Judgment vitiated by confusion and wrong view of facts cannot be upheld. 30 Cr. L. J. 1160=A. I. R. 1930 Mad. 443=120 Ind. Cas. 69. Where there were several accused charged with different offences and sufficient materials were wanting in the judgment to enable the High Court to decide as to the correctness of the sentence, as against each accused the judgment was set-aside. 18 Cr. L. J. 294=20 C. W. N. 1296=38 Ind. Cas. 326. As the High Court in revision depends on the lower Appellate Court for findings of fact those Courts must give full analysis of evidence and clear findings. A. I. R. 1930 Lah. 1051=120 Ind. Cas. 276.

Conviction.—The High Court in revision can set-aside conviction after consideration of the evidence on the record. 17 Cr. L. J. 460=36 Ind. Cas. 140. Where there has been a conviction and a substantial punishment, the High Court does not usually interfere in revision. 6 Ber L. J. 81=28 Cr. L. J. 757=A. I. R. 1927 Rang. 240=103 Ind. Cas. 837. It is not fair in revision to alter conviction under one Act to one under another Act. A. I. R. 1931 All. 17=1930 A. L. J. 1467=1931 Cr. C. 33=130 Ind. Cas. 626. The High Court in its revisional power can alter the finding under s. 323 I. P. Code to one under s. 325 of the same Code. 21 Cr. L. J. 647=57 Ind. Cas. 663. Loss of record cannot be a ground for acquitting the accused in revision and a retrial can be ordered. 18 Cr. L. J. 737=40 Ind. Cas. 737. A conviction though not technically correct, should not be interfered with if it does substantial justice. 30 P. W. R. Cr. 1916=17 Cr. L. J. 474=37 P. L. R. 1917=36 Ind. Cas. 154. Revision does not lie where an appeal could have been preferred. A. I. R. 1930. Oudh. 497=1930 Cr. C. 1161=120 Ind. Cas. 221. Conviction recorded under repealed Act is not a vital error if accused is guilty of an Act in force. 10 O. L. J. 208=25 Cr. L. J. 336=A. I. R. 1924 Oudh. 32=77 Ind. Cas. 192. When conviction has altered by the Sessions Judge from one section to another, High Court can re-alter the conviction. 28 Cr. L. J. 529=A. I. R. 1927 Pat. 199=102 Ind. Cas, 337. When a conviction was affirmed by the High Court in appeal subsequent discovery of facts showing accused to be innocent will not warrant the High Court to revise the previous conviction. 45A. 143=24 Cr. L. J. 766=A. I. R. 1923 All. 473=74 Ind. Cas. 270. Person convicted on plea of guilty canot show cause against conviction when enhancement to punishment is sought in revision. 49 L. L. J. 432=33 C. W. N. 599=56 C. 1145=30 Cr. L. J. 1038=119 Ind. Cas. 301. Person convicted on plea of guilty cannot show cause against conviction when enhancement of punishment is sought in revision. *Ibid*; see also 30 P. L. R. 437=30 Cr. L. J. 699=A. I. R. 1929 Lah. 584; 30 Cr. L. J. 815=A. I. R. 1929 Lah. 797=30 P. L. R. 409=1929 Cr. C. 429. Failure in previous revision against conviction will debar accused from showing cause against conviction. 26 Cr. L. J. 583=A. I. R. 1925 Mad. 993=85 Ind. Cas. 727. Where conviction is not justified and fine arbitrary, conviction can be set aside. 7 O. W. N. 461=1930 Cr. C. 570=31 Cr. L. J. 1015=A. I. R. 1930 Oudh. 250=126 Ind. Cas. 497. Accused was called upon to show cause against enhancement can contend that his trial was illegal though the question was not raised at the trial. 49B. 892=27 Bom. L. R. 1343=27 Cr. L. J. 305=A. I. R. 1926 Bom. 110=92 Ind. Cas. 689.

Discharge—High Court will not interfere with an order of acquittal in the absence of clear error or defect in the proceedings resulting in grave injustice. 35 M. L. J. 518=20 Cr. L. J. 101=9 L. W. 113=48 Ind. Cas. 981. High Court can revise an order of discharge by a Presidency Magistrate although question of jurisdiction does not arise. 17 Cr. L. J. 428=20 C. W. N. 1128=35 Ind. Cas. 988. An order of discharge will be interfered with in revision only as a last resort. 21 Cr. L. J. 863=58 Ind. Cas. 943. High Court will not interfere with order of release under s. 562 except an strong grounds. 28 Cr. L. J. 255=A. I. R. 1927 Lah. 353=100 Ind. Cas. 127. Before an order of discharge or acquittal can be set aside, it must be proved that it is clearly wrong. 29 Cr. L. J 895=A. I. R. 1928 Lah. 178=111 Ind. Cas. 575. When an order of discharge was challenged on the ground that s. 539 B. was not complied with, but it has really obeyed, the High Court declined to interfere. 28 Cr. L. J. 280=A. I. R. 1927 Nag. 397=89 Ind. Cas. 852. When offence committed was found to be technical one, no further enquiry was ordered. A. I. R. 1933 Mad. 434=1933 Cr. C. 662=146 Ind. Cas. 195. Order of discharge though incorrect cannot be set aside by complainant on revision. A. I. R. 1933 Lah. 323=34 Cr. L. J. 718=34 P. L. R. 860.

Enhancement of sentence=The High Court will not proprio motu more in the matter of enhancement. 18 N. L. R. 901=A. I. R. 1922 Nag. 65=64 Ind. Cas. 277. High Court will not ordinarily enhance sentence save when it is manifestly inadequate. That it would itself pass a heavier sentence is no sufficient ground for enhancement. 12 O. L. J. 421=2 O, W. N. 550=26 Cr. L. J. 1364=A. I. R. 1925 Oudh. 723=89 Ind. Cas. 452. Where sentence is inadequate but not grossly inadequate, there should be no interference in revision. A. I. R. 1931 Lah. 132=32 P. L. R. 5=1931 Cr. C. 280. Enhancement of sentence means the vacating of the original sentence and the passing of a new and proper sentence. 49 L. L. J. 432=33 C. W. N. 599=56 C. 1145—30 Cr. L. J. 1038=A. I. R.1929 Cal. 747=119 Ind. Cas. 301. High Court should not generally interfere to enhance sentence on the

application of private complainants. 33 C. W. N. 395=30 Cr. L. J. 979=56 C. 964=A. I. R. 1929 Cal. 340=118 Ind. Cas. 894. In showing cause against enhancement of sentence, the accused can show that his conviction itself is wrong. The status, position and the education of the accused are grounds justifying enhancement. 30 Cr. L. J. 933=A. I. R. 1921 All. 150=118 Ind. Cas. 577. High Court may in proper cases enhance sentence even contrary to the opinion of the District authorities. 30 Cr. L. J. 222=A. I. R. 1928 All. 417. Where no prejudice is caused, High Court will be very reluctant to interfere with an order of acquittal. A. I. R. 1924 All. 674. Where the High Court sets aside the sentence under one court but enhances it under another, it is its duty to comply with requirements of clause (2) of s. 439. 35 C. W. N. 184=A. I. R. 1931 Cal. 450=132 Ind. Cas. 247. A private complainant can apply to the High Court in revision for the enhancement of sentence. 1930 A. L. J. 1324=A. I. R. 1931 All. 13=129 Ind. Cas. 444. Every irregularity or illegality does not call for interference by appellate or revisional Court. A. I. R. 1930 Sind. 315=1930 Cr. C. 1147. Rules issued for enhancement of sentence on application of complainant should ordinarily be discharged if the crown does not support the application. 1929 Cr. C. 43=50 L. L. J. 176=33 C. W. N. 105=A. I. R. 1929 Cal. 785=121 Ind. Cas. 305. High Court can enhance sentence on application of private complainant which is not vindictively urged. A. I. R. 1931 Rang. 52=8 Rang. 57=32 Cr. L. J. 353=129 Ind. Cas. 510 ; but see 19 S. L. R. 64=A. I. R. 1926 Sind. 254. It is not the practice of the Court even in extreme cases, to call upon the accused to show cause why the sentence should not be enhanced. 8 Pat. 181=30 Cr. L. J. 937=A. I. R. 1929 Pat. 161=117 Ind. Cas. 176. Application for enhancement can be heard after appeal against conviction is decided. 50 Bom. 783=28 Bom. L. R. 1051=27 Cr. L. J. 1178=A. I. R. 1926 Bom. 555=97 Ind. Cas. 805. Court should not interfere if substantial sentence is given. 30 Cr. L. J. 240=A. I. R. 1928 Lah. 961=114 Ind. Cas. 72. Sentence will not ordinarily be enhanced on the motion of a private complainant except in extreme cases where it is inadequate. 30 Cr. L. J. 219=A. I. R. 1928. All 419=113 Ind. Cas. 768. The crown and not individuals must ask for enhancement. 2 Luck. 605=4 O. W. N. 699=28 Cr. L. J. 802=A. I. R. 1927 Oudh. 321=104 Ind. Cas. 242 ; 95 Ind. Cas. 594 ; A. I. R. 1926 Sind. 254. Lahore High Court generally does not send a man back to jail by increasing his sentence after he has served out the original sentence. 30 Cr. L. J. 2=A. I. R. 1929 Lah. 194=112 Ind. Cas. 769. So long as substantial punishment has been meted out, High Court does not generally interfere, even though it would itself have passed a heavier sentence. 3 Bur. L. J. 155=A. I. R. 1924 Rang. 373. Where the accused was sentenced to one year's rigorous imprisonment for brutally beating his wife with a stick, which caused her death, the sentence was enhanced to 3 years' rigorous imprisonment. 32 Bom. L. R. 1286=1930 Cr. C. 1140=54 B. 822=A. I. R. 1930 Bom. 593=129 ind. Cas. 159. It is not the practice of the Court save in extreme cases to call upon the accused to show cause why the sentence should not be enhanced. 8 Pat. 181=30 Cr. L. J. 737=A. I. R. 1929 Pat. 161=117 Ind. Cas. 176. Where a husband on a very trivial incident without provocation hit his wife in the abdomen within a few days of her delivery of a child and she died of the injuries, the sentence of 3 month's rigorous imprisonment was held to be ridiculonsly low and was enhanced. 30 Cr. L. J. 300=1929 Cr. C. 90=A. I. R. 1929 Lah. 531=116 Ind. Cas. 442. High Court should not interfere in revision with the sentence of the trial Court unless it is too severe or too lenient. 22 Cr. L. J. 324 =23 Bom. L. R. 358=61 Ind. Cas. 52 ; 29 Cr. L. J. 764 ; 29 Cr. L. J. 343. Accused in showing cause against enhancement can also show cause against his conviction. 26 Cr. L. J. 821=A. I. R. 1925 Nag. 221=86 Ind. Cas. 469. Proposal for enhancement must be supported by Government Pleader. 20 Cr. L. J. 996=A. I. R. 1928 Nag. 51=105 Ind. Cas. 820. The High Court cannot convert an acquittal under s. 302 I. P. Code into a conviction under the same section. But where the accused has been convicted under s. 322 but acquitted under s. 302, it can convict under s. 335 of the same Code. 24 A. L. J. 414=27 Cr. L. J. 564=A. I. R. 1926 All. 332=94 Ind. Cas. 132. Court will not, except rarely, enhance sentence where the accused has served out the sentence. 1 Lah. 453=21 Cr. L. J. 537=2 Lah. L. J. 541=56 Ind. Cas. 861. In an offence under s. 377 I. P. Code. where there is no extenuating circumstances, sentence was enhanced to two years. A. I. R. 1933 Sind. 87=34 Cr. L. J. 618=1933 Cr. C. 215. Application for enhancement of sentence by private individual if not vindictively urged can be entertained by the High Court. 129 Ind. Cas. 510=8 Rang. 578=32 Cr. L. J. 353=A. I. R. 1931 Rang. 52 ; see also A. I. R. 1931 All. 13=53 A. 223=32 Cr. L. J. 312=1930 A. L. J. 1324 ; A. I. R. 1933 All. 485=1933 A. L. J. 957. Where sentence is inadequate

but is not grossly inadequate, it should not be interfered in revision. 132 Ind. Cas. 577=32 Cr. L. J. 943=32 P. L. R. 5=A. I. R. 1931 Lah. 132 ; see also A. I. R. 1931 Lah. 31=32 Cr. L. J. 539=32 P. L. R. 273. Transportation would be enhanced only when death is the only sentence that could be passed. A. I. R. 1933 Nag. 307=1933 Cr. C. 1265. In case of enhancement of sentence, where appeal of accused is heard by High Court cl. 6 does not apply. 33 Cr. L. J. 155=1932 Cr. C. 158=13 P. L. T. 17=10 Pat. 872=A. I. R. 1932 Pat. 126. Only crown case ask for enhancement of sentence. A. I. R. 1933 Oudh. 421=10 O. W. N. 903 ; see also A. I. R. 1232 Nag. 73=1932 Cr. C. 346=33 Cr. L. J. 728=139 Ind. Cas. 63. Notice for enhancement of sentence should not be given at time of admission of appeal. 35 Bom. L. R. 174=1933 Cr. C. 465=A. I. R. 1933 Bom. 153. For enhancing sentence High Courts revisional powers are distinct from its appellate powers. A. I. R. 1931 Cal. 450=35 C. W. N. 184=32 Cr. L. J. 890=1931 Cr. C. 602 ; see also A. I. R. 1933 All. 485=1933 A. L. J. 957=1933 Cr. C. 830. Crown has no right to influence Court in revision on question of punishment. 38 C. W. N. 25=A. I. R. 1933 Cal. 870. In case of enhancement of sentence in revision, each case has been judged on its merits. 1933 Cr. C. 882=A. I. R. 1933 Lah. 660. High Court cannot interfere in relation to enhancement if sentence passed involves substantial punishment and not manifestly inadequate. 33 Cr. L. J. 365=33 P. L. R. 49=A. I. R. 1932 Lah. 199 ; see also 35 Cr. L. J. 1453=151 Ind. Cas. 924=A. I. R. 1934 Lah. 89 ; A. I. R. 1934 Lah. 975=36 P. L. R. 184=1934 Cr. C. 1357 ; A. I. R. 1934 Sind. 157=1934 Cr. C. 1149=152 Ind. Cas. 872 ; 36 Bom. L. R. 1126. The mere fact that the High Court itself would, if it had tried the case, have passed a heavier sentence than that passed by the trial Court is no reason for enhancement. 35 P. L. R. 527=A. I. R. 1934 Lah. 613 see also 36 Bom. L. R. 954=A. I. R. 1934 Bom. 471=1934 Cr. C. 1343. Where notice of enhancement of sentence is served on accused he is entitled to appeal against both his conviction and sentence notwithstanding plea of guilty. A. I. R. 1335 Rang. 49. Sentence from which no appeal lies to High Court, High Court can enhance sentence under s. 439. A. I. R. 1935 Bom. 37.

Expunging remarks—Remarks prejudicial to the character of a stranger to proceedings without giving him opportunity to be head must be expunged. 6 Lah. 166=26 P. L. R. 315=26 Cr. L. J. 1326=A. I. R. 1925 Lah. 392 ; see also 35 P. L. R. 373 ; 112 Ind. Cas. 686=29 Cr. L. J. 686=29 Cr. L. J. 1102=A. I. R. 1929 Lah. 201. Remarks by Appellate Court doubting correctness of Trial Courts' acquittal, must be expunged. 25 Cr. L. J. 1245=A. I. R. 1925. To have objectionable remarks expunged the remedy is by way of appeal and not in revision. 1930 M. W. N. 791 ; see also 19 Cr. L. J. 97=19 Bom L. R. 912=43 Ind. Cas. 321.

Pending proceeding.—The High Court will not interfere with pending cases unless there is some manifest and patent injustice calling for prompt redress. 21 Cr. L. J. 343=55 Ind. Cas. 679 ; see also 53 Ind. Cas. 492=20 Cr. L. J. 764 ; see also 1930 Cr. C. 977=31 P. L. R. 809=A. I. R. 1930 Lah. 881=128 Ind. Cas. 542 ; see also 51 M. 84=26 M. L. W. 487=1927 M. W. N. 752=53 M. L. J. 528=105 Ind. Cas. 803 ; 20 Cr. L. J. 764 (Nag.) ; 20 Cr. L. J. 30=48 Ind. Cas. 510 ; 26 Cr. L. J. 1093=A. I. R. 1925 Nag. 345=88 Ind. Cas. 181 ; 28 Cr. L. J. 644=A. I. R. 1927 Sind. 231 ; 26 Cr. L. J. 1303=A. I. R. 1925 Sind. 231=89 Ind. Cas. 247 ; 6 N. L. J. 119=24 Cr. L. J. 591=A. I. R. 1924 Nag. 47=73 Ind. Cas. 335 ; A. I. R. 1934 Sind. 184=1934 Cr. C. 1378 ; A. I. R. 1934 Nag. 138=1934 Cr. C. 569 ; A. I. R. 1933 Sind. 413 ; A. I. R. 1933 Sind. 196=27 S. L. R. 214=34 Cr. L. J. 884 ; A. I. R. 1933 Sind. 169=34 Cr. L. J. 1049=1933 Cr. C. 533.

Proceedings under s. 110.—High Court will interfere only in the case of miscarriage of justice. A. I. R. 1934 Cal. 482=149 Ind. Cas. 460=35 Cr. L. J. 952=61C. 588.

Proceedings under s. 144.—The High Court can consider whether the Magistrate has jurisdiction to pass an order under s. 144 Cr. Pro. Code. 12 Rang. 283=35 Cr. L. J. 1300=A. I. R. 1934 Rang. 124 ; see also 1930 M. W. N. 849.

Proceedings under s. 145.—The High Court has jurisdiction to interfere in cases of illegalities or manifest irregularities in proceedings committed by Magistrate in proceedings under s. 145. 17 Cr. L. J. 217=34 Ind. Cas. 329. Finding as regards possession can not be gave into revision. 150 Ind. Cas. 143=A. I. R. 1934 Oudh. 158=11 O. W. N. 375=35 Cr. L. J. 1056. The High Court in revision of a proceeding under s. 145 cannot go into the question of the sufficiency of evidence to support

the finding of lower Court. 18 Cr. L. J. 301=38 Ind. Cas. 333. The High Court of will not interfere with proceedings under chapter XII of the Code. 18 A. L. J. 1140 =22 Cr. L. J. 97=59 Ind. Cas. 401 ; 18 Cr. L. J. 23=5 L. W. 165=36 Ind. Cas. 855. In case of an arbitrary refusal to examine more than a certain number of witnesses. High Court can revise proceedings. 2 P. L. T. 330=22 Cr. L. J. 430=A. I. R. 1921 Pat. 308=61 Ind. Cas. 718. If a declaratory decree under s. 145 (b) is passed the order can be revised but if a Magistrate refuses to proceed under s. 115 the order is revisable. 18 S. L. R. 278=26 Cr. L. J. 1333=A. I. R. 1926 Sind. 85=89 Ind. Cas. 309. Where necessary party was not asked to file a written statement and Magistrate's order does not specifically state that there is danger of breach of peace, proceedings will be set aside in revision. 26 Cr. L. J. 630=A. I. R. 1925 Oudh. 484=85 Ind. Cas. 918 ; see also 5 P. L. T. 45=25 Cr. L. J. 906=A. I. R. 1924 Pat. 783=81 Ind. Cas. 442. Magistrate's failure to maintain possession delivered by Civil Court is an error of jurisdiction vitiating order under s. 145 and High Court will interfere in revision. 3 P. L. T. 628=24 Cr. L. J. 279=A. I. R. 1923 Pat. 76=71 Ind. Cas. 999. Refusal by Court to grant adjournment cannot be set aside under s. 145. A. I. R. 1932 Sind. 145 =34 Cr. L. J. 216=26 S. L. R. 353. Order of dismissal of complaint under s. 145 on ground of absence of likelihood of breach of peace, cannot be set aside. 10 O. W. N. 310=1933 Cr. C. 559=34 Cr. L. J. 934=A. I. R. 1933 Oudh. 253. When preliminary order is not in conformity with s. 145 (1), subsequent order under s. 145 (b) cannot be set aside in absence of failure of justice. 54 A. 1002=34 Cr. L. J. 425= 1932 A. L. J. 865=A. I. R. 1932 All. 681.

Proceedings under s. 195.—Application for revision lies under s. 439 even when the sanction is granted by a Civil Court. 11 L. L. J. 103=30 P. L. R. 392= 30 Cr. L. J. 666=A. I. R. 1929 Lah. 676=116 Ind. Cas. 711. In a case under s. 195, granting or revoking sanction, High Court can only interfere to prevent a gross and palpable failure of justice. 25 Cr. L. J. 454=A. I. R. 1924 All. 461=77 Ind. Cas. 806 ; see also 25 O. C. 153=24 Cr. L. J. 217.

Quashing proceedings.—Power of High Court under s. 439, to quash proceedings should be sparingly used. 10 L. L. J. 455=30 Cr. L. J. 162=A. I. R. 1928 Cal. 945=113 Ind. Cas. 536 ; see also 5 O. W. N. 357=29 Cr. L. J. 657=A. I. R. 1928 Oudh. 292=110 Ind. Cas. 209. In case of abuse of process of the Court, the proceedings can be quashed in revision. A. I. R. 1934 Lah. 434=35 P. L. R. 361= 152 Ind. Cas. 224 ; see also A. I. R. 1934 Sind. 27=35 Cr. L. J. 884=148 Ind. Cas. 1066. High Court will quash even proceedings of interlocutory nature where no offence has been committed. A. I. R. 1933 Bom. 409=39 Bom. 409=35 Bom. L. R. 845=1933 Cr. C. 1173. Unnecessary committal justifies quashing of committal order. A. I. R. 1932 Lah. 263=33 P. L. R. 185=33 Cr. L. J. 880=138 Ind. Cas. 701.

Wrong procedure.—Where applicant has not been prejudiced by irregularity, High Court will not interfere in revision. 18 Cr. L. J. 765=41 Ind. Cas. 141=15 A. L. J. 642. If Magistrate in the exercise of his discretion elects to proceed under s. 107 instead of s. 145 the High Court cannot interfere in revision. 32 Cr. L. J. 224=24 C. W. N. 1075=60 Ind. Cas. 336. Omission to frame a charge while changing finding in appeal is no ground for revision unless there is a miscarriage of justice. 4 L. W. 373=17 Cr. L. J. 384=(1916) 2 M W. N. 267=35 Ind. Cas. 816. Powers of revision should not be invoked to supply laches of prosecution. 17 Cr. L. J. 3=9 S. L. R. 95=32 Ind. Cas. 131. When irregularties are discovered at the end of a trial leading to a mis-carriage of justice the aggrieved party must carry the matter to the Crown for remedy. 44 C. 723=18 Cr. L. J. 311=21 C. W. N. 167=38 Ind. Cas. 423. An application to lower Court is essential before moving High Court in revision, irrespective of whether the District Magistrate or Sessions Judge has power to grant the relief or not. 43 A. 496=19 A. L. J. 425=3 P. L. R. 77=22 Cr. L. J. 715=63 Ind. Cas. 875. If Appellate Court does not thoroughly investigate facts as dealt with by trial Court, High Court will do so in revision. 20 Cr. L. J. 370= 50 Ind. Cas. 978. When a point is not urged in lower Courts, High Court will not interfere in revision unless there has been a mis-carriage of justice. 21 Cr. L. J. 96=54 Ind. Cas. 496. Though complaint has been dismissed by two Courts, the High Court can interfere in a proper case and direct the complaint to be enquired into. 21 Cr. L. J. 338=1 Pat. L. T. 127=55 Ind. Cas. 674. Several persons receiving stolen property at different times should be charged and tried separately in respect of each article. A joint trial being illegal, objection can be taken for

first time in High Court. 2 Pat. L. T. 47=21 Cr. L. J, 619=57 Ind. Cas. 283. Where land has been attached under s. 88 without a warrant, the High Court would interfere under inherent powers to set right the irregularity. 27 Cr. L. J. 1025=8 L. L. J. 608=27 P. L. R. 825=A. I. R. 1926 Lah. 662=96 Ind. Cas. 977. High Court cannot take action under s. 439 on a report by District Magistrate which has for its object interference with decision by a Court of Session. District Magistrate if he considers a Sessions Judge's order illegal should move the Public Prosecutor. 24 Cr. L. J. 573=A. I. R. 1924 Lah. 420=73 Ind. Cas. 269; see also 17 S. L. R. 268=26 Cr. L. J. 177. An argument *ad miseri cordium* is out of place in a Court of revision which is concerned with law and practice. 7 O W. N. 757=A. I. R. 1931 Oudh. 80=128 Ind. Cas. 275. Revision lies against the order of Sessions Judge but motion shall not be heard by High Court as an appeal. All that pititioners can claim in revision application is that Sessions Judge had decided wrongly. 4 P. L. T. 265=24 Cr. L. J. 495=A.I.R. 1923 Pat. 238=72 Ind. Cas. 959. Mere defect in form or method is no ground for interference. 60 C. 149=36 C. W. N. 1031=34 Cr. L. J. 181. Every irregularity does not vitiate trial. 26 S.L.R. 105=A. I. R. 1923 Sind. 37. High Court will interfere with this joinder of charges if the accused is prejudiced thereby. A. I. R. 1931 Rang. 161=32 Cr. L. J. 1068=133 Ind. Cas. 489; see also A. I. R. 1932 Oudh. 298=34 Cr. L. J. 58. Where accused is not prejudiced, wrong procedure will not vitiate the proceeding. 32 Cr. L. J. 971=A. I. R. 1931 Mad. 494; A. I. R. 1933 Oudh. 430=10 O. W. N. 1037. But where the accused is prejudiced thereby the High Court should set aside conviction in revision. A. I. R. 1932 Lah. 188=33 P. L. R. 177=1932 Cr. C. 181.

Reference.—Power to refer under s. 438 is not restricted to matters in revision under s. 439. 35 Bom. L. R. 1054=A. I. R. 1933 Bom. 485. District Magistrate is not entitled to make reference regarding propriety of order passed by Sessions Judge. A. I. R. 1933 Lah. 433=1933 Cr. C. 674=34 Cr. L. J. 371.

Stay of proceedings.—Application for stay of criminal proceedings pending Civil Suit cannot be made to the High Court unless Magistrate has refused it. 18 M. L. W. 266=24 Cr. L. J. 640=A. I. R. 1924 Mad. 235=73 Ind. Cas. 528. A proceeding which is void for want of jurisdiction cannot be literally quashed but the High Court can direct further proceedings to be stayed. 24 Cr. L. J. 351=A. I. R. 1923 Mad. 326=72 Ind. Cas. 451. Once proceedings are stayed by High Court and the matter is brought to the notice of the Court concerned it is its duty to stay its hands. 6 P. L. T. 215=26 Cr. L. J. 965=A. I. R. 1925 Pat. 553=87 Ind. Cas. 421. In a proper case High Court can stay proceedings of lower Court. A. I. R. 1931 Pat. 711=12 P. L. T. 671; see also A. I. R. 1933 Pat. 116=146 Ind. Cas. 37.

Reduction of sentence.—In reducing sentence the High Court should be satisfied that sentence is so unreasonable and so excessive as to require a reduction before it can interfere in revision. A. I. R. 1930 Sind. 58=31 Cr. L. J. 763=125 Ind. Cas. 46; see also 1929 P. L. J. 385=30 Cr. L. J. 670=A. I. R. 1929 All. 220; 2 Luck. 673=A. I. R, 1927 Oudh 596=103 Ind, Cas. 401; A. I. R. 1932 Sind. 159=34 Cr L, J. 24. High Court may reduce sentence at instance of third party in revision even though convicted person has not appealed in special circumstances. A. I. R. 1933 Cal. 361=34 Cr. L. J. 814=1933 Cr, C. 497.

Limitation.—Article 182, has no application to revision application to High Court. 7 O. W. N. 663=31 Cr. L. J. 1012=126 Ind. Cas. 395. High Court can in a proper case interfere with revision application though presented after more than two months. 1933 Cr. L. 1363=A. I. R. 1933 Pat. 601; see also A. I. R. 1934 Lah. 264=35 Cr. L. J. 1447=151 Ind. Cas. 943; 27 Cr. L. J. 1021=A. I. R. 1926 All. 577=96 Ind. Cas. 877. Delay in filing revision should be explained. 143 Ind. Cas. 852=9 O. W. N. 345=34 Cr. L. J. 661=A. I. R. 1933 Oudh. 257; see also A. I. R. 1933 Cal. 647=1933 Cr. C. 1057; A. I. R. 1932 Oudh. 242=7 Luck. 699=9 O. W. N. 334; 27 Cr. L. J. 1021=A. I. R. 1926 All. 577=96 Ind. Cas. 877. Application for criminal revision according to the practice of the Calcutta High Court should be made within 60 days plus the period of obtaining copies. It can be extended in special circumstances. 43 C. 1029=17 Cr. L. J. 419=20 C. W. N. 1170=35 Ind. Cas. 979; see also 18 Cr. L. J. 694=25 L. L. J. 564=40 Ind. Cas. 694; 54 C. 394=28 Cr. L. J. 639=A. I. R. 1927 Cal. 574=103 Ind. Cas. 63; 25 C. L. J. 564=40 Ind. Cas. 694. According to the practice of Oudh Chief Court admission or non-admission of revision application is entirely discretionary, but Court should not as a

matter of practice admit them unless they are made with a reasonable time which would appear to be time granted by statute for admitting appeals. 7 O. W. N. 663=A. I. R. 1930 Oudh. 401=21 Cr. L. J. 1012=126 Ind. Cas. 395 ; see also 49 A, 228=25 A. L. J. 44=A. I. R. 1926 All. 767.

Notice.—Under s. 439 no order can be made against the accused without giving him an opportunity of being heard and the fact that hearing was given before making reference is not sufficient compliance with s. 439. 19 Cr. L. J. 70=22 C. W. N. 168=36 Ind. Cas. 157 ; see also A. I. R. 1933 Lah. 433=1933 Cr. C. 674=34 Cr. L. J. 371 ; 47 M. 428=26 Cr. L. J. 370=A. I. R. 1924 Mad. 640=46 M. L. J. 456=84 Ind. Cas. 850. Where accused prefers appeal and has opportunity of being heard personally or by pleader, notice for enhancement of sentence is not necessary. 27 Cr. L. J. 1265=A. I. R. 1927 Sind. 85=98 Ind. Cas. 113.

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision :

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (2).

Notes.—No party has any right to be heard. 26 Cr. L. J. 527 ; 10 C. L. J. 80 ; 85 I. C. 367 ; 23 M. L. J. 371. Calcutta and Allahabad High Courts hear counsel generally. 19 C. 380 ; 11 C. W. N. 316 ; 25 A. L. J. 1010. But the Madras High Court does not. 14 M. 363. No party has right to be heard in revision under this section. 26 Cr. L. J. 527=A. I. R. 1925 Oudh. 558=85 Ind. Cas. 367 ; see also 31 Bom. L. R. 1144=A. I. R. 1929 Bom. 543.

Statement by Presidency Magistrate of ground of his decision to be considered by High Court.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue, and the Court shall consider such statement before overruling or setting aside the said decision or order.

Notes.—This section is not intended to enable Presidency Magistrate to give fresh reasons contradictory to their original reasons but to give reasons where there were no reasons at all. 1929 M. W. N. 893=31 Cr. L. J. 466=A. I. R. 1930 Mad. 225=122 Ind. Cas. 800.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified ; and, if necessary, the record shall be amended in accordance therewith.

Application of the section.—Vide, 4 P. R. 1909.

Notes.—Although the High Court has power to interfere in revision, with an original or appellate judgment of acquittal, it will not ordinarily do so. 27 A. 359=A. W. N. 1904, 278 ; 15 B. 349. The power under this section ought to be exercised with great care, and with regard to pending trials, only in most exceptional cases. 2 A. L. J. 673=A. W. N. 1905 ; 238=2 Cr. L. J. 790. Under this section, the High Court is not incompetent to interfere in revision as well as to interfere on appeal. 2 Weir. 573. The High Court, in revision, has power of ordering a re-trial, though it may not convert a finding of acquittal into one of conviction. L. B. R. (1893—1900), 41. Although the High Court does not ordinarily interfere with orders of acquittal in revision, yet it cannot be expected that it would hesitate to do so where the acquittal is based, not upon an appreciation of doubtful evidence, but upon a manifest error in law appearing on the face of the judgment. 9 Bom. L. R. 156=5 Cr. L. J. 171. Under this section the High Court is empowered to exercise any of the powers given to a Court of appeal under section 423 (c). 2 Weir 575 (F. B.)=2 Weir. 634.

Under this section, although it is not usual for the High Court to interfere with the decision of the lower Court, when the decision is based upon a consideration of the evidence, yet, if the lower Court has not valued the testimony of accomplices as it ought to be, and has admitted improperly hearsay evidence on important points, the High Court is justified in going into the facts of the case in exercise of its revisional powers. 2 C. W. N. 672. The High Court has no power under this section to interfere with an order made by a Civil Court under s. 476 Cr. Procedure Code. 17 M. L. T. 268=16 Cr. L. J. 232=27 Ind. Cas. 904 ; 14 Cr. L. J. 466=20 Ind. Cas. 752=7 L. B. R. 76 ; 26 M. 98 ; 31 A. 38 ; 9 Cr. L. J. 24 ; 40 C. 477 ; 16 Cr. L. J. 232 ; *contra* 27 Cr. L. J. 1021 ; 92 Ind. Cas. 454 ; 14 Cr. L. J. 496 ; 5 P. R. 1908 ; 23 A. 249 ; 20 Ind. Cas. 752.

On hearing a revision the High Court could hear a private complaint in the case of an offence under ss. 500 and 501, I. P. Code. 50 C. 159=71 Ind. Cas. 670. The High Court's power of interference in revision with findings of fact is one that should be sparingly used. 1923 Oudh. 8. Ordinarily the High Court would, in revision, go behind the concurrent findings on the Courts below on a question of fact. 72 Ind. Cas. 892.

This section does not authorise the High Court to direct a subordinate Court to refrain from trying an accused against whom process has been issued by such Court. 2 Pat. 257=74 Ind. Cas. 713=24 Cr. L. J. 809.

The High Court has power under this section to interfere with an order of acquittal, but in practice it is largely restricted to cases which have not been tried out ordinarily. It can interfere only in cases where it is urgently demanded in the interests of public justice. 25 Cr. L. J. 1266=82 Ind. Cas. 274 ; 1924 Mad. 837. As a matter of practice the High Court will not entertain a revision application for enhancement of a sentence at the instance of a private complainant. 48 B. 358=26 Bom. L. R. 165 Cr. Clause (b) is intended to give a person who has been brought to the bar of the High Court to show cause against enhancement of sentence, the right of showing by argument *a fortiori* not only that the sentence should not be enhanced but that the conviction should be set aside. 86 Ind. Cas. 469=29 Cr. L. J. 821.

PART VIII.

SPECIAL PROCEEDINGS.

*[CHAPTER XXXIII.]

SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND INDIAN BRITISH SUBJECTS ARE CONCERNED.

Determination regarding applicability of this Chapter.

443. (1) Where, in the course of the trial outside a Presidency-town of any offence punishable with imprisonment, the accused person, at any time before he is committed for trial under section 213 or is asked to show cause under section 242 or enters on his defence under section 256, as the case may be, claims that the case ought to be tried under the provisions of this Chapter, the Magistrate inquiring into or trying the case after making such inquiry as he thinks necessary and after allowing the accused person reasonable time within which to adduce evidence in support of his claim, shall, if he is satisfied—

(*a*) that the complainant and the accused person of any of them are respectively European and Indian British subjects or Indian and European British subjects, or

(*b*) that in view of the connection with the case of both an European British subject or an Indian British subject, it is expedient for

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* Chapter XXXIII (section 443 to 449) was substituted for original Chapter XXXIII (sections 443 to 463) by s. 27 of the Criminal Law Amendment Act, 1923 (XII of 1923).

ends of justice that the case should be tried under the provisions of this chapter,

record a finding that the case is a case which ought to be tried under the provisions of this Chapter or, if he is not so satisfied, record a finding that it is not such a case.

(2) Where the Magistrate rejects the claim, the person by whom it was made may appeal to the Sessions Judge, and the decision of the Sesssions Judge thereon shall be final and shall not be questioned in any Court in appeal or revision.

(3) Where the Magistrate rejects the claim, be shall stay the proceedings until the expiration of the period allowed for the presentation of the appeal or, if an appeal is presented, until it has been decided.

Notes.—Where an European employee of a Railway administration launches a complaint against a British Indian subject, the latter cannot claim to be tried under Chapter 33 of the Criminal Procedure Code. 3 Bur. L. J. 197=1924 Rang. 373. A claim to be dealt with as an European British subject or an Indian British subject or an European not being an European British subject or an American, which is dealt with in Chapter XLIVA of the Criminal Procedure Code, the claimant has to prove his own status. If the claim is based on section 443 (1) (*a*), the claimant will have to prove that complainant and the accused persons or any of them are respectively European and Indian British subject or Indian and European British subjects. 40 C. L. J. 254=1925 Cal. 14. The mere fact that an accused person is an European British subject does not *ipso facto* entitle him to a right of any special procedure and does not specially restrict a Magistrate or a Court of Session in his or his power of punishment. *Barus field* v. *Emperor*, 118 Ind. Cas. 438 (2)=A. I. R. 1929 Lah. 187. The words "punishable with imprisonment" in s. 443 cover charge of murder under Penal Code s. 302. 33 P. L. R. 578=33 Cr. L. J. 529=13 Lah. 755=A. I. R. 1932 Lah. 490. This section does not apply to proceedings under s. 107. A. I. R. 1933 Lah. 1019. Revision is open against order accepting claim under s. 443. *Ibid.* Where accused does not claim benefit of chapter 33 before committing Magistrate he cannot raise question after committal to Sessions. 28 O. C. 230=26 Cr. L. J. 217. Rights to be tried under provisions of chapter 33 can be raised when leave is applied for. 40 C. L. J. 256 29 C. W. N. 447=26 Cr. L. J. 401.

Definition of "complainant."

444. For the purposes of section 443, "complainant" means any person making a complaint or, in relation to any case of which cognizance is taken under clause (*b*) of section 190, sub-section (1) any person who has given information relating to the commission of the offence within the meaning of section 154 :

Provided that a Public prosecutor, a public servant, a member, officer or servant of any local authority, a railway servant as defined in section 3 of the India Railways Act, 1890,* or an officer or servant of any company, association or other body to which the Local Government may, by general or special order published in the local official Gazette, declare the provisions of this section to apply, shall not, by reason only of the fact that he has made a complaint of, or, given information of, an offence in his capacity as such Public Prosecutor, public servant, railway servant, member, officer or servant, be deemed to be so a complainant within the meaning of this section nor shall a police-officer be deemed by reason only of the fact that a report under section 173, relating to a case has been made by or through him.

Notes—Clause (1) lays down as a general proposition as to who is a complainant and the proviso is intended to exclude generally from the application of the definition public prosecutors, public servants, etc., who make complaints or lodge information before the Police in their official capacity as such public prosecutors or public servants, etc., irrespective of whether or not they have personal knowledge of the facts or a personal interest in the case. 27 Cr. L. J. 770=95 Ind. Cas. 306. Chapter 33 does not apply to complaint by public servant under orders of Government. 7 P. L. T. 367=27 Cr. L. J. 1041=A. I. R. 1926 All. 66=97 Ind. Cas. 17.

* IX of 1890.

Procedure in summons cases.

445. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a summons-case, the Magistrate trying the same, shall direct that the case be referred to a Bench of two Magistrates and shall send a copy of such order to the District Magistrate who shall forthwith provide for the constitution of a Bench of two Magistrates of the first class, of whom one shall be an European and other an Indian, for the trial of the case.

(2) Where the Magistrate constituting the Bench by which a case is tried under this section differ in opinion, the case, together with their opinions thereon, shall be laid before Sessions Judge, who may examine any party or re-call and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall thereafter pass such judgment, sentence or order in the case as he thinks fit and is as according to law.

(3) Any person convicted by a Bench under this section shall have the same right of appeal as if he had been convicted by a Magistrate of the first class, and any person convicted by a Sessions Judge under sub-section (2) shall have the same right of appeal to the High Court as if he had been convicted by the Sessions Judge at a trial held by the Sessions Judge under this Code.

(4) In any case in which it is impracticable to constitute a Bench in accordance with the provisions of sub-section (1) in any district, the District Magistrate shall transfer the case for trial by a like Bench to such other district as the High Court may, by general or special order, direct.

(5) Notwithstanding anything contained in this section, the Local Government may, by notification in the local official Gazette, direct that all summons-cases tried under the provisions of this Chapter in any district specified in the notification shall be tried as if they were warrant cases in accordance with the provisions hereafter in this Chapter laid down for the trial of warrant-cases.

Procedure in warrant-cases.

446. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is warrant-case, the Magistrate inquiring into or trying the case shall, if he does not discharge the accused under section 209 or section 253, as the case may be, commit the case for trial to the Court of Session whether the case is or is not exclusively triable by that Court.

(2) Where an accused is committed to the Court of Session under sub-section (1), the Court shall proceed to try the case as if the accused had required to be tried in accordance with the provisions of section 275, and the provisions of that section and the other provisions of Chapter XXIII, so far as they are applicable, shall apply accordingly.

Provided that where the trial before the Court of Session would in the ordinary course be with the aid of assessors, and the accused, or all of them jointly, require to be tried in accordance with the provisions of section 284A, the trial shall be held with the aid of assessors all of whom shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

Notes—The object of the legislature is to place Indian and European British subjects on the same footing, and had been carried out by s. 446. 5 Lah. 515. The Court must inform the accused of his rights to be tried under this Chapter. 4 Bur. L. J. 44. Where Indian accused is charged together with European, Magistrate cannot assume jurisdiction over Indian by discharging European. They must be committed to Sessions. 51A. 483=1029 A. L. J. 181=30 Cr. L. J. 218=A. I. R. 1929 All. 84=113 Ind. Cas. 764. Trial must be made by Jury in committals under this section unless accused desires otherwise. 5 Lah. 515=26 Cr. L. J. 540=A. I. R. 1925 Lah. 235=85 Ind. Cas. Commitment cannot be made without preliminary inquiry. A. I. R. 1933 Pat. 677=12 Pat. 707. Where in a trial of a European British Subject under chapter 33 only two out of the five jurors were Europeans or Americans

the conviction and sentence should be set aside. 13 Pat. 177=35 Cr. L. J. 827=15 Pat. L. T. 82=A. I. R. 1934 Pat 200. Magistrate cannot cancel charge once framed. 1931 A. L. J. 526=32 Cr. L. J. 866=53 A. 690=A. I. R. 1931 All. 366. Decision by Magistrate that chapter 33 applies to case is final. 33 P. L. R. 578=33 Cr. L. J. 529=13 Lah. 755=A. I. R. 1932 Lah. 490. Nagpur Judicial Commissioner's court can try European British Subject. 1933 Cr. C. 610=34 Cr. L. J. 505=29 N. L. R. 251=A. I. R. 1933 Nag. 136.

Court to inform accused persons of their rights in certain cases.

447. If at any stage of an inquiry or trial under this Code it appears to the Magistrate that the case is or might be held to be a case which ought to be tried under the provisions of this Chapter, he shall forthwith inform the accused person of his rights under this Chapter.

Notes.—Omission of Magistrate inform accused for their rights under Chapter 33 as required by s. 447 is absolutely cured by provisions by s. 534. 4 Bur. L. J. 44=26 Cr. L. J. 1370=3 Rang. 200=A. I. R. 1925 Rag. 233=89 Ind. Cas. 459.

References to Sessions Judge to be construed as references to High Court in Rangoon.

448. For the purpose of the trial in Rangoon of any person under the provisions of this Chapter, references to the Sessions Judge shall be construed as references to the High Court of Judicature at Rangoon.

Special provisions relating to appeal.

449. (1) Where—

(*a*) a case is tried by jury in a High Court or Court of Session under the provisions of this Chapter, or

(*b*) a case which would otherwise have been tried under the provisions of this Chapter is under this Code Committed to or transferred to the High Court and is tried by jury in the High Court, or

(*c*) a case is tried by jury in the High Court in a Presidency-town and the High Court grants leave to appeal on the ground that the case would, if it had been tried outside a Presidency-town, have been triable under the provisions of this Chapter,

then, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the Letters Patent of any High Court, an appeal may lie to the High Court on a matter of fact as well as on a matter of law.

(2) Notwithstanding anything contained in the Letters Patent of any High Court, the Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original order of acquittal passed by the High Court in any such trial as is referred to in sub-section (1).

(5) An appeal under sub-section (1) or sub-section (2) shall where the High Court consists of more than one Judge, be heard by two Judges of the High Court.

Notes.—An appeal from the original Criminal Sessions of the High Court under s. 449 (1), is governed by art. 115 of the Limitation Act just like appeals from Sessions Courts in mofussil. 53 C. 746=27 Cr. L. J. 1303=98 Ind. Cas. 248=A. I. R. 1926 Cal, 1803. The appeal against acquittal under s. 449 is also an appeal against an order of acquittal, and the effect of Art. 157. Limitation Act, is to fix the period of limitation in respect of such appeals at six months in all classes of cases, whatever may have the form of trial and whatever may be the scope of the appeal. The only effect is that by reason of the provisions of s. 449 its scope extends to questions of law. A. I. R. 1934 Cal. 610=38 C. W. N. 908=35 Cr. L. J. 1367. Where a European British subject was tried and convicted by a Judge of the High Court sitting in Sessions and applied for leave to appeal under s. 449 (3) Criminal Procedure Code and filed an affidavit by himself as to his nationality, *held*, that the affidavit was admissible in evidence. 54 C. 52=101 Ind. Cas. 657=28 Cr. L. J. 481. Whether Vakil can act for party in a criminal appeal from the original side of High Court depends upon the rules of that Court and it is not concluded by anything in Cr. Pro. Code. 55 C. 858=32 C. W. N. 319=29 Cr. L. J. 1022=A. I. R. 1928 Cal. 675=112

Ind. Cas. 350. Affidavits of applicants as to nationality on the application for leave to appeal under s. 449 (1) (c) are admissible. 54 C. 52=28 Cr. L. J. 481=A. I. R. 1927 Cal. 307=101 Ind. Cas. 657. In trial by Jury under Chapter 33, High Court can interfere with findings of Jury as appeal lies thereto on facts as well as law. 6 Lah. 98=26 L. R. 268=26 Cr. L. J. 1241=A. I. R. 1925 Lah. 401=88 Ind. Cas. 857. It is desirable that the application for leave to appeal should be heard by a Division Bench. 41 C. L. J. 325=29 C. W. N. 458=26 Cr. L. J. 835=52 C. 636=A. I. R. 1925 Cal. 673=86 Ind. Cas. 659. Where accused's claim to be tried as European British subject wrongly allowed, error of the order cannot be challenged in appeal from conviction. 41 C. L. J. 87=29 C. W. N. 260=26 Cr. L. J. 662=A. I. R. 1925 Cal. 501=86 Ind. Cas. 38. Where ground of leave is found not to exist, appeal may be dismissed. 40 C. L. J. 256=52 C. 347=29 C. W. N. 447=26 Cr. L. J. 401=84 Ind. Cas. 1041. The principle that application for leave should be made to judge who tried the case is one of convenience. *Ibid.* If applicant can show, that if case had been tried out side Presidency-town, it would have been triable under Chapter 33 he has an absolute right of appeal. 41 C. L. J. 325=29 C. W. N. 458=26 Cr. L. J. 835=52 C. 636. Right of appeal under s. 449 (1) (a) depends on whether accused was in fact tried under chapter 33. The fact that accused might have been tried is not material. A. I. R. 1935 Rang. 67 (S. B.) For trial by jury under chapter 33, accused must have only preferred claim before Magistrate that he ought to have tried under chapter 33 and such claim must be determined by Magistrate or Sessions Judge. *Ibid.*

* **450-463.** [*Repealed*].

CHAPTER XXXIV.

LUNATICS.

Procedure in case of accused being lunatic.

464. (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person, to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

†[(1A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 465.]

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he ‡[shall record a finding to that effect and] shall postpone further proceedings in the case.

Notes.—Where the Magistrate is of opinion that the accused is of unsound mind and therefore incapable of making his defence he cannot legally acquit him. But he is bound to postpone further proceedings in the case and either release him on bail or report the case to Government. 2 Weir, 581; see also A. W. N. 1900. 47; U. B. R. (1892—96) 150; 15 A. L. J. 239=39 Ind. Cas. 310. The subsequent trial may be by a different Judge. 3 Pat. L. J. 291. Provisions of s. 464 are mandatory order not satisfying provisions cannot be sustained. A. I. R. 1933 Sind. 267=1933 Cr. C. 941. Where accused has been examined by Civil Surgeon and his evidence was recordod further evidence should be taken if asked for, rebutting evidence of Civil Surgeon. A. I. R. 1933 Oudh. 362=34 Cr. L. J. 914=10 O. W. N. 719. If party is insane court must postpone trial. 26 Cr. L. J. 701=48 M. 388=48 M. L. J. 187=86 Ind. Cas. 77. Issue as to unsoundness must be tried first. Medical expert's evidence to be taken first. 42 A. 137=18 A. L. J. 53=54 Ind. Cas 582; 44 C. L. J. 225=27 C. R. L. J. 896; A. I. R. 1926 Lah, 488=7 Lah. 315. Magistrate is not bound to direct medical enquiry upon defence of insanity. 9 Lah. 371=29 Cr. L. J. 204.

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* *See* the footnote to Chapter XXXIII, *supra*.

† This sub-section was inserted by s. 120 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

‡ These words were inserted by *ibid.*

465. (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity,* [and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged.]

Procedure in case of person committed before Court of Session or High Court being lunatic.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Notes.—The provisions of this section are mandatory and the fact that the committing Magistrate acted correctly under s. 464 does not absolve the Sessions Judge from following the procedure laid down by this section when his mind is not free from doubt as to the accused's mental state, 7 Lah. 315=27 P. L. R. 454=93 Ind. Cas. 1049=27 Cr. L. J. 552=A. I. R. 1926 Lah. 498. The moment the question of insanity of the accused is raised, the Judge must put to the jury as a preliminary issue to be tried by them as to whether or not the jury are satisfied that the accused is a person of unsound mind and can stand his trial and is in a position to understand the proceedings which are going on the Court. 96 Ind. Cas. 160=27 Cr. L. J. 896 ; 44 C. L. J. 285 ; A. I. R. 1927 Cal. 289. Where demeanour of accused raises suspicion as to sanity and capability to make defence, Court must come to definite finding on the point. A. I. R. 1930 All. 450=319 L. J. 899=125 Ind. Cas. 767. In enquiry under this section prosecution and not defence has to begin. 51C. 827=26 Cr. L. J. 276=A. I. R 1925 Cal. 479=84 Ind. Cas. 340. Onus in an enquiry under this section is on prosecution which has to prove mental capacity of accused to understand proceedings. 51 C. 584=25 Cr. L. J. 1051=A. I. R. 1924 Cal. 713=81 Ind. Cas. 827. Preliminary enquiry under this section is not a trial to find if accused is guilty or not of offence charged. 3 P. L. J. 291=19 Cr. L. J. 135 ; see also 18 Cr. L. J. 470=15 A. L. J. 239=39 Ind. Cas. 310. It is not every degree of unsoundness of mind that will oust ordinary procedure of Criminal Courts. Procedure in cases of lunacy at time of trial and at time of commission of offence is different and leads to different consequences. 33 Cr. L. J. 542=9 O. W. N. 355=A. I. R. 1932 Oudh. 190.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be,† [whether the case is one in which bail may be taken or not], may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation of trial.

‡[(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Local Government :

Custody of lunatic.

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912.]§

* These words were substituted for the words "and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed" by s. 121, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "if the case is one in which bail may be taken " by s. 122, *ibid*

‡ This sub-section was substituted by s. 122 *ibid.*

§ IV of 1912.

Notes.—Magistrate cannot add any other condition not mentioned in s. 466 (1). 1933 Cr. C. 941=A. I. R. 7933 Sind. 267.

Resumption of inquiry or trial.

467. (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may, at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Notes.—Vide 2 Weir, 582.

Procedure on accused appearing before Magistrate or Court.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused* to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, † [and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466.]

Notes.—Vide, A. I. R. 1934. Lah. 123=35 Cr. L. J. 869.

When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Notes.—Where a Magistrate finds after examination of some of the prosecution witnesses, that the accused committed the offence, while he was suffering from temporary insanity, he should act under ss. 470, 471 of the Code. He is not competent to discharge him under s. 253, if it does not appear that the accused is of unsound mind. 2 Weir. 582.

Person acquitted on such grounds to be detained in safe custody.

471. (1) Whenever‡ [the finding] stated that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would but for the incapacity found have constituted an offence,

* The word "person" was omitted by s. 123 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were added by *ibid.*

‡ These words were substituted for the words "such judgment" by s. 124 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

order such person to be * detained in safe custody in such place and manner as the Magistrate or Court thinks fit,† [and shall report the action taken to Local Government :]‡

§ [Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912.]‖

¶[(2)] The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector-General of Prison under** section 473 or section 474.

Power of Local Government to relieve Inspector-General of certain functions.

Notes.—When an offence has been committed by a lunatic he should be kept in a place of safe custody. 25 Bom. L. R. 286=26 Cr. L. J. 348. In such a case the Court can itself direct detention in a jail or asylum. 8 L. B. R. 290; see also 42 M. L. J. 72; see also 54 Ind. Cas. 254. "Detained in safe custody" in this section does not mean having regard to the language used in s. 475 "detained in the custody of friend and relations." *Legal Remembrancer* v. *Sirish Chandra Roy*, 56C. 201=A. I. R. 1928 Cal. 653. Accused need not necessarily be sent to Lunatic Asylum but safeguards may be taken. High Court can in revision pass order under s. 471 in case of failure by lower Court to do so. 42 M. L. J. 72=23 Cr. L. J. 71=A. I. R. 1922 Mad. 54=65 Ind. Cas. 423. Under s. 471 (1) a Court can order a criminal lunatic to be kept in safe custody. But Court cannot exercise powers conferred on Local Government under ss. 474 and 475. 20 Bom. L. R. 629=19 Cr. L. J. 771=43 B. 134=46 Ind. Cas. 691. The Court can itself issue a direction for the detention in a Lunatic Asylum or if there is no accommodation in it, in jail or some other place of custody in British India. 21 Cr. L. J. 46=22 O. C. 269=54 Ind. Cas. 254.

472. Lunatic prisoners to be visited by Inspector-General. [Rep. by Act IV of 1912].

473. If such person is†† [detained] under the provisions of section 466, and‡‡ [in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them] shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate of Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 464; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic prisoner is reported capable of making his defence.

Notes.—Vide, A. I. R. 1934 Lah. 123=45 Cr. L. J. 869.

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* This word was substituted for the word "kept" by of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by *ibid.*

‡ The words "and shall report the case for the orders of the Local Government" were repealed by s. 3 and Second Schedule of the Repealing and Amending Act, 1914 (X of 1914).

§ This Proviso was inserted by s. 124, *ibid.*

‖ Original sub-sections (2) and (3) of section 471 were repealed by the Indian Lunacy Act, 1912 (IV of 1912).

¶ Original sub-section (4) was renumbered "(2)" by s. 124, *ibid.*

** The word and figures "section 472" were repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

†† This word was substituted for the word "confined" by s. 125, *ibid.*

‡‡ These words were substituted for the words "such Inspector-General or visitors" by *ibid.*

474. (1) If such person is * [detained] under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be † [released] without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be † [released], or to be detained in custody or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

Procedure where lunatic detained under section 466 or 471 is declared fit to be released.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his † [release] or detention as it thinks fit.

‡ [**475.** (1) Whenever any relation or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody the Local Government may upon the application of such relative or friend and on his giving security to the satisfaction of such Local Government that the person delivered shall—

Delivery of lunatic to care of relative or friend.

(*a*) be properly taken care of and prevented from doing injury to himself or to any other person, and

(*b*) be produced for the inspection of such officer, and at such times and places, as the Local Government may direct, and

(*c*) in the case of person detained under section 466, be produced when required before such Magistrate or Court.

order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in sub-section (1), clause (*b*), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.]

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

§ [**476.** (1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1),

Procedure in cases mentioned in section 195.

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* This word was substituted for the word "confined" by s. 126 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This word was substituted for the word "discharged" by *ibid.*

‡ Section 475 was substituted by s. 127 *ibid.*

§ Sections 476 was substituted for s. 476 by s. 128 *ibid.*

clause (*b*) or clause (*c*), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or, if the alleged offence is non-bailable, may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate :

*[Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.]

For the purposes of this sub-section, a † Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

Scope.—This section has application only by judicial proceedings. 26 Cr. L. J. 1044=87 Ind. Cas. 964. Section 476 is not cancelled by s. 339. 23 N. L. R. 35=28 Cr. L. J. 646=A. I. R. 1927 Nag. 189=103 Ind. Cas. 101. An order under s. 476, Cr. Pro. Code is not a complaint. The provisions of s. 195 (5) of the Cr. Pro. Code cannot apply to a case sent to a Magistrate under s. 476 Cr. Pro. Code for an order under the latter section is not a sanction. 20 Cr. L. J. 770=53 Ind, Cas. 610. Offence must be one which appears to have been committed in or in relation to a proceeding in the Court, which passes the order under s. 476. 22 A. L. J. 772=46 A 851=25 Cr. L J. 1277=A. I. R. 1924 All. 770=82 Ind. Cas 285. The section indicates that the desirability of prosecuting accused must be present to the mind of Court during the progress of the proceedings but it is not necessary. 1 Rang. 372= 2 Bur. L. J. 154=26 Cr. L. J. 523=A. I. R. 1924 Rang. 54=85 Ind. Cas. 362. The finding of a competent Court that a document is a forgery, or that a witness has committed perjury before it is a sufficient *prima facie* ground for a complaint under s. 476. 24 A. L. J. 122=26 Cr. L. J. 1506=A. I. R. 1926 All. 21=90 Ind. Cas 290. It is doubtful whether a Court can review its order, refusing to make a complaint. under s. 476. A review would appear undesirable in view of the appeal preferred. 49 A. 752=25 A. L. J. 639=28 Cr. L. J. 543=A. I. R. 1927 All. 571=102 Ind. Cas. 351. Sections 476 and 195 must be read together. 1933 A. L. J. 697=32 Cr. L. J. 1105=53 A. 804=A. I. R. 1931 All. 443 (S.B.). Both sections apply to offences committed not only during proceedings in Court of law but also in relation to such proceedings. 1933 Cr. C. 484=34 Cr. L. J. 686=A. I. R. 1933 All. 318. Section 476 applies only where complaint by Court is necessary for taking cognizance. Words "in or relations to proceedings in that Court" are used merely to indentify Court itself which is to take action. 132 Ind. Cas. 241=58 C. 727=35 C. W. N. 98=A. I. R. 1931 Cal. 438=32 Cr. L. J. 883. Offence should have been committed in relation to proceedings in that Court. A. I. R. 1931 Oudh. 417=7 Luck. 222=33 Cr. L. J. 160=8 O. W. N. 1086. Where document is filed in Court, but offence of forgery was committed with respect to document after close of proceeding in which it was filed but during its custody in Court, action cannot be taken under s. 476. 62 M. L. J. 310=35 M. L. W. 319= 55M. 531=33 Cr. L. J. 788=A. I. R. 1932 Mad. 290. *Cf.* 476 and 195 Cr. Pro Code are intended really to prevent indiscriminate prosecutions under the various sections mentioned thereto. 15 P. L. T. 694=A. I. R, 1934 Pat. 536 ; see also 35 Cr. L. J. 785=1933 A. L. J. 1623=A. I. R. 1934 All. 385. Section 476 is corrolary of s. 195. Powers conferred by s. 476 are not limited by s. 195. A. I. R 1931 Bom. 305=55 B. 461=33 Bom. L. R. 296. To bring a case within s. 191 I. P Code false evidence must be intentionally given. 34 Cr. L. J. 686=A. I. R, 1933 All. 318. There is no inherent power to file complaint. 1931 A. L. J.

* Added by Act II of 1926.

† Certain word after this has been omitted by Act II of 1926.

697=32 Cr. L. J. 1105=53 A. 804. Occasion of the offence must be stated. Complaint only is to be sent to Court. Finding by complainant Court need not be filed. Accused must prove that findings were not recorded or were not proper. A. I. R. 1933 Sind. 37=26 S. L. R. 105=1933 Cr. C. 166. Merely because finding is not recorded in words of sections proceedings should not be set aside. A. I. R. 1933 Pat. 713=14 P. L. T. 635. Where a witness after making contradictory statements reverts to truth in later statement, he should not be prosecuted for perjury. A. I. R. 1932 Lah. 307=33 P. L. R. 321=33 Cr. L. J. 485 ; see also A. I. R. 1933 Nag. 179=34 Cr. L. J. 649. Where proceedings of complaining Court are embodied in a single document, the document may serve dual purpose of a finding as well as of complaint. A. I. R. 1931 Mad. 16=54 M. 331=32 Cr. L. J. 200. In some cases enquiring under s. 476 should be made. 35 C. W. N. 690=32 Cr. L. J. 674=A. I. R. 1931 Cal. 344 ; A. I. R. 1932 Sind 7=25 S. L. R. 341=33 Cr. L. J. 109. Court thinking preliminary inquiry necessary must make inquiry itself with ordinary procedure. Nature, method and extent of enquiry are in Court's discretion. 35 C. W. N. 98=32 Cr. L. J. 883=A. I. R. 1931 Cal. 438. Application under s. 476 can be re-heard in spite of previous dismissal. A. I. R. 1932 Mad. 130=61 M. L. J. 686=33 Cr. L. J. 272=1931 M. W. N. 1048. Court cannot sanction prosecution for offences mentioned in s. 195 (1) (c) of person not party to proceedings upon it. 61 M. L. J. 684=33 Cr. L. J. 218=A. I. R. 1932 Mad. 129=1932 Cr. C. 109. No person should be proceeded against for making false charge under s. 211 unless he is given opportunity to substantiate his allegations. 13 Lah. 568=33 Cr. L. J. 409=33 P. L. R. 174=A. I. R. 1932 Lah. 246. Complaint by private person under s. 193 Penal Code is not cognizable and conviction based on such complaint is not protected by ss. 537 and 532 and should be set aside. A. I. R. 1932 Mad. 253=55 M. 343=33 Cr. L. J. 361=35 M. L. W. 180. A private complaint can be made against a person who abets an offence for which the Court's sanction should be in the first place be obtained under s. 195 Cr. Pro. Code. A. I. R. 1934 Sind. 78=35 Cr. L. J. 1251=1934 Cr. C. 628. When order has been passed refusing to take action under s. 476 at the instance of one person, Magistrate is not prevented from taking action at instance of other person or *suo motu*. A. I. R. 1935 Pesh. 1. Withdrawal of application under s. 476 as consideration for reference to arbitration does not vitiate reference. A. I. R. 1135 Sind. 10.

Offences not referred.—Section 476 does not apply as regards offences under ss. 353, 341 and 147 of I. P. Code. 39 C. L. J. 33=A. I. R. 1924 Cal. 501. No proceedings can be started under s. 476 against an accused in respect of an offence under s. 409, I. P. Code. 13 O. L. J. 653=3 O. W. N. 618=1 Lach. 527=27 Cr. L. J. 974=A. I. R. 1927 Oudh. 210=96 Ind. Cas. 526. Robbery and abetment of robbery are not offences within the scope of s. 476, and no court can exercise the powers conferred by that section in those cases. 23 Cr. L. J. 97=15 S. L. R. 119=A. I. R. 1922 Sind. 9=65 Ind. Cas. 481. Complaints for offences described in section 195 sub-section (1) (a) do not seem to be authorised by s. 476. Hence it was held that complaint for offences under ss. 183 and 185 I. P. Code is *ultra vires*. 2 Luck. 395=3 O. W. N. 757=27 Cr. L. J. 1247=A. I. R. 1927 Oudh. 51=98 Ind. Cas. 63.

Preliminary inquiry.—The enquiry is to be made by the Court itself. It must be compatible with the ordinary procedure of the Court in question. The judge can look at documents and take evidence but he cannot base his order on the police report. 35 C. W. N. 98=A. I. R. 1931 Cal. 438=132 Ind. Cas. 241. It is true that under the provisions of s. 476 a preliminary inquiry is not legally necessary. Yet in common prudence, it should be held by every Court before it passes an order under s. 476. 51 C. L. J. 45=A. I. R. 1930 Cal. 282=127 Ind. Cas. 265 ; see also 34 C. W. N. 914=52 C. L. J. 87=A. I. R. 1930 Cal. 721 ; 31 Cr. L. J. 1055=A. I. R. 1930 Cal. 515 ; A. I. R. 1930 Rang. 201=31 Cr. L. J. 793. In a case where a *prima facie* case has been made out, a preliminary inquiry is not necessary. 15 P. L. T. 694=A. I. R. 1934 Pat. 536. Where there is no *prima facie* case, inquiry cannot be ordered. A. I. R. 1932 Bom. 551=44 Cr. L. J. 33=34 Bom. L. R. 1247. Charge which is not likely to succeed should not be preferred. A. I. R. 1933 Sind. 412. The preliminary enquiry need not be exhaustive. 31 C. W. N. 828=28 Cr. L. J. 783=A. I. R. 1927 Cal. 628=104 Ind. Cas. 111. Where it seems probable that of two sworn statements, one or the other must be false it is expedient in the interests of justice, that an enquiry should be made. 3 Ber. L. J. 149=A. I. R. 1924 Rang. 374. The nature, method and extent of the preliminary enquiry are, entirely at the discretion of the Court holding it. If therefore a Court holds such an enquiry,

the person against whom it is carried on, cannot claim to cross-examine the witnesses. 50 M. 660=51 M. L. J. 331=27 Cr. L. J. 1149=A. I. R. 1926 Mad. 1008=97 Ind. Cas. 669 ; see also 4 Pat. 484=7 P. L. T. 572=27 Cr. L. J. 371=92 Ind. Cas. 883. When once a preliminary enquiry is held full opportunity should be given to show cause against the order. 21 Cr. L. J. 718=1 Pat. L. T. 342=58 Ind. Cas. 62 ; see also 21 Cr. L. J. 29=54 Ind. Cas. 173. The person ordered to show cause has no right to cross-examine witnesses during the preliminary enquiry. 17 Cr. L. J. 249=18 Bom. L. R. 284=34 Ind. Cas. 969. When there is absolutely no evidence to make out a *prima facie* case, it is not advisable to start a prosecution. 35 Cr. L. J. 1163=11 O. W. N. 1058=A. I. R. 1934 Oudh. 377. Mere contradictions alone in the deposition of a witness will not justify a prosecution for giving false evidence A. I. R. 1934 Sind. 155=152 Ind. Cas. 254. When Magistrate receives application requesting complaint to be filed by Magistrate for offences against ss. 211 and 193 he should record finding that it is expedient to make inquiry. A. I. R. 1935 Oudh. 59.

Court.—The expression "Court" in s. 195 is of a wide scope than expression a "Civil, Revenue or Criminal Court" in s. 476. 48 A. 60=23 A. L. J. 956=26 Cr. L. J. 1485=A. I. R. 1926 All. 30=89 Ind. Cas. 1053. This section refer to "Court" and not to "Judge" or even presiding officer. Therefore Court is competent to complain whether Judge or presiding officer is same or different. 29 Cr. L. J. 1028=A. I. R. 1928 Lah. 759=112 Ind. Cas. 356. The words "such Court" in s. 476 includes the successor to the office. A. I. R. 1930 Cal. 721=34 C. W. N. 914=52 C. L. J. 87=129 Ind. Cas. 561. Any Court seized of the case can also complain under this section. A. I. R. 1930 Mad. 192=31 Cr. L. J. 986=126 Ind. Cas. 112 ; see also 33 C. W. N. 1158=95 Ind. Cas. 316=31 Cr. L. J. 430 ; 20 S. L. R. 90=27 Cr. L. J. 780=A. I. R. 1926 Sind. 215. The word court in section 476 Cr. Pro. Code includes the successor of a Judge before when offence was committed. 4 Lah. 58=24 Cr. L. J. 180=A. I. R. 1924 Lah. 101=71 Ind. Cas. 596 ; see also 30 Cr. L. J. 862 ; A. I. R. 1929 Mad. 518=30 Cr. L. J. 860 ; 49 Ind. Cas. 492=20 Cr. L. J. 172=9 L. W. 74=25 M. L. T. 18 ; 65 P. L. R. 1922=23 Cr. L. J. 451 ; 56 Cr. L. J. 500=A. I. R. 1925 Rang. 195=3 Rang. 48=3 Bur. L. J. 344 ; A. I. R. 1926 Lah. 394=27 Cr. L. J. 527=93 Ind. Cas. 991 ; 19 A. L. J. 819=22 Cr. L. J. 680 ; 18 Cr. L. J 1015=14 N. L. R. 16=63 Ind. Cas. 616. Commissioners appointed under Act 37 of 1850 are court and complaint by them is necessary. 12 Lah. 391=A. I. R. 1931 Lah. 662=32 Cr. L. J. 1252. Subordinate Court by taking direction from superior court does not become *functus officio*. A. I. R. 1933 Sind. 37=26 S. L. R. 105. Where order of discharge is passed by two Magistrate of a Bench, complaint by three magistrates of the same Bench under s. 211. I. P. Code is only technically defective and does not justify interference in revision. A. I. R. 1933 Oudh. 430=10 O. W. N. 1037. Civil Court exercising jurisdiction under s. 476 does not cease to be a civil court. 51 A. 344=1929 A. L. J. 55=A. I. R. 1929 All. 774=111 Ind. Cas. 595. In case of disobedience under ss. 69 and 70 of the Tenancy Act, the Collector can act under s. 476 of the Cr. Pro. Code and to direct a prosecution under s. 188 in respect of such disobedience. 48 C. 1086=33 Cr. L. J. 231=25 C. W. N. 617=66 Ind. Cas. 71. Where proceedings are heard by one Judge, direction under this section can be granted by another Judge. 49 B. 710=17 Bom. L. R. 616=26 Cr. L. J. 1189=A. I. R. 1925 Bom. 436=88 Ind. Cas. 709. Court to prefer the complainant shall be the original court which heard the case and an Appellate Court should only make a complaint when the suit has been before it on appeal or when the original Court has granted or refused a complaint and its order is appealed from to Appellate court. 49 A. 460=25 A. L. J. 433=A. I. R. 1927 All. 409=101 Ind. Cas. 247. Mere filing of forged document as annexure to petition is sufficient production in court for purpose of this section. 28 Cr. L. J. 318=A. I. R. 1927 Nag. 184=101 Ind. Cas. 1044. Judge receiving and dealing with a petition under s. 88 of Transfer of Property Act, is a court within the meaning s. 476. 6 P. L. T. 225=4 Pat. 24=26 Cr. L. J. 170=A. I. R. 1925 Pat. 330=83 Ind. Cas. 730. Election commissioners are not a "Civil Court" within the meaning of s. 476. Complaint by them under s. 575 must be deemed to be one under s. 195 (1) (b). 47 A. 934=23 A. L. J. 845=A. I. R. 1925 All. 737=89 Ind. Cas. 630. Proceedings under this section cannot be taken by Magistrate before whom complaint is filed after dismissal of the complaint by a Magistrate to whom it was transferred for dispossal. 53 C. 488=30 C. W. N. 504=57 Cr. L. J. 648=A. I. R. 1926 Cal. 788=94 Ind. Cas. 600 ; see also 28 Bom. L. R. 1926=28 Cr. L. J. 49 ; but see 20 A. L. J. 666=23 Cr. L. J. 603=68 Ind. Cas. 827. The enquiry and the order under s. 476 must both be by

same court. 8. O. L. J. 634=22 Cr. L. J. 751=24 O. C. 258=64 Ind Cas. 143. The word, "referred to in s. 195" which have found a place in s. 476 are merely words descriptive of the class of offences with which a particular court can deal. They do not mean that s. 195 governs s. 476 to any extends other than this. 40 A. 116=19 Cr. L. J. 148=15 P. L. J. 912=43 Ind. Cas. 436. Section 476 requires that offence referred to in s. 195 should have been brought to the notice of court in a judicial proceeding. 20 Cr. L. J. 202=49 Ind. Cas. 650. A certificate officer under ss. 57, 58 and 68 of the Bihar and Orissa Public Demands Recovery Act, 1914, is while acting in such capacity a Court. 4 Pat. L. J. 475=20 Cr. L. J. 529 =51 Ind. Cas. 769. Where the District Magistrate is acting executively, order for prosecution is illegal. 18 Cr. L. J. 942=42 Ind. Cas. 174. Court taking evidence in a proceeding of which it is entitled to take cognizance under legal Practitioners Act is a court within the section. 32 M. L. J. 402=18 Cr. L. J. 785=41 Ind. Cas. 305. Resistance offered to attachment in execution decree is offered in judicial proceeding before executing Court and that Court is competent to sanction prosecution under s. 476. 19 Cr. L. J. 153=43 Ind. Cas. 441. Collector acting under s. 70 C. P. Code has power to pass order under the section. 18 Cr. L. J. 307=14 P. L. J. 1077=38 Ind. Cas. 419. Deputy Commissioner is not a court. 17 Cr. L. J. 59=32 Ind. Cas 651. It is only the court before whom the offences of perjury and bringing a false complaint were said to have been committed can take action under s. 476. A. I. R. 1934 Oudh. 344=11 O. W. N 490= 35 Cr. L. J. 824 ; see also A. I. R. 1935 Oudh. 272=11 O. W. N. 683=35 Cr. L. J. 908, 35 P. L. R. 593=35 Cr. L. J. 1392 ; 66 M. L. J. 471=A. I. R. 1934 Mad. 316=35 Cr. L J. 780.

Discretion—Making complaint under this section is discretionary. 5 Pat. 262=7 P. L. T. 114=27 Cr. L. J. 641=A. I. R. 1926 Pat. 81=94 Ind. Cas. 593 ; see also A. I. R. 1933 Oudh. 430=10 O. W. N. 1037=1933 Cr. C. 1315. Where there is communal friction between parties, sanction should be given only in extreme cases. A. I. R. 1932 All. 674=34 Cr. L. J. 105=141 Ind. Cas. 146. In prosecuting a person for giving false evidence, age, relationship and other circumstances are to be considered by trying Magistrate. A. I. R. 1933 Mad. 125=34 Cr. L. J. 92= 1933 Cr. C. 157. High Court should not interfere with discretion of both the Courts below in their exercise of discretion to act under the section 48B. 401=2[illegible] Bom. L. R. 289=25 Cr. L. J. 1123=81 Ind. Cas. 947 ; see also 35 C. W. N. 775=33 Cr. L. J. 38=59 C. 68=A. I. R. 1931 Cal. 604. Making preliminary inquiry is left entirely to discretion of Court. It is not essential that it should be made in presence of accused or after giving notice to him. A. I. R. 1935 Oudh. 113.

In relation to.—Only those matters mentioned in complaint as are relevant to the charge of guilt tried are "in relation to" trial. 33 Cr. L. J. 479=55 M. 611=62 M. L. J. 425=A. I. R. 1932 Mad. 263 (F. B.) Offence may be committed by person in relation to a proceeding, though not in the proceeding itself. 52 C. L. J. 149=1930 Cr. C. 1063=A. I. R. 1930 Cal. 671=127 Ind. Cas. 65 ; see also A. I. R. 1934 Lah. 981. Mere fact of a telegram sent by complainant to the D. S. P. being exhibited and filed in case does not make the contents of it a matter "in relative to the proceeding" in the Court, so as to give the Court jurisdiction to take action under s. 476, against persons not parties to the proceeding but mentioned in the telegram. 1930 M. W. N. 1130. F. B. Institution of false case to Police being basis of proceedings in Sessions Court the offence is committed "in relation to" proceedings in Sessions Court with the meaning of s 476. 28 Cr. L. J. 324=A. I. R. 1924 Cal. 478=100 Ind. Cas. 708 ; but see A. I. R. 1932 Mad. (F. B.)= 1930 M. W. N. 1130=62 M. L. J. 425=55 M. 611=33 Cr. L. J. 479.

Judicial proceeding.—Under the amended section, it is not essential that the proceeding in respect of which action is taken should be of a judicial character. 4 Pat. 24=6 P. L. T. 225=26 Cr. L. J. 170=A. I. R. 1925 Pat. 330=83 Ind. Cas. 730. As regards what proceedings are judicial, vide 31 C. W. N. 828=78 Cr. L. J. 783 ; 49 C. L. J. 193=30 Cr. L. J. 656=A. I. R. 1929 Cal. 203=116 Ind. Cas. 632. Since 1923 proceedings under this section are taken only by Court and not by private person. Private person may move the Court but it is Court that should decide for action. 31 P. L. R. 840=1930 Cr. C. 917=A. I. R. 1930 Lah. 873=127 Ind. Cas. 152. The power conferred by s. 476 can be exercised by the Court only in the course of the judicial proceeding or at its conclusion or so shortly thereafter as to make it really the continuation of the same proceedings in the course of which

the offence was committed. 35 Cr. L. J. 908=11 O. W. N. 683=A. I. R. 1934 Oudh. 272.

Finding of expediency.—Express finding that in the interest of justice inquiry should be made into offence is essential. A. I. R. 1933 Cal. 147=1933 Cr. C. 224=144 Ind. Cas. 88; see also 58 C. 1117=53 C. L. J. 177=35 C. W. N. 400=A. I. R. 1931 Cal. 190; A.I.R. 1933 Mad. 67=56 M. 157=33 Cr. L. J. 960=63 M.L.J. 670; A. I. R. 1933 Sind. 412. It is unnecessary that words "expedient in the interest of justice" should appear in the order under this section. It is sufficient if the Court is of such opinion. A. I. R. 1930 Lah. 345=127 Ind. Cas. 859; see also 32 L. W. 513=59 M. L. J. 850; A. I. R. 1931 Cal. 190=53 C. L. J. 177=35 C. W. N. 400; 55 C. 1312=A. I. R. 1928 Cal. 862=30 Cr. L. J. 221=113 Ind. Cas. 142; but see A. I. R. 1930 Cal. 705=129 Cas. 210; 51 C. L. J. 908. Where offence is of considerable gravity, expediency though not recorded would be presumed. 32 Cr. L. J. 1236=58 C. 965=A. I. R. 1931 Cal. 760. Before proceeding under s. 476, officer should decide whether it is expedient to make enquiry. A. I. R. 1933 Sind. 412; see also, 11 L. L. J. 103=30 P. L. R. 392=30 Cr. L J. 666=A. I. R. 1929 Lah. 676=116 Ind. Cas. 711; 28 M. L. W. 774=30 Cr. L. J. 370=A. I. R. 1929 Mad. 74=114 Ind. Cas. 834. Complaint of perjury need not be made in every case unless interests of justice so require. 1928 M. W. N. 229=29 Cr. L. J. 732=A. I. R. 1928 Mad. 783. Where single document serves purpose of complaint and finding there is sufficient compliance. 32 Cr. L. J. 200=59 M. L. J. 850=A. I. R. 1931 Mad. 16.

Duty of Court.—It is the duty of Court to apply its mind to decide if prosecution is necessary or not. 21 A. L. J. 930=A. I. R. 1924 All. 453=83 Ind. Cas. 498. Complaint must contain particulars of false evidence. 31 Cr. L. J. 1060=A. I. R. 1930 Rang. 153=126 Ind. Cas. 530; see also 48 M. 395=48 M. L. J. 290=A. I. R. 1925 Mad. 609=86 Ind. Cas. 449. Court directing prosecution must be satisfied with sufficiency of evidence. 30 Cr. L. J. 407=115 Ind. Cas. 174, Officer making complaint must state evidence which is relied upon by him. 7 O. W. N. 638=1930 Cr. C. 944=31 Cr. L. J. 938=A. I. R. 1930 Oudh. 404=125 Ind. Cas. 838. Court which passes the order should apply its minds to the matter upon its merits. 21 A. L. J. 930=26 Cr. L. J. 18=A. I. R. 1924 All. 453=83 Ind. Cas. 498. Court making complaint must hold preliminary enquiry and must make a written complaint. 6 P. L. T. 225=4 Pat 24=26 Cr. L. J. 170=A. I. R. 1925 Pat. 330=83 Ind. Cas. 730. Complaint under this section need not state section of Penal Code. 26 Cr. L. J. 1115=A. I. R. 1925 Nag. 337=88 Ind. Cas. 283. Court is bound under the section to make a complaint in writing signed by the presiding officer of the Court and to forward it to a Magistrate of the First class having jurisdiction. 48 B. 401=26 Bom. L. R. 289=A. I. R. 1924 Bom. 347=81 Ind. Cas. 947. Complaining Court must have witnesses to be examined. 48 M. 395=26 Cr. L. J. 801=48 M. L. J. 290=A. I. R. 1925 Mad. 609=86 Ind. Cas. 449. In a complaint under s. 476 the setting out of particulars of the offence charged against the accused is absolutely necessary. 52 C. 478=26 Cr. L. J. 1307=A. I. R. 1925 Cal. 721=89 Ind. Cas. 251. Sanction will be improper where prosecution is bound to fail. 28 Cr. L. J. 293=A. I. R. 1927 Lah. 352=100 Ind. Cas. 373. Complaint of perjury without setting out precisely passages in deposition amounting to false evidence is not proper complaint. 28 M. L. W. 774=30 Cr. L. J 370=A. I. R. 1929 Mad. 74=114 Ind. Cas. 834; see also A. I. R. 1926 All. 21=24 A. L. J. 122=26 Cr. L. J. 1505=90 Ind. Cas. 290. Facts forming offence should be determined. 7 P. L. T. 199=26 Cr. L. J. 1535=A. I. R. 1926 Pat. 25=90 Ind. Cas. 445. Provision to record a finding that an offence has been committed is mandatory. and omission to do so is not cured by s. 537. 1928 M. W. N. 229=29 Cr. L J. 732=A. I. R. 1928 Mad. 783=110 Ind. Cas. 588; see also 46 C. L. J. 40=28 Cr. L. J. 840=A. I. R. 1927 Cal. 718. Recording of finding of two alternative offences mutually inconsistent is not sufficient compliance. Court must record a finding that offence or offences have been committed and complain in writing. 28 Cr. L. J. 888=A. I. R. 1927 All. 567. Complaining Magistrate or Judge must himself feell that trial will end in conviction of complaint is made. 28 Cr. L. J. 1007=A. I. R 1927 Mad. 996=105 Ind Cas. 831; see also 23 Cr. L. J. 605=68 Ind. Cas. 829. Judge desiring to take action under this section must himself make proper enquiry. 26 A. L. J. 46=28 Cr. L. J. 986=A. I. R. 1928 All. 21=105 Ind. Cas. 810.

Initiation of proceedings—Court may take action of its own motion. 34 C. W. N. 914=52 C. L. J. 87=A. I. R. 1930 Cal. 721=129 Ind. Cas. 561. Courts do generally take action only on application of parties. 5 Pat. 262=7 P. L. T. 114=27 Cr. L. J. 641=A. I. R. 1926 Pat. 81=94 Ind. Cas. 593. Under s. 476, complaint

may be made by a Court either on an application or otherwise. Whether the person applying was a party in the suit, is immaterial. 31 Cr. L. J. 143=8 Pat. 736=11 P. L. T. 76=A. I. R. 1929 Pat. 242=120 Ind. Cas. 629. Matters under s. 476 must be viewed as matters of public duty undertaken for propose of indicating and ensuring purity of administration of public justice. 34 C. W. N. 914=52 C. L. J. 87=A. I. R. 1930 Cal. 721=129 Ind. Cas. 561. Proceedings under this section not to be undertaken on application of private person unless they are in the interests of state and will result in conviction. No proceedings to be taken against person not party to Court's proceedings. 31 Cr. L. J. 938=A. I. R. 1930 Oudh. 404=7 O. W. N. 638=125 Ind. Cas. 838. Court before whom or in relation to the proceeding before which such offences have been committed should move for prosecution. 46 C. L. J. 40=28 Cr. L. J. 840=A. I. R. 1927 Cal. 718=104 Ind. Cas. 456. Court may make a complaint against a person under s. 476 for an offence under s. 211, Penal Code if it is of opinion that the proceedings before Court were caused to be started by that person though he was not a party to a proceeding before it. 52 C. L. J. 149=A. I. R. 1930 Cal. 671=127 Ind. Cas. 65. In case of false complaint to police and to Magistrate, complaint by Magistrate is necessary for prosecuting complaint. 53 M. L. J. 455=39 M. L. T. 103=1927 M. W. N. 694=28 Cr. L. J. 849=A. I. R. 1927 Mad. 851=104 Ind. Cas. 625. Court alone should take action under this section. 30 Cr. L. J. 1144=A. I. R. 1930 Pat. 194=120 Ind. Cas. 45. Proceedings should be initiated, if possible by Judge before whom offence is committed. A. I. R. 1933 Sind. 412 ; see also 32 Cr. L. J. 826=A. I. R. 1931 Cal. 436.

Notice.—Though no notice is necessary it is expedient. 49 B. 710=27 Bom. L. R. 616=26 Cr. L. J. 1189=88 Ind. Cas. 709 ; see also A. I. R. 1924 All. 435=25 Cr. L. J. 488=77 Ind. Cas. 888 ; 31 Cr. L. J. 179=A. I. R. 1930 Lah. 55=120 Ind. Cas. 687 ; 10 P. L. T. 77=30 Cr. L. J. 545=115 Ind. Cas. 882 ; 20 Cr. L. J. 777=53 Ind. Cas. 617 ; 20 Cr. L. J. 791=53 Ind. Cas. 695. An order under s. 476 directing prosecution of a person, upon evidence recorded in his absence and without affording him an opportunity to cross-examine the witnesses cannot be justified. 19 A. L. J. 56=22 Cr. L. J. 143=59 Ind. Cas. 655. Notice is not essential in proceedings under this section, but it may become necessary in some cases. 22 Cr. L. J. 233=60 Ind. Cas. 425 ; see also A. I. R. 1923 Rang. 79=24 Cr. L. J. 736=1 Ber. L. J. 153=73 Ind. Cas. 976 ; 46 C. L. J. 40=28 Cr. L. J. 840=A. I. R. 1927 Cal. 718=104 Ind. Cas 456 ; 28 Cr. L. J. 227=A. I. R. 1927 Lah. 173=99 Ind. Cas. 1027. Accused has right to cross-examine witnesses, and refusal to allow that is liable to be set aside in revision. 2 Pat. L. T. 552=6 Pat. L. J. 146=22 Cr. L. J 458=A. I. R. 1921 Pat. 176=61 Ind. Cas. 842. Notice of the alleged offence place and time must be given to accused. If not, order will be set aside. 18 A. L. J. 381 ; 21 Cr. L. J. 400=55 Ind. Cas. 1008. Where a Court after a very careful consideration arrive at the conclusion that an order under s. 476 Cr. Pro. Code is called for, the omission to have a preliminary inquiry is a mere irregularity under s. 537 of the Code. 21 Cr. L. J. 276=55 Ind. Cas. 292. Where a plaintiff is called upon to show cause, he should be afforded every opportunity of adducing evidence in support of his claim and remove any doubt in the mind of the Court as to the falsity of the case. 21 Cr. L. J. 158 (Pat.) =54 Ind. Cas. 686. Court is not bound to issue notice before taking action under s. 476 though desirable to give it. A. I. R. 1935 Oudh 113.

Order against strangers.—A person who is not a party gets no protection from clause (c) of sub-section (1) of s. 195 and is not within the purview of s. 476 in respect of offences mentioned in clause (c). S. 476 can apply only to cases where by reason of a provision in the code, the Magistrate requires a complaint by a Court in order that he may take cognizance of the charge. 35 C. 98=A. I. R. 1931 Cal. 438=132 Ind. Cas. 241. Section 476 is not restricted to the party making the complaint or actually before the Court, but is wide enough to include any person, who appears to have committed an offence mentioned in s. 195 (1) (b). It does not speak of a party to the proceeding. A. I. R. 1930 Cal. 515=31 Cr. L. J. 1055=126 Ind. Cas. 553 ; see also 29 Cr. L. J. 652=A. I. R. 1928 Lah. 510. A Court cannot make a complaint in respect of any person other than persons who were parties to the proceedings before it. 2 Rang. 374=26 Cr. L. J. 295=A. I. R. 1925 Rang. 28=84 Ind. Cas. 439 ; see also 40 M. 100=16 Cr. L. J. 797=31 Ind. Cas. 653 ; 19 Cr. L. J. 236 ; 7 O. W. N. 638=31 Cr. L. J. 938=A. I. R. 1930 Oudh. 404=125 Ind. Cas. 838 ; 22 S. L. R. 201=28 Cr. L. J. 978=A. I. R. 1928 Sind. 69=105 Ind. Cas. 802 ; 28 C. W. N. 880=25 Cr. L. J. 1095=81 Ind. Cas. 919 ; but see 20 Cr. L. J. 630=52 Ind. Cas. 390 ; 51 Ind. Cas. 202=20 Cr. L. J. 426 (Nag).

Delay.—There is no need for Courts to wait for action under this section till disposal of suit. 44 M. L. J. 74=23 Cr. L. J. 712=A. I. R. 1923 Mad. 228=69 Ind. Cas. 440. Though speedy action under s. 476 is desirable there is nothing to compel an enquiry in actual course of judicial proceedings or so shortly after so as to make it a continuation of those proceedings. 20 Bom. L. R. 998=20 Cr. L. J. 433=43 B. 300=51 Ind. Cas. 357 ; see also 20 Cr. L. J. 274 ; 19 Cr. L. J. 981=5 O. L. J. 622=48 Ind. Cas. 161 ; 18 Cr. L. J. 337=38 Ind. Cas. 721 ; 1 Pat. L. J. 553=18 Cr. L. J. 52=37 Ind. Cas. 36 ; but see 57 Ind. Cas. 457=1 P. L. T. 717=21 Cr. L. J. 633 ; 1 P. L. T. 331=21 Cr. L. J. 549=56 Ind. Cas. 853. Order under s. 476 need not be set aside on ground of delay in all cases. A. I. R. 1935 Oudh. 113.

Expert evidence.—It is not always safe to order prosecutions when there is no other testimony than that of an expert. 26 Cr. L. J. 796=A. I. R. 1925 Nag. 358=86 Ind. Cas. 428 ; see also 21 A. L. J. 390=24 Cr. L. J. 900=A. I. R. 1923 All. 601=75 Ind. Cas. 148.

Pending proceedings.—A Court need not wait till the completion of the main case, to pass an order under s. 476. 21 S. L. R. 43=27 Cr. L. J. 1249=A. I. R. 1927 Sind. 89=98 Ind. Cas. 97 ; 31 M. L. J. 440=17 Cr. L. J. 515=36 Ind. Cas. 483. Proceedings for perjury against a witness should not be started till after the conclusion of the case in which the witness gives evidence. 26 Cr. L. J. 1350=A. I. R. 1925 Nag. 412=89 Ind. Cas. 390 ; see also 18 Cr. L. J. 626=1 Pat. L. W. 545=39 Ind. Cas. 994. Where an appeal is pending the proper course is to wait its disposal before proceeding under s. 476. 46 C. L. J. 40=28 Cr. L. J. 840=A. I. R. 1927 Cal. 718=104 Ind. Cas. 456 ; see also 7 L. L. J. 73=26 Cr. L. J. 1166=A. I. R. 1925 Lah. 625=88 Ind. Cas. 526.

Probability of conviction.—An order under section 476 should not be passed unless there is probablity of conviction. 24 Cr. L. J. 823=A. I. R. 1924 Pat. 436=74 Ind. Cas. 855. Under the amended Code, it is no longer the duty of the Court to see that there is a reasonable probability of the prosecution, ending in a conviction, though it should not act capriciously or without proper ground. 27 Cr. L. J. 280=A. I. R. 1926 Mad. 238=92 Ind. Cas. 456. Suspicion is insufficient for starting prosecution. 29 Cr. L. J. 539=109 Ind. Cas. 358 ; see also 30 Cr. L. J. 221=55 C. 1312 ; 30 Cr. L. J. 407=115 Ind. Cas. 174.

Stay of proceedings—Pendency of appeal is no bar to a speedy trial under s. 476. 23 Cr. L. J. 84=65 Ind. Cas. 436 ; but see 18 Cr. L. J. 125=20 C. W. N. 1116=37 Ind. Cas. 477. Where civil suit is pending regarding the document in question, if balance of convenience is not in favour of stay of criminal proceedings, Magistrate should not be asked to pass final orders till disposal of appeal. A. I. R. 1931 Lah. 49=130 Ind. Cas. 651=32 P. L. R. 303 ; but see A. I. R. 1931 Pat. 411=12 P. L. T. 671=33 Cr. L. J. 147.

Rights of accused.—Where the accused under s. 476 was no party to the previous proceedings he should be given an opportunity to cross-examine the witnesses. 19 A. L. J. 56=22 Cr. L. J. 143=59 Ind. Cas. 655 ; see also 2 P. L. T. 552=6 P. L. J. 146=22 Cr. L. J. 458=A. I. R. 1921 Pat. 121=61 Ind. Cas. 842. Omission to inform accused of his right to be tried by another Magistrate, vitiates the trial when it is initiated and carried on by same Magistrate. 11 O. L. J. 532=25 Cr. L. J. 1224=28 O. C. 1=82 Ind. Cas. 152.

Abetment.—Complaint by Court is unnecessary under this section in respect of abettors of offence. 10 Lah. 442=30 P. L. R. 517=30 Cr. L. J. 485=115 Ind. Cas. 529.

Witness.—If the alleged false statement of a witness is not material to the case and nothing turns on it, then it is not a fit case for making a complaint. 28 Cr. L. J. 310=A. I. R. 1927 Cal. 515=100 Ind. Cas. 534. Sanction against witness for offence under section 465 I. P. Code can be granted. 23 Cr. L. J. 228=24 O. C. 367=A. I. R. 1922 Oudh. 220=66 Ind. Cas. 68. There is nothing in s. 476 to prevent a Court from making a complaint under the ordinary law in respect of an offence under s. 471 I. P. Code, if it is found to have been committed before it either by party or witness. 24 A. L. J. 122=26 Cr. L. J. 1506=A. I. R. 1926 All. 21=90 Ind. Cas. 290 When the offence committed by witness is not covered by s. 195 (1) (c), complaint by Court is not necessary. 35 C. W. N. 98=58 C. 727=A. I. R. 1931 Cal. 438. Where a witness corrects himself before leaving witness box, criminal proceedings should not be taken. A. I. R. 1933 Sind. 412.

Jurisdiction.—Village Panchyat acting in Civil case is subordinate to the District Judge and as such report of offence by Panchayat to Collector and complaint by him is without jurisdiction. 1930 A. L. J. 1520=32 Cr. L. J. 558=A. I. R. 1933 All. 141. Where statement in committing Magistrate's Court contradicts that in Sessions Court, Sessions Judge can direct prosecution. A I. R. 1932 Mad. 494=55 M. 536=33 Cr. L. J. 519; see also A. I. R. 1933 Mad. 125=1933 M. W. N. 100=34 Cr. L. J. 92; A. I. R. 1933 Mad. 767=65 M. L. J. 534=1933 M. W. N. 902. Magistrate declining under s. 476 to file a complaint is not *functus officio* complaint subsequently filed by him, confers jurisdiction to deal with person complained against. Refusal by Magistrate to file a complaint does not attract the doctrine of *autre fois acquit*. A. I. R. 1930 Sind. 315. Magistrate has no jurisdiction under s. 476 to direct prosecution in respect of a statement, entirely unconnected with the judicial proceeding before him. 22 Cr. L. J. 653=3 Lah. L. J. 535=63 Ind. Cas. 413. Complaint cannot be called in question in appeal from conviction. A. I. R. 1932 Cal. 545=34 Cr. L. J. 39.

Powers of Court.—A Court cannot make a complaint of perjury when the alleged false statement is literally and strictly speaking true. 7 L. L. J. 621=27 Cr. L. J. 330=92 Ind. Cas. 746. Where an order has been passed under s. 476 the District Magistrate has no power to alter it. 24 Cr. L. J. 658=A. I. R. 1923 All 597=73 Ind. Cas. 690. Under s. 476, a Court has authority to make an enquiry and record a finding only in cases coming under s. 195 Sub-section 1 (b) and (c) and not in cases coming under clause (a) 4 O. W. N. 640=28 Cr. L. J. 681=A. I. R. 1927 Oudh. 326=103 Ind. Cas. 409, Where alleged false evidence was given before Chief Presidency Magistrate and he preferred a complaint in his own Court and transferred it for trial to another Court, it was held that there was nothing illegal in the procedure. 53 C. 350=30 C. W. N. 276=27 Cr. L. J. 385=43 C. L. J. 310=A. I. R. 1926 Cal. 470=93 Ind. Cas. 33. Though the accused are not anxious to take action under s. 211 I. P. Code a Court has power to complain under s. 188, I. P. Code. 30 Cr. L. J. 2=A. I. R. 1928 All. 333 =112 Ind. Cas. 770.

Power of Superior Court.—A Superior Court can grant sanction under s. 476 during the pendency of an application for sanction to the Subordinate Court. 26 Bom. L. R. 713=25 Cr. L. J. 1287=A. I. R. 1924 Bom. 51=82 Ind. Cas. 359; see also 26 Cr. L. J. 566= A. I. R. 1925 All. 410=85 Ind. Cas. 710. District Magistrate cannot order the withdrawal of a complaint made under s. 476 in respect of an offence under s. 211 I. P. Code. 49 A. 752=25 A. L. J. 639=28 Cr. L. J. 543=A. I. R. 1927 All. 571=102 Ind. Cas, 351. A District Magistrate has power on reading a judgment of a Court under s. 476 to take cognizance of offences committed by persons not parties to the prior proceedings. 22 S. L. R. 201=28 Cr. L. J. 978= A. I. R. 1928 Sind. 69=105 Ind. Cas. 802. Complaint can be laid by High Court at any stage of the proceedings if justice requires it. It can be laid, when it is dealing with a case in revision. 27 Cr. L. J. 4=3 Rang. 303=A. I. R. 1925 Rang. 321=91 Ind. Cas. 36. Where a witness leaves the jurisdiction of Court, to avoid giving evidence, the High Court is neither bound nor ought to proceed under s. 476. 4 Rang. 257=27 Cr. L. J. 1241=A. I. R. 1926 Rang. 188=98 Ind. Cas. 57. In appeal against order granting sanction, Sanctioning Court cannot be asked to explain things to support his order. Summary disposal of appeal is bad. 54 C. 355= 31 C. W. N. 281=A. I. R. 1927 Cal. 284=100 Ind. Cas. 351; see also 24 Cr. L. J. 658=A. I. R. 1923 All. 597=73 Ind. Cas. 690. A Sessions Judge can take up at the instance of a private person any revision of a Magistrate's order under s. 476. 49 A. 230=25 A. L. J. 42=27 Cr. L. J. 1130=97 Ind. Cas. 650.

Appeal or Revision—Application for revision lies even when sanction under s. 476 has been granted by a Civil Court. 32 P. L. R. 46=A. I. R. 1931 Lah. 105= 131 Ind. Cas. 216; see also 32 Ind. Cas. 674=17 Cr L. J. 82. There is no revision under section 439 where order under this section is passed by Civil Court. 27 Cr. L. J. 1021=A. I. R. 1926 All. 577. Application under s. 476 originating in Civil Court should be dealt with according to s. 115, C. P. Code or provisions of Cl. 31 Cr. Pro. Code, may apply to such cases where Civil P. Code does not apply. 35 C. W. N. 775=33 Cr. L. J. 38=59 C. 68=A. I. R. 1931 Cal. 604; see also 32 Cr. L. J. 647=A. I. R. 1931 Lah. 105. High Court will not lightly interfere with discretion of subordinate Courts in prosecution under s. 476. 33 Cr. L. J. 860=13 P. L. T. 370=A. I. R. 1932 Pat. 243. Where Subordinate Judge refuses to order prosecution but District Judge orders prosecution on appeal, appeal lies to High Court. 12 P. L. T. 633=10 Pat. 446=32 Cr. L. J. 1065=A. I. R.

1931 Pat. 343. In case of several complaints by one order several accused must file separate appeals. 34 Cr. L. J. 92=1933 M. W. N. 100=A. I. R. 1933 Mad. 125. Words "such a complaint" in section 476 B. are not confined to complaints on application by some party. Even complaints made by Court of its own accord are appealable. 59 M. L. J. 850=A. I. R. 1931 Mad. 16=128 Ind. Cas. 719. Failure to exercise judicial discretion in sanctioning prosecution is good ground for revision. 11 L. L. J. 103=30 P. L. R. 392=30 Cr. L. J. 666=A. I. R. 1929 Lah. 676=116 Ind. Cas. 711. An appeal against order made by a Judge exercising original jurisdiction to a Divisional Bench lies under s. 476 B. 33 C. W. N. 329=56 C. 932=30 Cr. L. J. 974=A. I. R. 1929 Cal. 521 ; see also 8 Rang. 25=A. I. R. 1930 Rang. 201=31 Cr. L. J. 793=125 Ind. Cas. 266. An appellate order by Civil Court confirming refusal to lodge complaint by subordinate Court is not revisable under s. 439 Cr. Pro. Code. It cannot be revised even under s. 115 C. P. Code if the conditions are not satisfied. 3 O. W. N. 905= 28 Cr. L. J. 16=A. I. R. 1922 Oudh. 14. Order of District Judge taking proceedings under s. 476 is revisible only under s. 115 C. P. Code. 23 Cr. L. J. 291= 66 Ind. Cas. 515. An order under s. 476 by a Civil Court cannot be revised under s. 115 C. P. Code. 20 S. L. R. 90=27 Cr. L. J. 780=A. I. R. 1926 Sind. 215=95 Ind. Cas. 316. No appeal lies against an order under s. 476 to the Court to which the court passing the order is subordinate. 48 B. 401=26 Bom. L. R. 289=25 Cr. L. J. 1123=81 Ind. Cas. 947. Order under Sections 476 is not revisable under ss. 435 and 438 Cr. Pro. Code. 23 Cr. L. J. 228=24 O. C. 367=A. I. R. 1922 Oudh. 220=66 Ind. Cas. 68. An order under s. 476 passed by a Revenue Court cannot be interfered with by High Court under s. 439. 2 P. L. T. 609=6 P. L. J. 178=22 Cr. L. J. 408=61 Ind. Cas. 643. Only way to challange validity of order under s. 476 Cr. Pro. Code is by revision to High Court. 21 Cr. L. J. 29=54 Ind. Cas. 173. Sessions Judge has no power to deal in appeal with an order of a lower court under s. 476. 20 Cr. L. J. 413=51 Ind. Cas. 173. Proceedings under s. 476 initiated by Magistrate can be revised by High Court under s. 439. A. I. R. 1935 Oudh. 59. Where proceedings are initiated by Revenue Court or Civil Court, High Court can in revision interfere with Appellate Court's order only under s. 115 Civil Procedure Code. *Ibid.*

Superior Court may complain where subordinate Court has omitted to do so.

*[**476A.** The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such such Court by the Court to which such former Court is subordinate within the meaning of section 195 sub-section (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the making of such complaint, and, where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.]

Notes.—Upon a proper construction of ss. 476A and 476B, there would lie an appeal from the District Judge to the High Court where the Munsif has refused an application made to him under s. 476 to make a complaint. 7 Pat. L. T. 114=27 Cr. L. J. 89=5 Pat. 262=94 Ind. Cas. 593. If a subordinate Court has not acted either way then superior Court can make complaint. But a superior Court should not take action *suo motu*, where an inferior court has rejected the application to complain. 42 C. L. J. 120=29 C. W. N. 1035=52 C. 1009=26 Cr. L. J. 1569=90 Ind. Cas. 529 ; see also 15 P. L. T. 303=A. I. R. 1934 Pat. 366. The word "rejected" in s. 476A, means rejected after consideration on the merits. Withdrawal by permission does not amount to rejection. 23 S. L. R. 37=29 Cr. L. J. 1051=A. I. R. 1929 Sind. 50=112 Ind. Cas. 475. In case of invalid complaint by Deputy Magistrate, Sessions Judge can himself make a complaint under s. 476A. 26 Cr. L. J. 973= A. I. R. 1925 All. 667=86 Ind. Cas. 987. In case of several complaints of one order, several accused must file separate appeals. A. I. R. 1933 Mad. 125=34 Cr. L. J. 92= 1933 Cr. C. 157. Subordinate Court by taking directions from superior court does not become *functus officio*. 26 S. L. R. 105=A. I. R. 1933 Sind. 37. Where appeal is made to Deputy Commissioner from mutation proceedings in tashildar's court,

* Substituted by Act 18 of 1923.

the latter can direct complaint being made in respect of any offence committed in tashildar's court. A. I. R. 1935 Oudh. 113.

*[476B. Any person on whose application any Civil Revenue or Criminal Court has refused to make a complaint under section 476 or section 476A or against whom such a complaint has been made, mae appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under section 476, and if it make such complaint, the provisions of that section shall apply accordingly.]

Appeals.

Notes.—Where the Collector acting under this sections sanctions a prosecution and directs the case to be laid before a Magistrate having jurisdiction, it can be taken as an order making a complaint. 27 Cr. L. J. 523. District Judge hearing appeal under s. 476B, has power to transfer appeal to competent Court and transferee Court can make necessary complaint. A. I. R. 1930 Cal. 361. An Appellate Court in cases of appeals under s. 476B should reconsider the entire matter on its merits. 33 C. W. N. 945.=A. I. R. 1929 Cal. 480. Only one appeal lies under Section 476B. 1931 P. L. J. 117=32 Cr. L. J. 367=53A. 416=A. I. R. 1931 All. 305. Section 421 applies to appeals under s. 476B. 34 C. W. N. 923=32 Cr. L. J. 325=58 C. 402 =A. I. R. 1931 Cal. 3 ; see also A. I. R. 1931 Pat. 144=32 Cr. L. J. 735=12 P. L. T. 336. Section 476 B is not exhaustive. 35 C. W. N. 775=59 C. 68=33 Cr. L, J. 38 ; see also A. I. R. 1933 Mad. 767=38 M. L. W. 564=65 M. L. J. 534=1933 Cr. C. 1373. Appellate Court can take additional evidence. 33 Cr. L. J. 43=25 S. L. R. 68=A. I. R. 1931 Sind. 115. Appellate Court acting under s. 476B must record finding as to whether or not in interests of justice inquiry should be made into offence complained of. 33 Cr. L. J. 43=25 S. L. R. 68=A. I. R. 1931 Sind. 115. In case of refusal by Assistant Sessions Judge to make complaint under s. 476, appeal lies to the Sessions Judge. A. I. R. 1933 Cal. 192=34 Cr. L. J. 628=60 C. 596=37 C. W. N. 192=143 Ind. Cas. 703. Under s. 195 (3) Munsif's Court is subordinate to District Judge. District Judge can alone hear appeal under s. 476B. A. I. R. 1933 Pat. 179=34 Cr. L. J. 410= 14 P. L. T. 131. Appeal lies even when complaint is filed by court *suo motu*. 32 Cr. L. J. 200=A. I. R. 1931 Mad. 16=54 M. 331=59 M. L. J. 850=32 Cr. L. J. 200. Sessions Court cannot direct Additional District Magistrate to prefer complaint under s. 476B, but may itself prefer it. A. I. R. 1931 Mad. 768=33 Cr. L. J. 51=1931 M. W. N. 713. High Court should not as far as possible interfere with order under s. 476 B. 30 C. W. N. 923=32 Cr. L. J. 325=58 C. 402=A. I. R. 1931 Cal. 3. Procedure in appeal is under Criminal Procedure Code. Appellate Court cannot make remand but cannot itself make enquiry. 33 Cr. L. J. 178=33 P. L. R. 558=A. I. R. 1931 Lah. 761 (F. B). An appeal from order of the Court of Small Causes Court, Saugor, under s. 476 Cr. Pro. Code lies to Additional District Judge, Saugor and not to the District Judge, Jabbulpore. A. I. R. 1936=A. T. R. 1934 Nag. 261. For the purpose of this section Collector is Subordinate to the District Judge in matters relating to case of arrears of rent. 1934 A. L. J. 867= A. I. R. 1934 All. 886. The jurisdiction of the Court of Session only arise under this section when a court subordinate to it has directed the filing of a complaint or refused to make a complaint under s. 476 or s. 476 A. A. I. R. 1934 Oudh. 344=11 O. W. N. 490. Under s. 476 B, an Appellate Court has power to withdraw the complaint or to direct a complaint to be filed when the lower court declines to prefer a complaint, but has no jurisdiction to take additional evidence in a matter coming up under the section. 51 M. 603=55 M. L. J. 218=29 Cr. L. J. 445=1928 M. W. N. 73=A. I. R. 1928 Mad. 391=108 Ind. Cas. 638. The Appellate Court in case of appeals under s. 476 B, should reconsider the entire matter on the merits. 23 A. L. J. 515=26 Cr. L. J. 1126=A. I. R. 1925 All. 544=88 Ind. Cas. 358. A legal representation cannot either file an appeal or support it on the death of the appellant. 47 A. 359=26 Cr. L. J. 1008=A. I. R. 1925 All. 620. According to section 476 B notice is to be sent to the parties concerned. 29 P. L. R. 128=29 Cr. L. J. 72=106 Ind. Cas. 584. An appeal does not lie to the High Court from

* Substituted by Act 18 of 1923.

an appellate order of the District Judge making a complaint which the subordinate Judge might himself have made. 6 Lah. 56=7 L. L. J. 584=26 Cr. L. J. 1168=26 P. L. R. 199=A. I. R. 1925 Lah. 322=88 Ind. Cas. 528. The Court to which the appeal is transferred has all the powers, so far as the particular matter transferred is concerned, as the ordinary court of appeal. 26 Cr. L. J. 796=A. I. R. 1925 Nag. 358=86 Ind. Cas. 428. Appeals under s. 476B are subject to all the provisions applicable to criminal appeals as laid down in s. 419 and the following sections and hence an appeal can be disposed of summarily by the District Magistrate under section 421 Cr. Pro. Code. 34 C. W. N. 923=A. I. R. 1931 Cal. 3. =129 Ind. Cas. 317. No appeal is allowed from a complaint made by an Appellate Court under s. 476 B. 30 Cr. L. J. 1148=1929 Cr. C. 490=A. I. R. 1929 All. 898= 120 Ind. Cas. 116. An Appellate Court in cases of appeals under s. 476 should reconsider the entire matter on its merits. 57C. 500=33 C. W. N. 945=31 Cr. L. J. 612=A. I. R. 1929 Cal. 480. The terms of s. 476 provide for an appeal, even where a complaint is filed by a judge not at the instance of an appellant but *suo motu*. 19 M. W. N. 991=59 M. L. J. 850=A. I. R. 1931 Mad. 16=32 Cr. L. J. 200=128 Ind. Cas. 719 ; see also 31 Bom. R. 153=12 L. L. J. 29=127 Ind. Cas. 711. An appeal preferred under s. 476 B. against an order of the lower court to the High Court is governed by Act. 155, limitation Act. 46 C. L. J. 40=28 Cr. L. J. 840=A. I. R. 1927 Cal. 418=104 Ind. Cas. 456 ; see also 24 P. L. J. 368=A. I. R. 1926 All. 211=93 Ind. Cas. 851. The right of appeal given by s. 476 (b) Cr. Pro. Code is restricted to offences referred to the s. 195 sub-section (1) a (b) or (c) and no right of appeal is given by s. 476 (b) in respect of any offence referred to in s. 195, subsection (1) Cl. (a). 28 Cr. L. J. 547=A. I. R. 1927 All. 828=102 Ind. Cas. 483. Section 476 B. appears to contemplate that if an Appellate Court sets aside the order of the original Court the party prejudicially affected has a right of appeal to the Court to which appeals from Appellate Court ordinarily lie. 7 P. L. T. 199=26 Cr. L. J. 1565=91 Ind. Cas. 445 ; see also 5 Rang. 523=28 Cr. L. J. 937=A. I. R. 1927 Rang. 313=105 Ind. Cas. 457 ; 27 Cr. L. J. 523=A. I. R. 1926 All. 402=93 Ind. Cas. 987. When Appellate Court revise the decision of the lower Court, it must give sufficient reason to show how the first court did not exercise its discretion. 52 C. 478=26 Cr. L. J. 1307=A. I. R. 1925 Cal. 721=89 Ind. Cas. 251. The phrase "or against whom such a complaint has been made" means that the right of appeal is given to any person against whom a complaint has been actually made. Such refers to the nature of the complaint which relates back to the words "complaint under s. 476 or s. 476 A". 30 Cr. L. J. 1019=31 P. L. R. 464=11 Lah. 55=A. I. R. 1929 Lah 641=119 Ind. Cas. 265. Under s. 476 B, the mere fact that a complaint has been made, opens the way to an appeal. It does not matter if party could have appealed to higher departmental authorities and has failed to do so. A. I. R. 1930 Rang. 201=31 Cr. L. J. 793. In dealing under s. 476 B. the Appellate Court is not governed by s. 424 Cr. Pro Code but order 41 C. P. Code and so it has power to remand a case, if it acts in accordance with the rules of order 41. 49 C. L. J. 374= 1929 Cr. C. 54=31 Cr. L. J. 750=A. I. R. 1929 Cal. 428=124 Ind. Cas. 827. Where a Court takes action under s. 476 not being moved by a party an appeal under s. 476 B. lies. The word "such" has no reference to the case of a complaint being filed at the instance of a party. 1930 A. L. J. 203=52A 79=A. I. R. 1929 All. 899= 120 Ind. Cas. 113. Disposing of appeal summarily in light of Court's knowledge in connection with appeal in other case, amounts to an irregularity. 34 C. W. N. 923=A. I. R. 1931 Cal. 3=129 Ind. Cas. 317. The words "and if it makes such complaint, the provisions of that section shall apply accordingly" refer to the procedure laid down in s. 476 about the filing of such complaints and not to the act of making the complaint. The policy of the Code is not to allow two appeals in criminal matters and no appeal lies under the provisions of the Code against an order made by the Appellate Court under s. 476 (B). 25 N. L. R. 192=30 Cr. L. J. 1098=A. I. R. 1929 Nag. 281=119 Ind. Cas. 703. Two things are rendered appealable, the refusal to lodge and the lodging of a complaint under s. 476 or s. 476A. It is immaterial for purpose of appeal that complaint was lodged *suo motu* or on the application of a party. 31 P. L. R. 464=A. I. R. 1929 Lah. 641=119 Ind. Cas. 265. Where an order is passed under s. 476B the High Court can interfere with the same only if it falls within one of the grounds mentioned in s. 115 C. P. Code. 34 C. W. N. 914=52 C. L. J. 87=129 Ind. Cas. 561. But the High Court should be very reluctant to interfere with an order under s. 476B where the Court which makes the order seems to be fully conversant with all the facts of the case. 34 C. W. N. 923=A. I. R. 1931 Cal. 3=129 Ind. Cas. 317 ; see also 8 P. L. T. 104=

27 Cr. L. J. 1263=A. I. R. 1927 Pat. 87. The view that an appeal lies under s. 476B from an order of the Appellate Court making a complaint, after a refusal by a Subordinate Court requires reconsideration. 8 Pat. 428=30 Cr. L. J. 834=A. I. R. 1929 Pat. 367=117 Ind Cas. 878. Order directing a complaint to be lodged under s. 476B is not appealable. 33 C. W. N. 285=49 C. L. J. 342=30 Cr. L. J. 658=56C. 824=A. I. R. 1929 Cal. 172. An appeal under s. 476B lies to the Court of the Sessions Judge, from an order passed by the District Magistrate under s. 476A and not to the High Court. 25 N. L. R. 1=30 Cr. L. J. 550=A. I. R. 1926 Nag. 97=116 Ind. Cas. 77. The policy of the Legislature seems to be to allow only one appeal against orders that may be passed under s. 476 and not allow an appeal and a second appeal against such orders. 51 M. 777=28 M. L. W. 134=55 M. L. J. 444=29 Cr. L. J. 786=A. I. R. 1928 Mad 506; see also 55 C. 765=32 C. W. N. 165=29 Cr. L. J. 119=A. I. R. 1928 Cal. 781=106 Ind. Cas. 711. The words "such a complaint" in s. 476B mean a complaint made on application. No appeal therefore lies from a complaint made by a Magistrate *suo motu*. 30 Cr. L. J. 163=A. I. R. 1929 Lah. 9=113 Ind. Cas. 537. Appellate Court must itself file complaint when appeal is allowed and not direct the lower Court to do it. 55 C. 1277=A. I. R. 1929 Cal. 195=115 Ind. Cas. 36. In case of a complaint under s. 476, limitation for an appeal must run from the date of the complaint. 33 C. W. N. 329=56 C. 932=30 Cr. L. J. 974; see also 52 B. 64=30 Bom. L. R. 76=26 Cr. L. J. 315=A. I. R. 1928 Bom. 64=108 Ind. Cas. 26; 7 Lah. 77=27 Cr. L. J. 1321=28 P. L. R. 232=A. I. R. 1927 Lah. 54=98 Ind. Cas. 393. Appellate Court cannot make remand to trial Court, it can itself make inquiry. A. I. R. 1935 Oudh. 59.

477. (Power of Court of Session as to such offences committed before itself). Omitted by s. 129 of Act XVIII of 1923.

Power of Civil and Revenue Courts to complete inquiry and commit to High Court or Court of Session.

478. (1) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(2) For the purposes of an inquiry under this section the Civil or Revenue Court may * exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, † [and of Chapter XXXIII in cases where that Chapter applies] and shall be deemed to have been held by a Magistrate.

Notes.—In order to make an order under this section, there must be a judicial proceeding before the Court and it is in the course of that judicial proceeding that some supposed offence must be brought under its notice. 6 A. L. J. 392=9 Cr. L. J. 219=Ind. Cas. 306. The procedure laid down in this section is only alternative, that is to say that the Court itself may proceed under it instead of sending the case to a Magistrate under s. 376. Rat Un. Cr. 959. Failure to follow procedure the s. 487 will make the commitment illegal. 40 A. 32=15 A. L. J. 805=42 Ind. Cas. 1000 under section 478 the Court has got the option of sending the case to a Magistrate under s. 476 or of committing it directly to the Court of Session. 49 A. 898=25 A. L. J. 555=28 Cr. L. J. 668=A. I. R. 1927 All. 574=103 Ind. Cas. 204. The Code permits no appeal against an order under s. 478, When the Magistrate does not pass an order as a Criminal Court but as a Revenue Court, the District Magistrate has no jurisdiction to revise his orders. 5 Luck. 435=31 Cr. L. J. 679=124 Ind. Cas. 384.

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* The words and figures "subject to the provisions of section 443" were omitted by s. 28 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words and figures were inserted by *ibid.*

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure of Civil or Revenue Court in such cases.

480. (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code* is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender † to be detained in custody ‡ and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Procedure in certain cases of contempt.

(2) Nothing in § section 29A or in Chapter XXXIII shall be deemed to apply to proceedings under this section.

Notes.—Where the Court which deals with the offence of contempt of Court is the Court in which the contempt occurred it cannot pass the sentence prescribed by 228, but should under this section limit the punishment to Rs. 200 with imprisonment in default for 30 days. 2 Weir. 603. In order to being a case within these sections, intention to insult must be proved. A. I. R. 1933 Bom. 478=35 Bom. L. R. 1025. Where a Court chooses to act under s. 482 instead of s. 480 in respect of an offence under s. 179 I. P. Code, it must give reasons for not taking cognizance under s. 480 itself. 11 O. L. J. 358=A. I. R. 1924 Oudh. 402=81 Ind. Cas. 951. When particulars of obstruction is not stated, conviction under s. 480 is not sustainable. 30 Cr. L. J. 118=A. I. R. 1928 Rang. 283=113 Ind. Cas. 278. In the absence of direction by Local Government about Sub-Register being a Civil Court, offence under s. 228 I. P. Code. committed before him cannot be dealt with under s. 480 Cr. Pro Code 57 C. 1007=34 C. W. N. 16=31 Cr. L. J. 942=A. I. R. 1930 Cal. 366=125 Ind. Cas. 853. It is necessary for the protection of persons death with under this section to insist upon a strict compliance with the procedure laid down in s. 481. A Magistrate not following the procedure prescribed by s. 480 is barred by s. 487. from himself trying the offender. L. B. R. (1893-1900) 20. Contempt committed outside the Court is not covered by this section. 23 C. W. N. 386=20 Cr. L. J. 373=50 Ind. Cas. 981. Under this section the Court exercises criminal jurisdiction. 45 C. 169. The statement that the presiding Judge is a prejudiced Judge and taken along with accused's refusal to withdraw it was held to be enongh to constitute an offence under s. 480. 46 B. 973=24 Bom. L. R. 386=23 Cr. L. J. 325=66 Ind. Cas. 821. As the suit or innocence depends upon the words used, it is the duty of the Court to record words actually used by accused. 24 P. L. R. 1922=64 Ind. Cas. 377.

481. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

Record in such cases.

(2) If the offence is under section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting and the nature of the interruption or insult.

Notes.—The direction contained in this section is mandatory. 10 C. W. N. 1062=4 C. L. J. 415=4 Cr. L. J 210. The omission to record the statement of a legal practitioner is a fatal defect. 37 C. L. J. 535=75 Ind. Cas. 542; see also

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* XLV of 1860.

† The words "whether he is a European British subject or not" were omitted by s. 29 of the Criminal Law Amendment Act, 1923 (XII of 1923.)

‡ *See* Sch. V. Form XXXVIII, *infra.*

§ These words and figures were substituted for the words and figures "section 444" by s 29 of the Criminal Law Amendment Act, 1923 (XII of 1923).

25 Cr. L. J. 588 ; 1923 Lah. 88. Directions in s. 481 are mandatory and omission to record particulars contained in section 481 is total to proceedings for contempt of Court. 14 N. L. J. 106=32 Cr. L. J. 1221=A. I. R. 1931 Nag. 193 ; see also 29 P. L. R. 653=29 Cr. L. J. 880=A. I. R. 1928 Lah. 357. "If any" merely indicates that Court cannot compel the accused to make a statement but it cannot be construed to mean that it should not give him an opportunity to make a statement. 37 C. L. J. 535=24 Cr. L. J. 798=74 Ind. Cas. 542.

Procedure where Court considers that case should not be dealt with under section 480.

482. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

Notes.—Reasons must be given for proceeding under s. 482, in preference to acting under s. 480. 11 O. L. J. 325=25 Cr. L. J. 1127=A. I. R. 1924 Oudh. 402=81 Ind. Cas. 951.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877,* shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

Notes.—Although it appears from this section that the Local Government may constitute a Sub-Registrar a Court for the purposes of certain sections, as those dealing with contumacious contempts, still, from the fact of authorisation under this section being deemed necessary, it is to be implied that he is not to be considered a Court for ordinary purposes. 12 B. 36.

Discharge of offender on submission or apology.

484. When any Court has under section 480 †[or section 482] adjudged an offender to punishment †[or forwaded him to a Magistrate for trial] for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Notes.—Vide, 15 Ind. Cas. 983=13 Cr. L. J. 567 ; 14 Cr. L. J. 687.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant ‡ under the hand of the presiding Magistrate or Judge commit

* *See* now the Indian Registration Act, 1908 (XVI of 1908).

† These words were inserted by s. 2 and first Schedule of the Repealing and Amending Act, 1914 (X of 1914).

‡ *See* Sch. V, Form XXXIX *infra*.

him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document or thing. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Notes.—Incriminating or irrelevant questions need not be answered. 10 B. 185; 13 B. 185. This section has no application where proceedings are not taken then and there. 13 M. 424.

Appeals from convictions in contempt cases.

486. (1) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

An appeal from such conviction by any other Court of small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

Notes.—Vide, 4 M. H. C. R. 140; Rat. Un. Rep. Cr. C. 978.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. (1) Except as provided in sections* 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court,† shall try any person for any offence referred to in section 195 when such offence is committed before himself or in contempt‡ of his authority,

or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

Scope.—The prohibition under this section extends only to the contempts of authority of a Magistrate as such. U. B. R. (1897-1901) Vol. I. 61; 23 C. W. N. 520=29 C. L. J. 382; 3 M. L. J. 241; 2 Weir. 612. The prohibition in this section is a personal prohibition, the mischief to be prevented being that the same person should not decide a matter which he may have already prejudged. 1 M. 305=2 Weir. 696. Giving false evidence in a judicial proceeding is a contempt of Court's authority. Col. Dig. Cr. 27 of 1875; see also 3 M. 254=2 Weir. 607; 1 B. 311; 1 A. 625 (F. B.); 10 B. H. C. R. 73; 5 C. 184; 22 W. R. Cr. 49; 2 M. 254. The Sessions Judge before whom the offence has been committed is not incompetent to

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* The figures "477" were omitted by s. 130 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The words "and the Recorder of Rangoon" were repealed by the Lower Burma Courts Act, 1900 (VI 1900). This Act has since been repealed by the Repealing and Amending Act, 1923 (XI of 1923).

‡ As to trials for contempt of authority of a Criminal Court or Magistrate in British Baluchistan, see the British Baluchistan Criminal Justice Regulation, 1896 (VIII of 1896).

hear the appeal from a conviction from that offence. 2 Weir. 607 ; but see 16 C. 121. The terms of the section are wide enough to include Presidency Magistrate. 12 C. W. N. 246=7 C. L. J. 70=7 Cr. L. J. 103=3 M. L. T. 154. A Magistrate cannot try for offences mentioned in s. 195 (a) committed before himself. 27 Cr. L. J. 1344=98 Ind. Cas. 416. Under s. 487 a Magistrate who takes cognizance of an offence which came to his knowledge in the course of judicial proceedings pending before him is debarred from trying himself. 21 Cr. L. J. 696=23 O. C. 138=57 Ind, Cas. 936. A Magistrate cannot try a person for an offence under s. 174 I. P. Code for disobedience of his summons. A. I. R. 1934 Lah. 545=35 P. L. R. 454. The mandatory provisions of s. 487 Cr. Pro. Code as amended, clearly prohibit the Sessions Judge from trying any person for any offence referred to in s. 487 of that Code. 25 Cr. L. J. 713=81 Ind. Cas. 201.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding *[one hundred] rupees in the whole as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered, from the date of the application for maintenance.

Enforcement of order.

(3) If any person so ordered †[fails without sufficient cause]‡ to comply with with the order, any such Magistrate may, for every breach of the order issue a warrant § for levying the amount due in manner hereinbefore provided for levying fines,§ and may sentence ‖ such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing :

¶[Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.]

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient

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* These words were substituted for the word "fifty" by s. 131 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "wilfully neglects" by s. 131 of the Code of Criminal Procedure (Amendment) Act., 1923 (XVIII of 1923).

‡ *See* Sch. V, Form XLI. *infra.*

§ *See* ss. 386 to 389, *supra.*

‖ *See* Sch. V, Form XL. *infra.*.

¶ This proviso was added by s. 131 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

reason, she refuses to live with her husband, or if they are living separately by by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *exparte*. Any orders so made may be set aside for good cause shown on application made within three months from the date thereof.*

† [(7)] The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

† [(8)] ‡ [Proceedings under this section may be taken against any person] in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

Scope.—Section 488 is not governed by s. 342. 28 Cr. L. J. 478=A. I. R. 1927 Lah. 435=101 Ind. Cas. 606. The provisions of a summary remedy under s. 488 cannot, unless an Act expressly says so, take away a right conferred by Hindu Law. 1926 M. W. N. 73=A. I. R. 1926 Mad. 261=95 Ind. Cas. 972, A husband who has turned his wife out cannot by saying in Court that he will keep her in his house, avoid liability for giving her Maintenance. 22 Cr. L. J. 149=59 Ind. Cas. 853. Persons aggrieved by the magisterial orders under s. 488 are expected to take their case to the Civil Courts. S. 488 gives a speedy remedy against desertion and starvation. Other issues must be decided by Civil Courts. 50 M. L. J. 44=1926 M. W. N. 146= 27 Cr. L. J. 350=A. I. R. 1926 Mad. 346=92 Ind. Cas. 862. Where the order is conditional on neglect or refusal by the husband to maintain the wife, a *bona fide* re-union has the effect of vacating the order. A. I. R. 1931 Rang. 89=8 Rang. 460=32 Cr. L. J. 114=128 Ind. Cas. 353. A previous order for alimony cannot oust the jurisdiction of the Magistrate so long as the husband neglects or refuses to maintain the wife. 49 M. 891=49 M. L. J. 335=26 Cr. L. J. 1597=A. I. R. 1926 Mad. 59=90 Ind. Cas. 669. An order of maintenance under s. 488 cannot be passed against the father of the husband. 30 Cr. L. J. 135=113 Ind. Cas. 327. Person against whom action is taken is not an "accused" and he need not therefore be examined before making an order. 10 Lah. 406=30 P. L. R. 549=29 Cr. L. J. 1002=A. I. R. 1929 Lah. 32=112 Ind. Cas. 218. Proceedings under this section are more of a civil than a criminal nature and the person against whom action is taken may give evidence on oath on his own behalf as in a civil suit. 30 Bom. L. R. 957=52 B. 768=29 Cr. L. J. 1051=A. I. R. 1928 Bom. 347=112 Ind. Cas. 475. The bare fact that civil litigation is pending before the parties is no reason for not giving effect to an order awarding maintenance so long as it is in force. 1930 Cr. C. 201=30 P. L. R. 740=A. I. R. 1930 Lah. 213=31 Cr. L. J. 770=125 Ind. Cas. 63. S. 488 applies to woman whose husband may have become Sadhu. 33 Cr. L. J. 625=34 Bom. L. R. 587=56B. 260=A. I. R. 1932 Bom. 285. Buddhist mark is amenable to s. 488. 144 Ind. Cas. 187=11 Rang. 226=1933 Cr. C. 728=34 Cr. L. J. 815=A. I. R. 1933 Rang. 138 (F. B.). Under s. 488 father-in-law is not liable to make monthly allowance to his daughter-in-law. 32 P. L. R. 346=32 Cr. L. J. 1175=A. I. R. 1931 Lah. 532. Order in previous application does not bar subsequent application for different period. 11 Rang. 226=34 Cr, L. J. 815=A. I. R. 1933 Rang. 138 (F. B.) Decree of Civil Court cannot be ignored. 34 Cr. L. J. 188=1932 A. L. J. 766=A. I. R. 1932 All. 583. Agreement for maintenance between husband and wife when not acted upon does not oust the jurisdiction under s. 488. A. I. R. 1932

* Original sub-section (7) was omitted by *ibid.*

† Sub-section (8) and (9) were renumbered respectively (7) and (8) by s. 131 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words were substituted for the words. "The accused may be proceeded against" by *ibid.*

Cal. 698=59 C. 1229=33 Cr. L. J. 634=A. I. R. 1932 Cal. 698. *Bona fide* reunion vacates the order granting maintenance to wife conditional on neglect or refusal by husband to maintain wife. A. I. R. 1931 Rang. 89=8 Rang. 460=32 Cr. L. J. 114.

Sufficient means.—"Means" includes capacity to earn. A. I. R. 1932 Bom. 285=56B. 260=34 Bom. L. R. 587=1932 Cr. C. 397. The term "sufficient means" is not confined to pecuniary resources. A. I. R. 1933 Rang. 138 (F. B.)=34 Cr. L. J. 815=11 Rang. 226=1933 Cr. C. 728=144 Ind. Cas. 187. "Means" does not mean property. A healthy able bodied man is taken to have the means to support his wife. 50 M. L. J. 44=1926 M. W. N. 146=27 Cr. L. J. 350=A. I. R. 1926 Mad. 346=92 Ind. Cas. 862. Under s. 44 (1) (d) of the Provincial Insolvency Act, an order of discharge does not release the insolvent from any liability under an order for maintenance made under s. 488, Cr. Pro. Code. 36 P. L. R. 191.

Unable to maintain itself.—A child is able to maintain itself if it has means of its own or is entitled in law to maintenance or is able to earn a living by its own exertion. 46 M. L. J. 324=25 Cr. L. J. 370=A. I. R. 1924 Mad. 549=77 Ind. Cas. 418. It is a question of fact in each case as to whether a child can maintain itself or not and there is no limit of age placed by s. 488 for such maintenance. 22 Cr. L. J. 336=2 Pat. L. T. 109=61 Ind Cas. 64 ; see also 19 Cr. L. J. 160=43 Ind, Cas. 448 ; 10 L. W. 229=20 Cr. L. J. 733=52 Ind. Cas. 893=37 M. L. J. 361 ; 39 M. 957=17 Cr. L. J. 16=32 Ind. Cas. 144.

Neglect to maintain—Neglect or refusal to maintain the petitioner must be proved, so as to give jurisdiction to the Magistrate. 31 P. L. R. 876=A. I. R. 1930 Lah. 886=129 Ind. Cas. 17 ; see also 27 O. C. 271=26 Cr. L. J. 128=A. I. R. 1925 Oudh. 294=83 Ind. Cas. 688 ; 26 Cr. L J. 831=4 Bur. L. J. 11=A. I. R. 1925 Rang. 205=86 Ind. Cas. 479. A mere offer to maintain does not amount to absence or neglect to maintain. 49 M. 899=49 M. L. J. 335=26 Cr. L. J. 1597=A. I. R. 1926 Mad. 59=90 Ind. Cas. 669 ; see also A. I. R. 1930 Lah. 1043=129 Ind. Cas. 216. Insolvency of husband is proof that he is not guilty of wilful neglect under s. 488. 25 Cr. L. J. 1088=50 C. 867=A. I. R. 1924 Cal. 230=81 Ind. Cas. 912. A husband who has turned his wife out cannot by saying in Court that he will keep her in his house, avoid liability for giving her maintenance. 22 Cr. L. J. 148=59 Ind. Cas 853.

Amount of maintenance—In the whole "the amount of maintenance" does not mean that Rs. 100 is maximum limit for all dependants together. 37 C, W. N. 655=1933 Cr. C. 584=34 Cr. L. J. 590=A. I. R. 1933 Cal. 406. Allowance in grain is bad. A. I. R. 1932 Nag. 183=34 Cr. L. J. 123=28 N. L. R. 284=A. I. R. 1932 Nag. 183. Wife can only claim maintenance under s. 488 on scale appropriate to her station in life. 65 M. L. J. 386=38 M. L. J. 392=34 Cr. L. J. 950=A. I. R. 1933 Mad. 688. Order granting a monthly allowance of Rs. 150 is in excess of the Magistrate's jurisdiction. 28 Bom. L. R. 1299=28 Cr. L. J. 51=99 Ind. Cas. 83.

Maintenance to children—There is no limit of age for maintenance to be awarded to a child. Till the child is able to maintain itself allowance must be paid. 2 P. L. T. 109=22 Cr. L. J. 336=A. I. R. 1921 Pat 379=61 Ind. Cas. 64 ; see also A. I. R. 1933 Lah. 1026. A major son is not entitled to maintenance. 5 N. L. J. 247=23 Cr. L. J. 167=A. I. R. 1922 Nag. 249=65 Ind. Cas. 631. Maintenance awarded to child sbould not be enforced if a Civil Court subsequeutly held that the respondent was not the father. 22 Cr. L. J. 127=13 Bur. L. T. 104. Father must maintain daughter even after marriage if she cannot maintain herself or if her husband is too poor to maintain her. 26 Cr. L. J. 732=48 M. 503=48 M. L. J. 183=21 M. L. W. 142=A. I. R. 1925 Mad. 491=86 Ind. Cas. 220. A child able to maintain itself cannot compel the father to contribute towards bettering its prospects. 1 Bur. L. J. 123=24 Cr. L. J. 590=A. I. R. 1923 Rang. 45=73 Ind. Cas. 334, see also 26 Cr. L. J. 535=2 Rang. 682=A. I. R. 1925 Rang. 197=85 Ind. Cas. 375, Proof of neglect or refusal to maintain the children is sufficient to allow an application for their maintenance. 49 B. 562=27 Bom. L. R. 359=26 Cr. L. J. 975=87 Ind. Cas. 431 ; see also 28 Cr. L. J. 415=A. I. R. 1927 Lah. 430=101 Ind. Cas. 191. Daughters under 10 years, living with their mother are entitled to a separate maintenance. 52 B. 763=30 Rom. L. R. 958=20 Cr. L. J. 1049=A. I. R. 1928 Bom. 418 =112 Ind. Cas. 473 ; see also 9 Lah. 313=29 P. L. R. 401=29 Cr. L. J. 1052=A, I. R. 1928 Lah. 548=112 Ind. Cas. 476. A father is liable for the maintenance of his legitimate or illegitimate child, unable to maintain itself but not for the child of another man. 7 Lah. 365=26 Cr. L. J. 616=27 P. L. R. 539=A. I. R 1926 Lah. 532=99 Ind. Cas. 354 ; see also 19 M. L. W. 520=25 Cr. L. J. 94=A. I. R. 1924

Mad. 624=76 Ind. Cas. 30. Even a Buddhist monk must maintain his child. His personal law is of no avail. It lies on him to prove his lack of means. 46 B. R. 138 =24 Cr. L. J. 368=A. I. R. 1923 Rang. 131=72 Ind. Cas. 368. But he is presumed not to have the means to pay maintenance. 1 Bur. L. J. 97=24 Cr. L. J. 510=A. I. R. 1922 L. B. 15=72 Ind. Cas. 974. Maintenance does not include college education. A. I. R. 1933 Lah. 1926. Person against whom application is made can raise plea, that child has become major and is able to maintain itself. 10 Rang. 194=1932 Cr. C. 476=33 Cr. L. J. 495=A. I. R. 1932 Rang. 94. Where parties are governed by Mahomedan law and minor daughters are in custody of divorced wife, father's demanding custody of children as condition for maintaining them amounts to refusal within meaning of s. 488. A. I. R. 1933 Lah. 969 ; see also A. I. R. 1932 Rang. 183= 10 Rang. 486. A wife or a son can apply under the section. 25 Cr. L. J. 1249=A. I. R. 1925 All. 73=82 Ind Cas. 257. Where paternity of the child is denied, the mother's evidence alone cannot be accepted without corroboration. 24 M. L. W. 409= 27 Cr. L. J. 1095=A. I. R. 1926 Mad. 1180=97 Ind. Cas. 359. Where husband is ready and willing to maintain wife and children, Court must enquire why wife is unwilling to live with husband. 27 P. L. R. 233=27 Cr. L. J. 1319=A. I. R. 1926 Lah. 536=98 Ind. Cas. 391.

Maintenance to wife—proof of marriage—Where validity of marriage is denied by husband, Magistrate himself has to decide such question. A. I. R. 1932 Lah. 301=33 P. L. R. 230=33 Cr. L. J. 447. In some cases strict proof of marriage is not required. 34 Cr. L. J. 108=59 C. 1257=A. I. R. 1932 Cal. 866. Where relationship on which the order for maintenance is based is declared by a Civil Court not to exist, the Magistrate may be asked not to give effect to his order for maintenance. 46 M. 721=A. I. R. 1923 Mad. 707=73 Ind. Cas. 944. Chinese customary law is to be applied in deciding whether a Burmese woman is married to a Chinese half-caste. But Court may presume marriage from long co-habitation. 4 Bur. L. J. 255=27 Cr. L. J. 656=A. I. R. 1926 Rang. 82=94 Ind. Cas. 608. No presumption of marriage arises from long co-habitation. 35 Cr. L. J. 1502=A. I. R. 1934 Rang. 166. Marriage between Adi-Dravida woman and Sudra Hindu is valid. 35 Cr. L. J. 852=A. I. R. 1934 Mad. 328.

Divorce.—Divorce of the wife subsequent to the order for maintenance disentitles her to enforce the order which must be set aside. 22 Cr. L. J. 633=17 N. L. R. 92=63 Ind. Cas. 329 ; see also 21 Cr. L. J. 503=13 Bur. L. T. 43=56 Ind. Cas. 663 ; 9 L. B. R. 206=12 Bur. L. T. 60=19 Cr. L. J. 799=46 Ind. Cas. 719 ; 32 Bom. L. R. 582=31 Cr. L. J. 1110=A. I. R. 1930 Bom. 178 ; 30 Bom. L. R. 617=29 Cr. L. J. 908=A. I. R. 1928 Bom. 224. Contracting a *sagai* with her brother-in-law by a *kahar* wife has not the effect of dissolving her marriage and she is entitled to her maintenance. 27 Cr. L. J. 550=A. I. R. 1926 All. 426=93 Ind. Cas. 1046.

Jurisdiction.—Where the husband and wife have a fixed or permanent place of residence, temporary residence at some place will not confer jurisdiction on the Court at that place. But if they have no such permanent abode, temporary residence will give jurisdiction. 53 B. 781=31 Bom. L. R. 931=31 Cr. L. J. 331=A. I. R. 1929 Bom. 410=122 Ind. Cas. 59 ; A. I. R. 1933 Oudh. 119=10 O. W. N. 374=34 Cr. L. J. 744=144 Ind. Cas. 351. Court in the jurisdiction of which temporary residence takes place has jurisdiction. A. I. R. 1932 Nag. 85=34 Cr. L. J. 32=N. L. J. 24. It is residence of husband and not of his father that gives jurisdiction to Court. A. I. R. 1933 Lah. 387=1933 Cr. C. 640=146 Ind. Cas. 51. A temporary residence with the wife at her parent's house is enough to give jurisdiction in the Court of that place. 54 B. 548=32 Bom. L. R. 764=A. I. R. 1930 Bom. 348=127 Ind. Cas. 179 ; see also 49 A. 479=25 A. L. J. 435=28 Cr. L. J. 494=A. I. R. 1927 All. 291= 101 Ind. Cas. 670. But when a person makes casual visits to his mother-in-law's house where his wife happens to be at the time such house is not his "residences" within s. 488. 22 Cr. L. J. 710=24 O. C. 249=63 Ind. Cas. 870 ; see also 1 Luck. 343=3 O. W. N. 231=27 Cr. L. J. 820=13 O. L. J. 597=A. I. R. 1926 Oudh. 268=95 Ind. Cas. 596 ; but see 29 Cr. L. J. 687=A. I. R. 1928 Lah. 853=110 Ind Cas. 239. The residence for a week in Calcutta during which an application was made under s. 488, is sufficient to give the Presidency Magistrate jurisdiction. 18 Cr. L. J. 706=21 C. W. N. 872=40 Ind. Cas. 706. The mere fact that the marriage of the parties had taken place within the jurisdiction of a Magistrate is not sufficient to give that Magistrate jurisdiction under s. 488. 27 Cr. L. J. 1009=A. I. R. 1926 Lah. 663=96 Ind. Cas. 865. A final order in proceeding under s. by 488 by a competent Magistrate is not vitiated by reason of their being held in the wrong district. 49 C. L. J. 205=30 Cr. L. J. 525=A. I. R. 1929 Cal. 336= 115 Ind. Cas. 602. The Court dismissing an application under s. 488 for maintenance

cannot entertain another application as its orders are final so far as it is concerned. 17 Cr. L. J 106 (Cal.)=32 Ind. Cas. 842 ; see also 18 Cr. L. J. 326=24 P. R. Cr. 1916=38 Ind. Cas. 438. The jurisdiction of the Civil Courts to grant a declaratory decree is not affected by the order for maintenance passed by a Criminal Court. 1 Bur. L. J. 82=70 Ind. Cas. 896. A Magistrate should not enforce an order for maintenance of a child if a Civil Court subsequently holds that the respondent is not the father of the child. 22 Cr. L. J. 127=13 Bur. L. T. 104=59 Ind. Cas. 559; see also 22 M. L. T. 294=33 M. L. J. 449=18 Cr. L. J. 971=42 Ind. Cas. 331. A Civil Court has no jurisdiction to restrain a party by an injunction from pursuing her remedy under s. 488 Cr. Pro. Code, in a Criminal Court. 1930 Cr. C. 1153=A. I. R. 1930 Cal. 753=129 Ind. Cas. 103 ; see also 22 M. L. T. 293=33 M. L. J. 449=18 Cr. L. J. 971=42 Ind. Cas. 331. On dismissal for default or an application without adjudication on its merits, a second application is maintainable. 30 C. L. J. 128= 21 Cr. L. J. 3=54 Ind. Cas. 510.

Discretion of Court.—Before awarding allowance, Magistrate should enquire as to whether husband has turned out wife or as to whether wife has good ground for not living with him. A. I. R. 1933 Pesh. 101. Where wife is ex-communicated, Magistrate's discretion is not affected. 34 Bom. L. R. 1449=34 Cr. L. J. 140=A. I. R. 1933 Bom. 21.

Refusal to live with husband.—If the wife declines to go to her husband and live with him in his house, she cannot demand maintenance. 30 P. L. R. 367= 30 Cr. L. J. 861=117 Ind. Cas. 903. When the wife refuses to live with husband the Magistrate should ask her to substantiate her reasons for refusal and if satisfied of the same should pass an order for maintenance. 31 P. L. R. 664=A. I. R. 1930 Lah. 464=130 Ind. Cas. 51. Where the wife was subjected to systematic ill-treatment and brutal oppression the wife was held to have just ground for her refusal. 1929 A. L. J. 1208=31 Cr. L. J. 3=1929 Cr. C. 593=A. I. R. 1929 All. 958=120 Ind. Cas. 195. The conversion of a Christian husband to Jewish faith is not a just ground for the Christian wife refusing to live with him, so long as he treats her as a wife and does not enforce on her his own new faith. 19 S. L. R. 128=27 Cr. L. J. 1177=A. I. R. 1926 Sind. 278=97 Ind. Cas. 809. The husband having another wife and children by her is no just ground for refusal to live with him. 28 Cr. L. J. 236=A. I. R. 1927 Lah. 168=94 Ind. Cas. 1036. Where a wife resists the *bona fide* execution of a decree for restitution for conjugal rights, she cannot claim maintenance. 20 S. L. R. 145=27 Cr. L. J. 876=A. I. R. 1926 Sind. 270=96 Ind. Cas. 124. Where the wife has been turned out or illtreated and the breach between husband and wife is irremediable so that re-union would only lead to fresh bitterness and trouble, the wife should be given maintenance, whether the parties are Hindus or Mahomedans A. I. R. 1927 Nag. 139=100 Ind. Cas. 169. The husband's second marriage is no just ground for refusal to live with him. But if the first wife has been turned out after a course of ill-treatment she need not respond to the half-hearted attempts of the husband to re-take her and is entitled to maintenance. 27 Cr. L. J. 507=A. I. R. 1926 Lah. 353=23 Ind. Cas. 971 ; see also 25 Cr. L. J. 453=A. I. R. 1924 Nag. 297=77 Ind. Cas. 805. Husband agreeing to maintain wife suitably but refusing to co-habit with her is no ground for a Court to feel compelled to order maintenance to the wife. 42 M. L. J. 566=23 Cr. L. J. 336=A. I. R. 1922 Mad. 209=66 Ind. Cas. 832 ; see also 29 Cr. L. J. 909=111 Ind. Cas. 669. Admission by a Muhammadan husband that he has married another woman and would not divorce the first wife would not by itself justify action for maintenance. 29 Cr. L. J. 895=A. I. R. 1929 Lah. 56=111 Ind. Cas. 575. Among Burmese Buddhists husband's taking a second wife is a good reason for wife refusing to live with him in a separate house. But if he marries again because the first wife lived apart and would not return when asked, she would not be entitled to maintenance. 19 Cr. L. J. 966=11 Bur. L. T. 105=47 Ind. Cas 866. Among Burmese Buddhists, a wife refusing to live with her husband without sufficient reason or living apart by mutual consent is not entitled to maintenance. But a husband cannot avoid liability by declaring that marriage is dissolved by reason of the wife's absence from him. 9 L. B. R. 44=18 Cr. L. J. 767=10 Bur. L. T. 212=91 Ind. Cas. 143. Wife is not disentitled to decree for maintenance merely because decree for restitution of conjugal rights is subsisting in favour of husband. 33 Cr. L. J. 748=33 P. R. 554=139 Ind. Cas. 123 ; see also A. I. R. 1231 Lah. 561=32 Cr. L. J. 1251=32 P. L. R. 619 ; but see A. I. R. 1931 Nag. 111=133 Ind. Cas. 96. Where she is ill treated refusal to live with husband will not disentitle her of maintenance. A. I. R. 1933 Nag. 183=34 Cr. L. J. 123.

Adultery—Adultery prior to application will disqualify one to the right to maintenance. 13 O. L. J. 802=27 Cr. L. J. 1190=A. I. R. 1926 Oudh. 604=97 Ind. Cas. 950. Desertion by wife without sufficient cause will only suspend the right of maintenance. The wife can at any time claim to be maintained after she returns. 20 Cr. L. J. 98=12 S. L. R. 90=48 Ind. Cas. 978. Order of maintenance in favour of wife will not forfeited or payment cannot be discontinued by a single act of adultery. 30 Cr. L. J. 403=1929 Cr. C. 262=A. I. R. 1929 Nag. 238=115 Ind. Cas. 161 ; see also 30 Bom. L. R. 79=52 B. 100=29 Cr. L. J. 314=A. I. R. 1928 Bom. 59=1008 Ind. Cas. 24. Single act of adultery cannot constitute "living in adultery." Inspite of the existence of an illegitimate child, it was held that it was open to the court to find that petitioner was living in adultery. 29 C. W. N. 647=26 Cr. L. J. 1184=A. I. R. 1925 Cal. 794=88 Ind. Cas. 608. An order cancelling maintenance on the ground of adultery cannot retrospectively operate so as to bar the recovery of arrears already accused prior to cancellation order. 30 Cr. L. J. 719=A. I. R. 1930 Lah. 99=117 Ind. Cas. 67.

Application under s. 488.—An application under s. 488, though verified can be neither a substitute for or supplement to the applicant's examination on oath in the presence of her husband nor is it legal evidence against the husband. 25 Cr. L. J. 302=23 O. C. 237=76 Ind. Cas. 974. A prior application dismissed for default is no bar at all. 5 Rang. 697=6 Bur. L. J. 200=28 Cr. L. J. 912=A. I. R. 1927 Rang. 958=105 Ind. Cas. 240. An application under s. 488, Cr. Pro. Code, cannot be regarded as a proceeding of a civil nature within section 12 of Chin Hill Regulation although the failure to maintain a child is not a criminal offence. 25 Cr. L. J. 111=A. I. C. 1925 Rang. 140=76 Ind. Cas. 111.

Conditional order.—A condition is an order of maintenance that the wife must reside at the place to which her husband belongs is illegal. 30 Cr. L. J. 51=113 Ind. Cas. 67 ; see also 18 Cr. L. J. 528=39 Ind. Cas. 496. Maintenance order in case the husband did not fail to maintain wife is illegal. 7 Lah. 313=27 P. L. R. 462=27 Cr. L. J. 556=A. I. R. 1926 Lah. 480=93 Ind. Cas. 1052. Proviso in maintenance order that if the husband lived with the first wife the complainant, the latter would not be entitled to maintenance, is vague and illegal. 29 Cr. L. J. 895=A. I. R. 1929 Lah. 56=111 Ind. Cas. 575.

Compromise.—If parties have compromised, Court should simply dismiss petition leaving the parties to enforce it in Civil Court. It is a bar to an application under s. 489. A. I. R. 1930 Lah. 524=127 Ind. Cas. 13 ; see also 27 Cr. L. J. 779=A. I. R. 1926 Lah. 469. A compromise after an order for maintenance will only make the lady forfeit her claim to past maintenance up to the date of compromise. 37 C. L. J. 180=24 Cr. L. J. 945=A. I. R. 1923 Cal. 456=75 Ind. Cas. 529. Magistrate can pass absolute order under s. 488, based on compromise between parties refusing only to amount fixed as maintenance and nothing else. A. I. R. 1632 Lah. 349=33 P. L. R. 292=33 Cr. L. J. 488. Consent order under s. 488 is no bar to civil suit for restitution of conjugal rights. A. I. R. 1931 Mad. 482=60 M. L. J. 433=54 M. 558=1931 M. W. N. 364. Agreement regarding rate of maintenance does not deprive jurisdiction under s. 488. A. I. R. 1931 Lah. 574=32 Cr. L. J. 993=132 Ind. Cas. 854 ; see also A. I. R. 1931 Mad. 185=60 M. L. J. 213=32 C. L. J. 688=33 M. L. W. 405 ; A. I. R. 1934 Lah. 864=36 P. L. R. 153. Criminal Court cannot take cognizance of compromise and refuse to execute its order. A. I. R. 1932 Lah. 115=33 Cr. L. J. 121=33 P. L. R. 927=1932 Cr. C. 135. Enforcement of compromise is within jurisdiction of Civil Court and it cannot be incorporated in order of Magistrate. A. I. R. 1933 Cal. 776=1933 Cr. C. 1327. Order based on compromise that parties would live apart as before, is legal. 37 C. W. N. 538=A. I. R. 1933 Cal. 675 ; see also 10 O. W. N. 374=34 Cr. L. J. 744=A. I. R. 1933 Oudh. 119.

Award of maintenance—This section provides only for monthly cash allowance and hence a direction to pay a certain quantity of grants per year is clearly not legal. 25 Cr. L. J. 1271=A. I. R. 1925 Lah. 142=82 Ind. Cas. 279. Magistrate cannot order maintenance to be paid prior to application. He can only direct future maintenance to be paid. 29 Cr. L. J. 458=A. I. R. 1928 Mad. 899=108 Ind. Cas. 906 ; see also 7 Lah. 365=27 Cr. L. J. 610=94 Ind. Cas. 354. Magistrate can order increased rate of maintenance from the date of application for the same. 28 Bom. L. R. 669=27 Cr. L. J. 940=A. I. R. 1926 Bom. 416=96 Ind. Cas. 396. It is desirable to hear both parties before a referring Court recommends the reduction of maintenance. 26 Cr. L. J. 535=2 Rang. 682=A. I. R. 1928 Rang. 127=85 Ind. Cas. 375. A wife is entitled to a sum not exceeding Rs. 100 and not to separate amounts for different purposes, but wife and children each entitled to different sums

not exceeding Rs. 100. 49 M. 891=49 M. L. J. 335=26 Cr. L. J. 1597=A. I. R. 1926 Mad. 59. An order directing a mixed payment in kind and in cash every year is contrary to the terms of the section. 26 Bom. L. R. 186=25 Cr. L. J. 965=A. I. R. 1924 Bom. 332=81 Ind. Cas. 613.

Execution of order—A Court which passed an order for maintenance cannot refuse to enforce the order. 52 M. 77=1928 M. W. N. 837=28 M. L. W. 421=55 M. L. J. 516=29 Cr. L. J. 932=A. I. R. 1928 Mad. 1171=111 Ind. Cas. 852. Six months simple imprisonment for failure to pay Rs. 170 as arrears of maintenance is justified. 20 Cr. L. J. 367=12 P. R. 1919 (Cr.)=50 Ind. Cas.847. In an execution of an order of maintenance in favour of wife and son, the Court can go into the question of son's ability to have maintained himself during the period of arrears. 10 Bur. L. T. 209=18 Cr. L. J. 103=9 L. B. R. 49=37 Ind. Cas. 311. When execution of an order for maintenance is applied for the Court is bound to give judicial consideration to the objections of the counter pititioner. 26 Cr. L. J. 953=48 M. L. J. 494=21 M. L. W. 702=A. I. R. 1925 Mad. 715=87 Ind. Cas. 105. Execution of order directing maintenance to be charge on joint estate which was not appealed against cannot be disturbed in revision. 49 B. 906=27 Bom. L. R. 1353=27 Cr. L. J. 652=A. I. R. 1926 Bom. 103=94 Ind. Cas. 604. Person who has already undergone imprisonment for default cannot be sentenced second time for same default. 10 Rang. 176=33 Cr. L. J. 544=A. I. R. 1932 Rang. 93.

Exparte order.—*Exparte* order without hearing the party who was present in Court with is pleader is not justified. A. I. R. 1930 Lah. 524=127 Ind. Cas. 13. *Exparte* order against husband where there was no refusal by him to accept service of notice, is not justified. 29 Cr. L. J. 687=A. I. R. 1928 Lah. 853=110 Ind. Cas. 239. A Magistrate can re-open a case to which an *exparte* order for maintenance was passed by his predecessor in office. 2 Bur. L. J. 61=24 Cr. L. J. 928=A. I. R. 1923 Rang. 159=75 Ind. Cas. 304.

Procedure.—When husband is willing to maintain his wife proviso to sub-section 3, must be complied with. 27 Cr. L. J. 938=96 Ind. Cas. 394. No order need be passed on a compromise out of Court. But a consent order can be enforced A. I. R. 1931 Mad. 185=60 M. L. J. 213=33 M. L. W. 405=1931 M. W. N. 327=131 Ind. Cas. 173. A Presidency Magistrate has a discretion to the recording evidence. 32 Bom. L. R. 1499 ; see also 33 Cr. L. J. 461=34 Bom. L. R. 276. After examination of both the husband and the wife, the Court is bound to ask the husband if he wished to adduce evidence bofore closing the case. If that is not done there is no proper enquiry. 1930 Cr. C. 147=31 Cr.. L. J. 110=A. I. R. 1930 Nag. 59=120 Ind. Cas. 416. On the husband offering to take back his wife although she was of bad character and had left him of her own free will, the Magistrate upon proceeding further must ask the wife if she was willing to return to the husband. 31 Cr. L. J. 876=A. I. R. 1930 Lah. 665=125 Ind. Cas. 637 ; see also 36 P. L. R. 111=A. I. R. 1934 Lah. 946. If husband fails he must pay costs of applicants. A. I. R. 1933 Bom. 21=34 Cr. L. J. 140=34 Bom. L. R. 1449. Mere fact that opposite party was not examined in proceedings under s. 488 is no ground for sending case back to trial Court. 36 C. W. N. 380=33 Cr. L. J. 640=A. I. R. 1932 Cal. 488. Evidence of both sides should be recorded before passing final orders. A. I. R. 2932 Lah. 301=33 Cr. L. J. 447=33 P. L. R. 230.

Imprisonment.—Imprisonment under s. 488 (3) Cr. Pro. Code is not that of a Civil debtor. 30 P. L. R. 191. As regards period of the imprisonment, *ibid.*

Alteration in allowance.

* **[489.** (1)] On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit : Provided that if he increases the allowance the monthly rate of † [one hundred] rupees in the whole be not exceeded.

‡ [(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should

* This section was re-numbered by s. 132, of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

† This words were substituted for the word "fifty" by *ibid.*

‡ This sub-section was added by *ibid.*

be cancelled or varied, he shall cancel the order, or, as the case may be, vary the same accordingly.]

Notes.—This section is sufficiently wide to enable the Magistrate to reduce the maintenance already allowed. 48 M. 543. Alteration refers to an alteration in amount and not to a stoppage. 5 A. 226 ; 19 A. 50 (F. B.) Change in circumstances refers to pecuniary change. 21 P. R. Cr. 1894. Alteration in allowance can be ordered only if circumstances of husband change and not on the ground that when the order was made, the husband had no means to pay. 30 Bom. L. R. 617=29 Cr. L. J. 908=A. I. R. 1928 Bom. 224=111 Ind. Cas. 668. Where the Magistrate has passed a wrong order under s. 489, sub-clause (2) it is right and proper that it should be corrected by the High Court in revision. But the amended section does not take away the discretion of Magistrate in maintenance orders. 20 S. L. R. 145=27 Cr. L. J. 176=A. I. R. 1926 Sind. 270=96 Ind. Cas. 124. Order of a Civil Court for restitution of conjugal rights does not of itself cancel a previous order for maintenance. 26 Cr. L. J. 1341=3 Rang. 150=A. I. R. 1225 Rang. 268=89 Ind. Cas. 317 ; see also A. I. R. 1934 All. 940=152 Ind. Cas. 822=1934 Cr. C. 1248 ; A. I. R. 1934 Rang. 59=35 Cr. L. J. 813. For change of circumstances, order for maintenance can only be altered but not cancelled. A. I. R. 1933 Lah. 1026. Where Divorce proceeding is pending, application under s. 488 should be adjourned till end of divorce petition. A. I. R. 1932 Sind. 219=1932 Cr. C. 901. Where order under s. 488 was varied in revision, still application under s. 489 may be entertained by trial Court. 138 Ind. Cas. 624=33 Cr. L. J. 646=A. I. R. 1932 Sind. 59.

Enforcement of order of maintenance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid ; and such order may be enforced by any Magistrate in any place where the erson against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Powers to issue directions of the nature of a *habeas corpus*.

491. *(1) [Any High Court] may, whenever it thinks fit, direct,—

(*a*) that a person within the limits of its † appellate criminal jurisdiction] be brought up before the Court to be dealt with according to law ;

(*b*) that person illegally or improperly detained in public or private custody within such limits be set at liberty ;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the Governor-General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively ;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

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* These words were substituted for the words "Any of the High Court of Judicature at Fort William, Madras and Bombay" by s. 30 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words were substituted for the words "ordinary original civil jurisdiction" by *ibid.*

(2) *[The High Court] may, from time to time, frame rules to regulate the procedure in cases under this section.

(3). Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1881, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the State Prisoners Act, 1850,† or the State Prisoners Act, 1858.‡

Scope.—The proceedings by way of *habeas corpus* are proceedings calling upon a person having custody of a prisoner to produce him and demonstrate under what authority he holds him in custody. If the authority be a legitimate authority binding on the officer complying with it, he is bound to obey the order of that authority and the Court cannot interfere. All that the High Court can do is to see that there is no patent defect visible in the authority by which the person having custody claims any person. 27 Cr. L. J. 37=91 Ind. Cas. 69=A. I. R. 1926 Sind. 126. The High Court can exercise the powers of *habeas corpus* on an application by a father for custody of his child from one with whom it was entrusted, unless it was found, that it was, in the interest of the child that it should remain with the opposite party. 4 Bur. L. J. 269=95 Ind. Cas. 65=27 Cr. L. J. 737. The Bombay High Court has got jurisdiction for the production of children who are outside British India provided it is satisfied that they are in the custody or control of persons within its jurisdiction. 27 Cr. L. J. 721=50 B. 616. The investment of the extraordinary powers of *habeas corpus* in a High Court does not take away from litigants the ordinary rights which they previously had under the Civil Law. 95 Ind. Cas. 65=27 Cr. L. J. 737. The Commissioner of Police acting under a warrant issued by the Secretary to Local Government under s. 4, Goondas Act is not acting under the Criminal Procedure Code. The Secretary to the Government in such a case is not in the position of a Court subordinate or inferior to the High Court. 30 C. W. N. 791. After the recent amendment of s. 491 the Criminal Appellate Bench of the High Court has power to dispose of applications under s. 491. 29 C. W. N. 98=40 C. L. J. 489=1925 Cal. 270=52 C. 519. No application for the issue of a suit of *habeas corpus* can be maintained apart from the Code of Criminal Procedure. The provisions of the Bengal Criminal Amendment (Supplementary). Act of 1925 rendering the provisions of s. 491 Criminal Procedure Code inapplicable to persons detained under the Beugal Criminal Law Amendment Act are valid in Law. 31 C. W. N. 593=102 Ind. Cas. 647=A.tl. R. 1927 Cal. 496. The High Court cannot issue a writ of *habeas corpus* against a person arrested by a person authorised under s. 10 of the Sind Encumbered Estate Act. 99 Ind. Cas. 930=29 Cr. L. J. 194. The discretion any power of the High Court should not be exercised where the applicant can get his remedy under any other Act. 1934 A. L. J. 1046 ; see also 35 Cr. L. J. 1108=11 O. W. N. 803=A. I. R. 1934 Oudh. 392. Where a person wanted is in custody of a Native state, power to issue directions under s. 491 (1) cannot be exercised. 1929 P. L. J. 527=30 Cr. L. J. 1083=A. I. R. 1929 All. 347=119 Ind. Cas. 527. The existence of a remedy under the Guardian and Wards Act is not a bar to proceeding under s. 491 Cr. P. Code. 53 M. 72=57 M. L. J. 642=31 Cr. L. J. 187=A. I. R. 1929 Mad. 834=120 Ind. Cas. 82 ; see also 47 M. L. J. 514=48 M. 299=95 Ind. Cas. 840 ; but see A. I. R.=1938 Mad. 1087. An application under s. 491 lios io the High Court in its ordinary original criminal jurisdiction. 44 C. 76=20 C. W. N. 1233=18 Cr. L. J. 73. It is doubtful whether s. 49, applies to a case where there has been conviction and sentence. 44 C. 723=18 Cr. L. J. 311=21 C. W. N. 167. Power under this section is now given to all High Courts. The order can be made in respect of a person resident in the mofussil also within its appellate criminal jurisdiction. 20 Cr. L. J. 257=46 C. 52=50 Ind. Cas. 17 ; see also 23 Cr. L. J. 614=A. I. R. 1922 Mad. 499=43 M. L. J. 396 (F. B.). High Court has power to issue writ of *habeas corpus* apart from s. 491 Cr. Pro. Code which is not excluded by s. 16 of ordinance No. 2 of 1921. 45 M. 14=23 Cr. L. J. 490=68 Ind. Cas. 26. High Court should not under s. 491 retry or override a question already determined by itself in its original jurisdiction. 56 C. 32=52 C. W. N. 889=A. I. R. 1928 Cal. 367. Applications under s. 491 or for bail should not be made to High Court while such applications are pending in the Sessions Court. 30 Cr. L. J, 301=A. I. R. 1929 Lah. 522=114 Ind. Cas. 444. Powers should be used in cases of urgency and with caution in the interest of the child, and not merely when it is merely a case of dispute as to guardianship. 31

* These words were substituted for the words "Each of the said High Courts" by s. 30 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† XXXIV of 1850. ‡ III of 1858.

Cr. L. J. 719=52A. 491=1930 A. L. J. 615=124 Ind. Cas. 728 ; see also, 31 Cr, L. J. 985=A. I. R. 1929 Mad. 33=126 Ind Cas. 111 (F. B.), Procedure by way of *habeas corpus* cannot be entitled for going behind order of competent Court. A. I. R. 1931 Mad. 773=33 Cr. L. J. 49=54 M. 759=1931 Cr. C. 1029. Sentences of military Court can be revised by High Court. A. I. R. 1931 Bom. 55 (F. B.)=55 B. 263=32 Bom. L. R. 1613. High Court has no jurisdiction to award costs in application for issuing writ of *habeas corpus*. A. I. R. 1933 Mad.102 (F. B.).=34 Cr. L. J. 32=63 M. L. J. 387 ; see also A. I. R. 1934 All. 606. "Improperly" refers to cases in which forms of law have been observed but there has been framed on an Act or abuse of powers given by legislature. 60 C. 364=36 C. W. N. 1088=A. I. R. 1932 Cal 753, The writ of *habeas corpus* has been displaced in India by s. 491 Cr. Pro. Code. 59 C. L. J. 135=38 C. W. N. 299. No appeal lies from an order under this section. A. I. R. 1934 All. 606=1934 A. L. J, 684. In an application under this section the status of parties should not be summarily decided. A. I. R. 1934 Lah. 647=35 P. L. R. 594. Under this section High Court can enquire whether a person arrested under the Extradition warrant has been legally or illegally detained. A. I. R. 1934 All. 148=35 Cr. L. J. 1296. "Detained in custody" means some sort of confinement. A. I. R. 1934 Oudh. 301=11 O. W. N. 799.

Powers of High Court outside the limits of appellate jurisdiction.

*[491A. Any High Court established by Letters Patent may exercise the powers conferred by section 491 in the case of any European British subject which such territories, other than those within the limits of its appellaate criminal jurisdiction, as the Governor-General in Council may direct.]

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Power to appoint Public Prosecutors.

492. (1) The Governor-General in Council or the †Local Government may appoint, generally, or in any case, or for any specified class or cases, in any local area, one or more officers to be called Public Prosecutors.

(2) ‡ The District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below §[such rank as the Local Government may prescribe in this behalf] to be Public Prosecutor for the purpose of ‖ [any case].

Notes—This section applies only to a public Prosecutor appointed by Government, an not to a person specially appointed to conduct a case. 2 Weir. 653 ; see also 8 A. 291. A public prosecutor represents the Crown, as such he should dis-

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* Section 491 A was inserted by s. 31 of the Criminal Law Amendment Act 1923 (XII of 1923).

† For notification appointing Public Prosecutors in Bengal. *see* Ben. R. & O ; in Burma, *see* Bur. R. M. ; in Coorg. *see* Coorg. R. & O. ; in Madras, *see* Mad. R. & O.; in the Punjab, *see* Pun. R. & O.

‡ The words "in any case committed for trial to the Court of Session" were omitted by s. 133 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ These words were substituted for the word "the rank of Assistant District Superintendent" by *ibid.*

‖ These words were substituted for the words "such case" by *ibid.*

charge his duties fairly and fearlessly. 21 C. W. N. 28=42 C. 422. Public Prosecutor should not be unseemly eager for conviction. He has to aid the Court in discovering the truth, and do his duty to do justice between the Crown and the accused. 7 N. L. J. 155=26 Cr. L. J. 163=A. I. R. 1924 Nag. 243=83 Ind. Cas. 723. The words "in the absence of Public Prosecutor" are very wide and include temporary absence at the place in the Court where the case is proceeding. 24 S. L. R. 377=31 Cr. L. J. 684=A. I. R. 1930 Sind. 156. Where a private complaint is filed and the complainant is given permission to conduct the prosecution and be responsible for its conclusion, it is highly improper that after he has closed his evidence and the charge has been framed, the prosecution should suddenly drop out without even consulting him. 46 A. 18=21 A. L. J. 855=25 Cr. L. J. 970.

Public Prosecutor may plead in all Court in cases under his charge. Pleaders privately instructed to be under his direction.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court and person in any such case Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein, under his directions.

Notes.—Where the Public Prosecutor has charge of the prosecution the pleader instructed by a private person including the agent of a railway administration, shall it is enjoined, act under the directions of the Public Prosecutor. A. I. R. 1925 Pat. 755 ; see also 29 P. R. 1886 ; 11 B. H. C. R. 102 ; 13B. 391. Section 493 of the Criminal Procedure Code does not bar the hearing of an application for changing the charge put in by a private party without the consent of the Public Prosecutor. *Dusuandha* v. *Lachman Singh*, A. I. R. 1929 Lah. 127 (1). The word "act" in s. 493, does not mean something other than examining or cross-examining witnesses or addressing the Court. 1930 M. W. N. 769. Legal Remembrancer is ex-officio Public Prosecutor and no Vakalatnama is necessary. 37 C. W. N. 276=60 C. 603=34 Cr. L. J. 662=A. I. R. 1933 Cal. 118.

Effect of withdrawal from prosecution.

494. Any Public Prosecutor* may with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person † [either generally or in respect of any one more of the offences for which he is tried] ; and upon such withdrawal,—

(*a*) if it is made before a charge has been framed, the accused shall be discharged ‡ [in respect of such offence or offences].

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted ‡ [in respect of such offence or offences.]

Notes.—The officer who has power of withdrawing from the prosecution of a case, under s. 494, is the officer referred to in s. 495. Cl. 11. Or. L. J. 722=8 Ind. Cas. 867=1911 M. W. N. 106. A public prosecutor for a particular case cannot withdraw from a prosecution under this section. 8A. 291 (F. B.)=1886 A. W. N. 94. If the prosecution be withdrawn and the accused is discharged under this section he will be a competent witness. 33 C. 1353=10 C. W. N. 962=4 Cr. L. J. 145. In case of withdrawal the accused should be acquitted. 12 M. 35 ; 5 M. L. T. 216 ; 24 Cr. L. J. 433. The case must be withdrawan before the verdict of the jury. 46 C. L. J. 121=104 Ind. Cas. 449. The Court may withhold consent when withdrawal is prayed for, but reasons should be recorded. 26 C. W. N. 880 ; 22 C. W. N. 69 ; see also 29 Ind. Cas. 364. In giving consent to the withdrawal the Court should also record reasons. 48 C. 1105 ; 26 C. W. N. 880 ; 72 Ind. Cas. 361. A complainant cannot withdraw. 4 Pat. L. T. 400. An acquittal under this section bars a

* The words "appointed by the Governor-General in Council or the Local Government" were omitted by s. 134, of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923).

† These words were insered by *ibid.*

‡ These words were added by s. 134, *ibid.*

retrial. 40 M. 976 ; 23 Cr. L. J. 305 ; 66 Ind. Cas. 657 ; 9 N. L. R. 26. Where a case is withdrawn by Crown, a fresh complaint by injured person is not barred. A. I. R. 1934 Lah. 169=1934 Cr. C. 347. Where trial Magistrate permits Public Prosecutor to withdraw one accused from prosecution so that his evidence might be avoidable against other accused, such person is competent witness in law. A. I. R. 1933 Cal. 148=34 Cr. L. J. 675. No formal enquiry is necessary under s. 494. A. I. R. 1932 Sind. 92=26 S. L. R. 67=33 Cr. L. J. 449. Clauses (a) and (b) cover all possible cases and limit time before which withdrawal can take place. 36 C. W. N. 928=56 C. L. J. 79=34 Cr. L. J. 433=A. I. R. 1932 Cal. 699. Court may allow Public Prosecutor to withdraw from prosecution in suitable case although it comes to the conclusion that prosecution is true. A. I. R. 1931 Cal. 607=54 C. L. J. 253 ; see also 56 C. L. J. 79=34 Cr. L. J. 433=36 C. W. N. 928. Withdrawal of case by prosecution is always open by the permission of the Court. A. I. R. 1933 Lah. 884=1933 Cr. C. 1178. No necessity of giving reasons for permitting withdrawal. A. I. R. 1932 Lah. 368=33 Cr. L. J. 337=33 P. L. R. 394 ; see also 59 C. 275=36 C. W. N. 16 ; 33 Cr. L. J. 449=26 S. L. R. 67=A. I. R. 1932 Sind. 92. Mistaken order of acquittal in previous case when discharge alone was possible is no bar to subsequent trial. A. I. R. 1933 Mad. 98=34 Cr. L. J. 12=36 M. L. W. 641. In case of withdrawal of case under s. 494, consent of Court is necessary. 34 Cr. L. J. 519 =29 N. L. R. 201=A. I. R. 1933 Nag. 78=143 Ind. Cas. 77. Public prosecutor is responsible person for making application for withdrawal. 33 Cr. L. J. 449=26 S. L. R. 67=A. I. R. 1932 Sind. 92. High Court should not interfere, where there is adequate ground for consent under s. 494. A. I. R. 1932 Sind. 92=26 S. L. R. 67= 33 Cr. L. J. 449. In case of discharge under s. 494, further enquiry can be ordered under s. 436. 29 N. L. R. 201=34 Cr. L. J. 519=A. I. R. 1933 Nag. 78. Court must record reasons for according or refusing consent to the withdrawal, so that High Court may be in a position to see if discretion has been properly exercised. 6 N. L. J. 177=24 Cr. L. J. 361=A. I. R. 1923 Nag. 260=72 Ind. Cas. 361 ; see also 48 C. 1105=34 C. L. J. 51=25 C. W. N. 615 ; 26 C. L. J. 208=28 Cr. L. J. 886. but see 72 Ind. Cas. 593=24 Cr. L. J. 433=A. I. R. 1923 Lah. 163 ; 2 Pat. 708=5 Pat. L. T. 404=25 Cr. L. J. 446=77 Ind. Cas. 734. Magistrate has discretion in allowing withdrawal or not. 33 C. W. N. 468=56 C. 1023=31 Cr. L. J. 415=121 Ind. Cas. 678. An order of discharge passed on withdrawal of the case by the Public Prosecutor does not amount to an acquittal. 30 P. L. R. 58=30 Cr. L. J. 233=A. I. R. 1929 Lah. 315=114 Ind. Cas. 50. Magistrate is not bond to record reasons for permitting withdrawal. But it is desirable that he should do so. 24 S. L. R. 377=31 Cr. L. J. 584=A. I. R. 1930 Sind. 156=124 Ind. Cas. 378 ; see also 30 Cr. L. J. 872=25 N. L. R. 6. The order of discharge of the accused on the withdrawal of a case, does not prevent a fresh complaint being entertained. 34 C. W. N. 196=A. I. R. 1930 Cal. 369=127 Ind. Cas. 63 ; see also 26 Cr. L. J. 129=A. I. R. 1924 Pat. 797=83 Ind. Cas. 689. The only prosecutor who could withdraw without the consent of Court and without giving reasons is the Advocate-General. 1 Rang. 756=25 Cr. L. J. 1106=81 Ind. Cas. 930. If a Sessions Judge in his discretion refuses permission to withdraw a case, High Court will not interfere. 27 Cr. L. J. 334=A. I. R. 1926 Mad. 296=92 Ind. Cas. 750. If a case against an accomplice is withdrawn under this section instead of a pardon being tendered under s. 337, he is a competent witness in the case against his co-accused. A. I. R. 1926 Nag. 426=27 Cr. L. J. 807 ; see also 31 C. L. J. 192=21 Cr. L. J. 386. The failure to obtain Court's consent would amount to a mere irregularity. 6 Pat. 208=8 P. L. T. 12=27 Cr. L. J. 1100=97 Ind. Cas. 364.

Permission to conduct prosecution.

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the Local Government in this behalf* but no person, other than the Advocate-General, Standing Council, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such premission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

* The words "with the previous sanction of the Governor-General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920).

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

Notes.—When a Magistrate has after due consideration exercised the discretion allowed to him by s. 495, and allowed counsel to appear on behalf of the prosecution, the High Court cannot, as a Court of Session, overrule the order of the Magistrate and direct him to refuse to allow counsel to appear. 2 Weir. 665. The Criminal Courts have no jurisdiction to acquit accused person, on a motion for a withdrawal of the case by the Police Inspector, who is specifically permitted to conduct the prosecution under s. 495. 10 Cr. L. J. 501=4 Ind. Cas. 132. The Court is not warranted in taking but the prosecution from the hands of the complainant's pleader assigning it to a person other than the Public Prosecutor. 18 S. L. R. 30=25 Cr. L. J. 571=A. I. R. 1925 Sind. 99. Permission of Court is not necessary for the complainant's counsel to address the Court for the prosecution as denied by the Publice Prosecutor. 1930 M. W. N. 769 : but see A. I. R. 1933 Sind. 345. Where the prosecuting Inspector is himself the complainant, he is not debarred from prosecuting his own case. 17 Cr. L. J. 486=36 Ind. Cas. 166. Excise officers are not included in the expression "Officer of police" in s. 495(4) 35 Bom. L. R. 376=34 Cr. L. J. 905=A. I. R. 1933 Bom. 234. Prosecution may be conducted by any person mentioned in s. 495. A. I. R. 1632 All. 670 ; see also A. I. R. 1933 All 895.

CHAPTER XXXIX.*

OF BAIL.

In what cases bail to be taken.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer, or at any stage of the proceedings before such Court to give bail such person shall be released on bail : Provided that such officer or Court, if he or it thinks fit, may instead of taking bail from such person, discharge him on his executing a bond † without sureties for his appearance as hereinafter provided,

‡[Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3)].

Notes.—The provision in s. 107 Cl. (4) of the Criminal Procedure Code, that a Magistrate before whom a person is sent under that section "may arrest or in his discretion detain such person in custody until completion of inquiry" is not subject to or controlled by this section. 1912 M. W. N. 160=36 M. 474. Refusal of bail is contrary to the spirit of the provisions of Chapter VIII. 27 Cr. L. J. 935. The proviso in s. 496 that bail can be granted only to a person other than a person accused of a non-bailable offence is not applicable to the Court of Session acting under s. 498 Cr. Pro. Code. *Aclhaibor* v. *Emperor*, 27 A L. J. 927=117 Ind. Cas. 99. A Magistrate can enlarge the accused on bail, pending further police investigation. 26 Cr. L. J. 167=A. I. R. 1923 Lah. 663=83 Ind. Cas. 727. The likelihood of the accused absconding or not is to be considered in granting or refusing bail. 27 Cr. L. J. 310=A. I. R. 1926 Nag. 279=92 Ind. Cas. 703. If the offence is bailable and the applicant is not likely to abscond, bail should not be refused merely because of the seriousness of the offence. 26 A. L. J. 1928 All. 211=108 Ind. Cas.

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* The provisions of this Chapter and of Chapter XLII apply, as far as may be, to bail given and bonds executed under s. 132 (4) of the Railways Act, 1890 (IX of 1890).

† *See* Sch. V, From XLII, *infra*.

‡ This proviso was added by s. 135 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

689. The bond must be in accordance with form 42 of the Schedule. If it is not in that form the executant incurs no legal liability under it. 29 Cr. L. J. 491=A. I. R. 1928 Lah. 318=109 Ind. Cas. 219. A person re-arrested after having been discharged on executing a surety bond, is entitled to be released under s. 496, if he is not accused of a non-bailable offence. 30 Cr. L. J. 809=10 P. L. T. 801=A. I. R. 1929 Pat. 654=117 Ind. Cas. 628. The Court should in bail applications, consider the penal consequences of the act if proved, the nature of the offence charged and whether the offence is bailable or not. 19 A. L. J. 693=22 Cr. L. J. 654=63 Ind. Cas. 414. In exercising the discretionary power to admit a person to bail, Courts have to consider the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offence and the character, means and standing of the accused. 30 Cr. L. J. 1129=A. I. R. 1929 Lah. 284=120 Ind. Cas. 10 ; see also 30 Cr. L. J. 1129=A. I. R. 1929 Lah. 284=120 Ind. Cas. 10. A person who broke his bail allowed by the High Court is not entitled to have his revision application heard. 24 Cr. L. J. 240=A. I. R. 1923 All. 327=71 Ind. Cas. 704. The application for bail should be supported by an affidavit giving the ground of bail. A. I. R. 1934 All. 815=1934 Cr. C. 998. Persons against whom proceedings are taken under s. 107 are entitled to bail as of right. A. I. R. 1933 Rang. 165=6 R. R. 70 ; see also A. I. R. 1933 Rang. 164=34 Cr. L. J. 950. Grant of bail is the rule and the refusal is the exception. 1931 A. L. J. 515=32 Cr. L. J. 1271=53A 931=A. I. R. 1931 All. 356. Accused cannot be deprived of their liberty except in due course of law. A. I. R. 1932 All. 327=1932 Cr. C. 306=33 Cr. L. J. 752. Bail should not generally be granted in cases of crimes punishable with long terms of imprisonment and never in case of murder. A. I. R. 1932 Pat. 209=13 P. L. T. 530=33 Cr. L. J. 574. That one of the accused should arrange for defence and for funds is not sufficient for grant of bail where release of accused is likely to lead to tampering of prosecution witnesses. A. I. R. 1935 All. 885. Bail will not be withheld as a punishment. A. I. R. 1933 Sind. 367=1933 Cr. C. 1339. Where bail has been refused by the Sessions Judge after considering all circumstances High Court will not interfere unless he has exercised discretion improperly. A. I. R. 1933 Sind. 367.

When bail may be taken in case of non-bailable offence.

497. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of police-station, or appears or is brought before a Court he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of *[an offence punishable with death or transportation for life.]

†[Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed ‡ a non-bailable offence,] but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

§[(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.]

§[(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment, delivered.]

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* These words were substituted for the words "the offence of which he is accused" by s. 136, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This proviso was aded by *ibid.*

‡ These words were substituted for the words "such offence" by *ibid.*

§ These sub-sections were inserted by *ibid.*

* [(5) A High Court or Court of Session and in the case of a person released by itself, any other Court may cause any person who has been released under this section to to be arrested and may commit him to custody.]

Notes.—The rule laid down in this section, for the guidance of Courts other than the High Court is a rule founded upon justice and equity and one which should be followed by the High Court as well as by every other Court unless anything appears to the contrary. 42 C. 25=16 Cr. L. J. 215=27 Ind. cas. 839. This section does not warrant the proposition that unless there is evidence to raise a strong presumption of the guilt of the accused, he must be admitted to bail and cannot be remanded. 6 M. 63=2 Weir. 409. The question of releasing an accused person on bail must be decided in accordance with what the legislature has enacted in this section, until this section is altered by the legislature. 6 L. B. R. 172=19 Ind. Cas. 171=14 Cr. L. J. 171=6 Bur. L. A. 73. The High Court cannot interfere and give relief under s. 497 or 498 Cr. Pro. Code when there is no order by any Court regarding the person in remand. 27 Cr. L. J. 1185=97 Ind. Cas. 945=44 Cr. L. J. 134. The words "offences punishable with death or transportation for life" in s. 497 must not be taken as extending to offences punishable with transportation for life only. 27 Cr. L. J. 401 ; 97 Ind Cas. 39 ; 27 Cr. L. J. 1063. Even under the present section a Magistrate has discretion to refuse to release on bail in a non-bailable offence. 27 Cr. L. J. 859. There is no difference between English and the Indian practice. Bail is not to be withheld merely as a punishment and the requirements as to bail are merely to secure the attendance of the accused at the trial. The test is to be applied by reference to the following considerations amongst others : (1) the nature of the accusation ; (2) the nature of the evidence in support of the accusation : (3) the severity of the punishment which conviction will entail : (4) the character of the sureties, that is to say, whether there are independent or indemnified by the accused ; (5) the character and behaviour of the accused. 6 Pat. 802=102 Ind. Cas. 909. 28 Cr. L. J. 621=8 Pat. L. T. 557=A. I. R. 1927 Pat. 302 ; see also 5. Rang. 276=104 Ind. Cas. 101=28 Cr. L. J. 773. Persons accused of non-bailable offences should not be released on bail as a rule, unless the case against them appears not likely to succeed or other special circumstances exist as justify the bail. 26 Cr. L. J. 4=A. I. R. 1923 All. 479=83 Ind. Cas. 483. In view of the amendment of s. 497 of the Cr. Pro. Code, Courts will be less fettered than before. 25 Cr. L. J. 732=51 C. 402=38 C. L. J. 388=A. I. R. 1924 Cal. 476=81 Ind. Cas. 220. The powers of the trial Courts are restricted to those granted in s. 497. 25 Cr. L. J. 1132=A. I. R. 1924 Oudh. 435=81 Ind. Cas. 956. Under s. 497 (5) High Court can re-arrest a person released on bail. 25 Cr. L. J. 1363=A. I. R. 1925 Nag. 228=82 Ind. Cas. 755. The High Court should not grant bail in cases of offences punishable with death or transportation for life except for exceptional and very special reasons. 1930 Cr. C. 1151=A. I. R. 1930 Rang. 335=128 Ind. Cas. 577. The object of bail is to secure the appearance of accused. In granting it, the Court have to consider the seriousness of the charge, nature of evidence and severity of the sentence prescribed for the offence and sometimes, the character, means and standing of the accused. 27 Cr. L. J. 1063=A. I. R. 1927 Nag. 53=97 Ind. Cas. 39 ; see also 3 Rang. 538=27 Cr. L. J. 401=A. I. R. 1926 Rang. 51=93 Ind. Cas. 65 ; 51 C. 402=38 C. L. J. 388=25 Cr. L. J. 732=81 Ind. Cas. 220 ; 8 P. L. T. 557=28 Cr. L. J. 621 ; 51 C. 402=38 C. L. J. 388=81 Ind. Cas. 220. Section 498 must be interpreted as being controlled by s. 497. English authorities as to grant of bail should not be followed in India. 22 S. L. R. 435=29 Cr. L. J. 470=A. I. R. 1928 Sind. 142=109 Ind. Cas. 118. A Magistrate has no power to grant bail in cases falling under s. 409, Penal Code 1930 Cr. C. 1151=A. I. R. 1930 Rang. 335=128 Ind. Cas. 577. A person accused of murder shall not be released on bail either by police or the Court before whom he is brought, if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused on the ground that the case against him does not go beyond mere suspicion. 5 Bur. L. J. 170=28 Cr. L. J. 188=99 Ind. Cas. 860. When the allegations against a prisoner are vague and general and are not defined or substantiated, bail should not be refused. 32 Bom. L. R. 1131=A. I. R. 1930 Bom. 484=129 Ind. Cas. 341. The guilt as to offences punishable with death or in the alternative to transportation referred to in the section includes also offences merely punishable with transportation. 30 Bom. L. R. 622=29 Cr. L. J. 901=A. I.

* This sub-section was substituted for original sub-section (3) by s. 136 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

R. 1928 Bom. 244=111 Ind. Cas 661. Where application for special leave to appeal to Privy Council has been lodged but not heard, High Court may grant bail. 49 A. 247=27 Cr. L. J. 1377=25 A. L. J. 97=A. I. R. 1927 All. 97=98 Ind. Cas. 593. Bail should not be refused, unless accused is likely to abscond or terrorize prosecution witnesses or commit similar or other serious offence. 1929 A. L. J. 1927=30 Cr. L. J. 718=A. I. R. 1929 All. 614=117 Ind. Cas. 99. The present policy of law is to grant bail to undertrial prisoners rather than to refuse it. 7 L. L. J. 331=26 P. L. R. 440 =27 Cr. L. J. 30=A. I. R. 1925 Lah. 510=92 Ind. Cas. 590. The mere previous respectability of a man is *per se* no sufficient reason for giving bail when he has been convicted of a criminal offence. 27 Cr. L. J. 319=A. I. R. 1926 Nag. 279=92 Ind. Cas. 703. The High Court should not in the case of non-bailable offence depart from the rule that the accused shall be detained in custody especially in the initial stages of the case, except in very special circumstances. 26 Cr. L. J. 427=2 Rang. 546=A. I. R. 1926 Rang. 129=85 Ind. Cas. 43. Where in the case of a Patwari 70 years old it was found there was nobody else to instruct his counsel in giving through documentary evidence, held bail should not be refused. 28 O. C. 220=12 O. L. J. 394=26 Cr. L. J. 1286=A. I. R. 1935 Oudh. 489=82 Ind. Cas. 150. Where bail granted by Sessions Judge has been cancelled by High Court. the Sessions Court cannot grant bail unless new case for granting bail is made out. A. I. R. 1933 All. 895. Section 497 (1) does not apply to application for bail by persons accused under s. 121 A Penal Code. Section applicable is s. 497 (2). 1931 A. L. J. 515=1931 Cr. C. 612=39 Cr, L. J. 1271=53A. 931. Section 498 is not controlled by limitations of s. 497 and High Court or Sessions Court has wider powers to grant bail. A. I. R. 1933 Lah. 925=1933 Cr. C. 1384 ; see also 134 Ind. Cas, 842=1931 A. L. J. 515=53 A. 931=A. I. R. 1931 All. 355 ; A. I. R. 1933 Bom. 492. Wording in ss. 497 and 562 is equally to be considered disjunctively. A. I. R. 1932 Nag. 130=28 N. L. R. 260=33 Cr. L. J. 844. High Court has jurisdiction to revise Sessions Court's order allowing bail to accused. A. I. R. 1932 Lah. 433=33 Cr. L. J. 335. Where the charge is one of attempt to murder and injured person was not well enough to be subjected to indentification parade, bail should not be allowed. A. I. R. 1931 Lah. 433=33 Cr. L. J 335=33 P. L. R. 387. The words "by itself" in clause (5) mean by the Magistrate committing to custody. A. I. R. 1933 Sind. 331=27 S. L. R. 197= 1933 Cr. C. 1078. Where an accused has been released by police he cannot be committed to custody. A. I. R. 1933 Sind. 331=27 S. L. R. 197. Before granting or refusing bail the Court should also consider whether the accused if released on bail temper with the evidence of the prosecution and set up false evidence in support of the defence. A. I. R. 1934 Sind. 131=28 S. L. R. 47. Where there are reasonable grounds for believing that the accused is guilty of murder, he should not be released on bail. A. I. R. 1934 Lah. 639=35 P. L. R. 528=152 Ind. Cas. 1080. In such a case, no bail can be granted on the ground that there is no member in his family who can look after his case. A. I. R. 1934 All. 815=1934 Cr. C. 998.

Power to direct admission to bail or reduction of bail.

498. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of of the case, and shall not be excessive : and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Notes.—A Court of Session has power under this section to grant bail in case of non-bailable offences. A. W. N. 1882, 234 (F. B.) This section is not controlled by s. 497, and it is open to the High Court to admit a person charged with a non-bailable offence to bail. 2 Weir 657. The words "in any case" are not to be considered in their widest and unlimited sense but in the narrower sense laid down therein. 19 S. L. R. 59. Where no leave to appeal to Privy Council was yet granted the case cannot be said to be under appeal so as to make the application of s. 498 possible. 1 N. L. R. 161. The power of the High Court to grant bail under this section is not limited by the restriction imposed by s. 497 (1). A. I. R. 1934 Sind. 131=28 S. L. R. 47 ; see also A. I. R. 1931 All. 504 (F. B.)=33 Cr. L. J. 94=54 A. 115 ; A. I. R. 1931 All. 356=53 A. 931=32 Cr. L. J. 1271=1931 A. L. J. 515. Section 498 authorises Appellate Court to grant bail in case where order has been made under s. 107. A. I. R. 1932 All. 680=1932 A. L. J. 624=54 A. 861=33 Cr. L. J. 731. High Court can direct arrest of persons released on bail under its orders. Magistrate or Sessions Judge cannot however cancel bail bond. A. I. R. 1932 All. 534=

1932 All. 531=1932 A. L. J. 701=23 Cr. L. J. 684. Where offence is serious and non-bailable and punishable with death or transportation, grant of bail is not a rule but is an exception particularly when prosecution evidence is closed and Sessions Judge has refused bail. A. I. R. 1931 All. 504 (S. B.)=54 A. 115=33 Cr L. J. 94=1931 A. L. J. 773. Granting of bail is in the discretion of the Court. 33 P. L. R. 331=33 Cr. L. J. 497. No accused has right to be allowed to argue in person application for bail. A. I. R. 1931 All. 356=53 A. 931=32 Cr. L. J. 1271=1931 A. L. J. 515. Section 337 controls s. 498. 28 Cr. L. J. 439=A. I. R. 1927 Sind. 173=101 Ind. Cas. 471. The discretion under s. 498 is absolute, but it must be used judicially. 5 Rang. 276=28 Cr. L. J. 773=A. I. R. 1927 Rang. 205 (F. B). High Court cannot under s. 491 reduce security directed to be furnished under s. 117 (3) Cr. Pro. Code though an interim security, if considered too high, may be reduced. 31 Cr. L. J. 812=A. I. 1930 Lah. 529=125 Ind. Cas. 222. A Sessions Judge has wide powers under s. 498. 51 A. 603=1929 A. L. J. 585=30 Cr. L. J. 697=A. I. R. 1929 All. 920 ; see also 117 Ind. Cas. 99=1929 A. L. J. 927=30 Cr. L. J. 711=A. I. R. 1929 All. 614. Section 498 does not confer jurisdiction upon Court to grant bail pending the result of an application to be made to Privy Council for leave to appeal 50 C. 585=24 Cr. L. J. 632=72 Ind. Cas. 362 ; see also 25 Cr. L. J. 672=198 L. R. 59. Bail can be allowed by the Sessions Judge against an order under s. 118. s. 123 (2) does non control s. 498. 50 C. 369=37 C. L. J. 592=24 Cr. L. J. 95 3=A. I. 1923 Cal. 723=75 Ind. Cas. 537. Bail with intention of moving for special leave to Privy Council to appeal against sentence of rigorous imprisonment was not granted. 21 N. L. K. 161=27 Cr. L. J. 185=A. I. R. 1926 Nag. 221=91 Ind. Cas. 1001. An Appellate Court in admitting the appeal may mention in the order that the punishment should be suspended till the disposal of the appeal. 22 A. L. J. 1103=25 Cr. L. J. 367=A. I. R. 1925 All. 218=84 Ind. Cas. 719.

499. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

Bond of accused and sureties.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Notes.—The time and place of appearance must be mentioned in the bail bond. 1885 A. W. N. 44. A bond undertaking to produce the accused whenever required, but not mentioning the time and place is not illegal. A. I. R. 1928 Cal. 261. When a bond should be forfeited, *Vide* 49 A. 895=A. L. J. 537=28 Cr. L. J. 576=102 Ind. Cas. 554 ; see also 19 Cr L. J. 687.

500. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released ; and, when he is in jail, the Court admitting him to bail shall issue an order of release* to the officer in charge of the jail, and such officer on recipt on the order shall release him.

Discharge from custody.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud or otherwise, insufficient sureties have accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Power to order sufficient bail when that first taken is insufficient.

Notes.—This section applies where there is a surety. 38 M. 1088. In such a case increased amount of bail can be demanded. 4 P. W. R. 1912. This section

* *See* Sch. V, Form XLII, *infra*.

applies to insufficient sureties accepted through mistake, fraud or the like. 17 Cr. L. J. 132=38 M. 1088=33 Ind. Cas. 308.

Discharge of sureties.

502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to cus tody.

Notes.—A surety bond cannot be forfeited without complying with the provisions of sub-section (2). 95 Ind. Cas. 768=27 Cr. L. J. 848. A Magistrate should cancel the bail bond on the application of the surety. 9 Bom. L. R. 1215. The sureties are discharged from liability on the death of the accused by suicide. 17 Cr. L. J. 393=18 Bom. L. R. 683=35 Ind. Cas. 825. Magistrate has no power after the appearance of the accused to attach bail money deposited by the surety to realise the fine imposed by the conviction. 110 L. J. 296=26 Cr. L. J. 113= A. I. R. 1924 Oudh 396=83 Ind. Cas. 673. Where a surety applies for discharge, his security bond cannot be forfeited without complying with the provisions of s. 502 Cl. (2). 27 Cr. L. J. 848=95 Ind. Cas. 798.

CHAPTER XL.

Of Commissions for the Examination of Witnesses.

When attendance of witness may be dispensed with.

503. (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstance of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission and procedure thereunder.

(2) When the witness resides in the territories of any Prince or Chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(3) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he, or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

(4) Where the commission is issued to such officer as is mentioned in sub-section (2), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

Notes.—In granting commissions to *purdah* women the customs and habits of the people should be taken into consideration. 15 C. 775. This section allows the examination of a *ghosa* woman, who appears as witness in a case on commission. 2 Weir 659; see also 5 A. 92; 24 C. 551; 11 P. W. R. 1913. The issue of a

commission lies entirely in the direction of the Court. 8 C. 896. A purdah woman of whose identity is in question must be examined in chambers rather than on commission. 31 Cr. L. J. 115=A. I. R. 1930 Sind. 56=120 Ind. Cas. 518. Commission should be very sparingly used and only in cases where real hardship or inconvenience is felt. 20 S. L. R. 28=27 Cr. L. J. 89=A. I. R. 1926 Sind. 124=91 Ind. Cas. 393. The issue of a commission for the examination of an important witness in a serious criminal trial is much to be deprecated. 3 Pat. L. T. 398=23 Cr. L. J. 218=A. I. R. 1922 Pat. 40=65 Ind. Cas. 1002. Commission can be issued if attendance of the witness cannot be secured without unreasonable expense. 4 Lah. L. J. 538=25 Cr. L. J. 652=A. I. R. 1923 Lah. 73=81 Ind. Cas. 140, The Assistant Master of Mint of the Calcutta Mint is an expert witness and there is no illegality in allowing him to be examined on commission. 12 O. L. J. 497=2 O. W. N. 377=26 Cr. L. J. 1232=A. I. R. 1925 Oudh. 616=88 Ind. Cas. 848. Additional District Magistrate authorised to exercise all powers of a District Magistrate can issue commission for examination of witnesses within his own jurisdiction. 24 Cr. L. J. 622=A. I. R. 1923 Lah. 158=73 Ind. Cas. 510. A commission for examination of witness in a Native State should not be returned on the ground that there was no Resident Political officer in the State. It must sent to the Political officer wherever he may be, and the latter should secure the attendance of the witness and his evidence. 9 Lah. 347=29 Cr. L. J. 202=30 P. L. R. 188=A. I. R. 1928 Lah. 76=106 Ind. Cas. 794 Foreign prince cannot be examined on commission. 16 N. L. J. 110=29 N. L. R. 315=34 Cr. L. J. 797=A. I. R. 1933 Nag. 226. Chief of Bhopal is a foreign prince and British India Courts have no jurisdiction over him. *Ibid.* Ss. 503 and 506 should be used sparingly and only in clearest possible case. The fact that the witness temporarily ill is no ground for examining him on commission. 13 P. L. T. 345=33 Cr. L. J. 942=A. I. R. 1932 Pat. 242.

Commission in case of witness being within presidency-town.

504. (1) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate, or Court issuing the commission may direct the same to* [such Presidency Magistrate,] who, thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

†[(1A) When a commission is issued under this section to a Chief Presidency Magistrate, he may delegate his powers and duties under the commission to any Presidency Magistrate subordinate to him.]

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the Slave Trade Act, 1876‡ section 3.

Parties may examine witnessess.

505. (1) The parties to any proceeding under this Code in which a commission is issued, may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed, §[or to whom the duty of executing such commission has been delegated] shall examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate or officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Notes.—Examination on commission in the absence of both complainant and accused is most unsatisfactory. 27 Cr. L. J. 840=A. I. R. 1926 Lah. 567=95 Ind. Cas. 760.

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* These words were substituted for the words "the said Presidency Magistrate" by s. 137 of Criminal Procedure (Amendment) Act. 1922 (XVIII of 1923).

† This sub-section was inserted by s. 137, *Ibid.*

‡ 39 & 4 Vict, c. 46.

§ These words were inserted by s. 138, *Ibid.*

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate, or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendence of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

Power of provincial Subordinate Magistrate to apply for issue of commission.

Notes.—Examination of witnesses by commission is not a satisfactory mode of procedure either in civil or criminal cases. 91 Ind. Cas. 393. An issue of commission by the District Magistrate, in a case pending before a subordinate Magistrate, without referring to him is improper 2 S. L. R. 8. Before it becomes incumbent on a Magistrate to take action undar s. 506 it must appear that the evidence of the witness is necessary for the ends of justice. 33 C. W. N. 1088=31 Cr. L. J. 645=124 Ind. Cas. 325. Party having case pending before Bench Magistrate should proceed under s. 596 for examining witness on commission. A. I. R. 1933 Sind 278=1933 Cr. C. 952.

507. (1) After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be opened at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of commission.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872,* may also be received in evidence at any subsequent stage of the case before another Court.

Notes.—Vide, 19 C. 113; 19 B. 749.

508. In every case in which a commission issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Adjournment of inquiry or trial.

Notes.—Vide 19 C. 113.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Deposition of medical witness.

(2) The Court may, if, it thinks fit summons and examine such deponent as to the subject-matter of his deposition.

Power to summons medical witness.

Notes.—This section does not require that to render the evidence of a medical witness admissible at the trial before the Court of Session it should be recorded by the Magistrate who is making the inquiry into the case, but permits expressly the

* I of 1872.

deposition of medical witness taken and attested by any Magistrate in the presence of the accused to be given in evidence in any inquiry, trial or other proceeding. A. W. N. 180. In case of deposition of medical witness, failure of Magistrate to append certificate does not itself make evidence inadmissible. A. I. R, 1933 Lah. 131=34 Cr. L. J. 443=1933 Cr, C. 242. Where the cross-examination of a medical witness is reserved in the committal court, the Session Court should not admit his previous deposition without summoning the witness himself. 3 Pat. L. T. 32=A. I. R. 1923 Pat. 116=60 Ind. Cas. 662. The statement of medical witness taken and attested by a Magistrate in the presence of the accused sho uld be recorded with the utmost care and accuracy as it is admissible in evidence in the Sessions Court even in the absence of the witness. 18 Cr. L. J. 380=20 O. C. 61=38 Ind. Cas. 764.

Report of Chemical Examiner.

510. Any document purporting to be report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Notes.—The report of a Chemical Examiner is evidence in criminal trial, if it bear the signature of the Examiner. The original should be produced. 6 B. L. R. App. 122=15 W. R. 49 ; 2 Weir 661. A report of Chemical Examiner made before the institution of proceeding is not admissible without his examination in person. 20 Cr. L. J. 266=50 Ind. Cas. 26. Chemical Examiners report does not require formal proof ; but it must be tendered as evidence and used as such. It cannot be for the first time used in appeal. 21 A. L. J. 864=26 Cr. L. J. 200=A. I. R. 1924 All. 193=83 Ind. Cas. 904. The certificate of the Professor of Anatomy is not *per se* admissible in evidence and used as such. It cannot for the first time be used in appeal. 24 Bom. L. R. 803=47 B. 74=26 Cr, L. J. 339.=84 Ind. Cas. 643. Where the Appellate Court admitted in evidence the report of the Chemical Examiner without examining him, but the evidence to support conviction was otherwise sufficient. *Held* that the dismissal of appeal against conviction was not improper. 5 Bur. L. J, 100=27 Cr. L. J. 1281=A. I. L. 1926 Rang. 13=98 Ind. Cas 177. Failure by prosecution to adduce evidence connecting the parcels containing the blood stained clothes which reached Chemical Examiner, with those that were alleged to be despatched is not a mere technical defect. 26 P. L. R. 748=26 Cr. L. J. 1420=A. I. R. 1926 Cal. 79=89 Ind. Cas. 844. When written report of chemical examiner was not given on oath and was not tested by cross-examining, the accused should not be put and herit of capital punishment on such report. A. I. R. 1933 All. 837 ; see also A. I. R. 1934 Oudh. 62=11 O. W. N. 312 ; A. I. R. 1934 Lah. 150=16 Lah. 310 ; A. I. R. 1934 All. 874.

Previous conviction or acquittal.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

(*a*) by an extract certified under the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the sentence or order, or,

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail, in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered ;

together with, in each of such cases, evidence as to the identity of the accused person so convicted or acquitted.

Notes.—The certified extract contemplated by Cl. (*a*) of s. 511 is "a copy of the sentence or order" 11 C. P. L. R. Cr. 5. In order to prove previous conviction, finger print of the accused must be proved to be similar to those of persons previously convicted. 16 Cr. L. J. 462=21 C. W. N. 469=39 Ind. Cas. 302. In order to prove previous conviction, the provisions of transaction must be observed. 151 Ind. Cas. 719=36 P. L. R. 7 ; see also A. I. R. 1934 Lah. 693=35 P. L. R. 697.

Record of evidence in absence of accused.

512. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial, such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

Record of evidence when offender unknown.

(2) If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry and exemine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of British India.

Notes.—It is not open to a Magistrate to decline to call for the documents desired by the complainant or to record any evidence on his behalf, on the ground that the accused has absconded and no enquiry was being then conducted ; he is bound in such a case by the provisions of s. 512. 2 Bom. L. R. 707. Before a deposition recorded under this section can be admitted in evidence it must be proved that the deponent is dead, or incapable of giving evidence, or that his attendance cannot be procured witbout an amount of delay, expense or inconvenience, which under the circumstances of the case, would be unreasonable. U. B. R. (1897-1901) Vol. I, 114 ; 10 C. 1097 ; 157 P. L. R. 1911=10 Ind. Cas. 119=12 Cr. L. 7. 214. To satisfy the requirements of section 512 all that is necessary is proof that the accused absconded and not a finding by the Court to that effect. 6 Lah. 489. Evidence taken in his absence cannot be admitted unless it is proved and found that the accused had absconded at the time. 13 A. L. J. 1043=16 Cr. L. J. 801=38A. 29=31 Ind. Cas. 817. Convicting and sentencing absent accused is wholly illegal and liable to be set aside. 26 P. L. R. 239=28 Cr. L. J. 971=A. I. R 1927 Lah. 870=105 Ind. Cas. 683. As a rule, Magistrate should record a finding that accused has absconded before taking evidence. 48 A. 375=24 P. L. J. 394=27 Cr. L. J. 247=26 P. L. R. 845=A. I. R. 1926 Lah. 83 ; 48 A. 375=27 A. L. J. 394=27 Cr. L. J. 874=A. I. R. 1926 All. 340=96 Ind. Cas. 122. Mere omision to read a finding that there was no immediate prospect of arresting accused who had clearly absconded does not render evidence inadmissible. 41 A. 60=20 Cr. L. J. 6=16 A. L. J. 902=48 Ind. Cas. 481. Generally a certificate granted by a qualified doctor is sufficient evidence of accused's inability to attend unless the certificate is to be disregarded for any reason. 25 Cr. L. J. 631=A. I. R. 1925 Lah. 101=81 Ind. Cas. 126. Evidence recorded in a different case in which another accused was charged with the same offence cannot be read unless the provisions of s. 33 of the Evidence Act are complied with. 24 Cr. L. J. 828=25 O. C. 142=A. I. R. 1922 Oudh. 254=74 Ind. Cas. 860. A deposition recorded under s. 512 can be read only if deponent is dead, incapable of giving evidence or his attendance would cause unreasonable delay, expense or inconvenience. That he cannot remember the details is no sufficient reason. 76 Ind. Cas. 31=25 Cr. L. J. 95=A. I. R. 1924 Lah. 605 ; see also 46 B. 120=23 Bom. L. R. 839=22 Cr. L. J. 620=63 Ind. Cas. Cas. 156.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

Deposit instead of recognizance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum

of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Notes.—The Court cannot require deposit in addition to bond. Rat. Un. Cr. C. 671. The deposit money should be returned, on the accused's appearance. 11 O. L. J. 296 ; 19 A. L. J. 887. Where surety executes bond for regular attendance of accused and accused absconds but surety amount was realized from property of accused, the surety is not relieved of his liability. A. I. R. 1933 Sind. 320=1933 Cr. C. 1074. Surety must have personal stake in seeing that accused carries out his obligations. A. I. R. 1935 Pat. 195.

Procedure on forfeiture of bond.

514. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate, or Magistrate, of the first class.

or when, the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.*

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant † for the attachment and sale of the movable property, belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the Local limits of the jurisdiction of the court which issued it : and it shall authorize the [attachment] and sale of any movable property belonging to such person without such limits, when endorsed by the District Magistrate of Chief Presidency Magistrate within the Local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.‡

§(7) When any person who has furnished security under section 106 or section 118 or section 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 514 B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

Notes.—An order forfeiting a surety bond or bond for good behaviour need not be passed at the same time as the conviction of the person for whom the bond is executed. 27 Cr. L. J. 326=92 Ind. Cas. 742. Under this section a surety is bound to produce the accused at the trial of the case on penalty of his security bond being enforced. 97 Ind. Cas. 672. It is the duty of the surety to see that the accused does not run away but where a surety had failed to produce the accused by reason of an illegal order passed by a Magistrate which the surety was not bound to carry out and where there is no connivance and no negligence it cannot be said that the surety had acted irresponsibly so as to be penalised. 49 A. 525=25 A. L. J. 537.

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*See Sch. V., Forms XLIV to LIII. *infra.*

† This word was substituted for the word "distress" by s. 139 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ The words "but the party who gave the bond may be required to find new surety" were omitted by sec. 139 *ibid.*

§ This sub-section was inserted by *ibid.*

Magistrate need not record a finding as to forfeiture of bond before calling upon the surety to show cause why he should not pay the amount. 11 P. L. T. 578. Forfeiture can be incurred only in terms of the bond. *Ibid.* Two steps are to be taken under this section, viz. it must be proved that the bond has been forfeited grounds, whereof Court must record, and secondly Court may call upon security to pay or show cause. A. I. R. 1928 Cal. 261 Order of forfeiture not in terms of the bond cannot be sustained. A. I. R. 1930 Pat. 519. If Court discharges accused bond becomes cancelled. 26 Cr. L. J. 400=A. I. R. 1925. Oudh. 314=84 Ind. Cas. 944. Where a person is required to execute a bond is a minor, it may be executed by surety only. No such provision is for a major. 29 Cr. L. J. 491=A. I. R. 1928 Lah. 318=109 Ind. Cas. 219. Where Court does not sit on the day fixed security cannot be forfeited for non-appearance of accused or for non-production of them. 9 L. L. J. 411=29 P. L. R. 231=A. I. R. 1928 Lah. 20=106 Ind. Cas. 108. Bond should not be forfeited if accused had been arrested and hence could not be produced. 4 Pat. 254=6 P. L. T. 397=26 Cr. L. J. 833=A. I. R. 1925 Pat. 389=86 Ind. Cas. 657. Court must record a finding on some evidence that bond has been forfeited before calling upon surety to show cause. 11 P. L. T. 572=31 Cr. L. J. 420=A. I. R. 1929 Pat. 643=122 Ind. Cas. 532 ; see also 67 Ind. Cas. 830=3 Pat. L. T. 381. Liability of sureties to produce accused does not terminate merely because he was under arrest for a day or two between date of bond and date of appearance. A. I. R. 1931 Pat. 19=130 Ind. Cas. 161. Bond imposing penalty must be considerd strictly. A. I. R. 1932 Bom. 290=33 Cr. L. J. 628=56 B. 220. Where bond was forfeited but the accused was subsequently found, the amount was reduced from Rs. 2000 to Rs. 500. A. I. R. 1933 Lah. 42=145 Ind. Cas. 967. Temporary arrest of the accused does not make the liability of the accused to cease. A. I. R. 1931 Pat. 19=12 P. L. T. 814=32 Cr. L. J. 467. Bonds for appearance before police under ths Bombay City Police Act cannot be forfeited under s. 514. 42 B. 400=19 Cr. L. J. 607=20 Bom. L. R. 379=45 Ind. Cas. 511. Bond of surety is not forfeited if an offence is committed in a Native State. 26 P. R. Cr. 1918=19 Cr. L. J. 924=47 Ind. Cas. 440. Even if original agreement is void surety is liable as a principal debtor under s. 514. 2 Lah. 204=85 P. L. R. 1921=22 Cr. L. J. 662=A. I. R. 1921 Lah. 79=63 Ind. Cas. 954. Surety bond must be strictly construed according to the terms and Court cannot opine that surety has a different intention. 23 Cr. L. J. 68=65 Ind. Cas. 420. In the case of bonds for appearance of accused Court need not have any further proof than order for bail, bail bond and absence of accused. 11 P. L. T. 575=31 Cr. L. J. 605=A. I. R. 1929 Pat. 658. Bond by accused to a Magistrate who had no jurisdiction and was not competent to admit him to bail, for appearance before another Court out-side his jurisdiction is null and void. 31 Cr. L. J. 2=1930 A. L. J. 199=A. I. R. 1929 All. 914=120 Ind. Cas. 194. Where penalty is not paid Court should first issue warrant for attachment and sale of moveable property or if surety is dead of his estate. 30 Cr. L. J. 346=A. I. R. 1928 Rang. 310=114 Ind. Cas. 682. It is nowhere laid down that the person giving the bond should actually be convicted before proceedings are taken against surety. 30 Cr. L. J. 203=50A. 666. A surety cannot be asked to produce the accused at a different place. 38 C. W. N. 804=A. I. R. 1934 Cal. 763. Surety is bound to produce the accused only on the date fixed and not on any other date. A. I. R. 1934 Lah. 294=1934 Cr. C. 525. Where a surety bond has been forfeited the Court in the first instance should proceed to recover the amount by issuing a warrant for the attachment and sale of the movable properties of the surety and if the amount be not realised thereby them the surety may be imprisoned in civil jail. A. I. R. 1934 All. 1046=1934 Cr. C. 1329. Where bond has been executed by surety alone and not by the accused it is not invalid. A. I. R. 1934 All. 1046. A bond executed by a surety is in the nature of a contract. A. I. R. 1934 Sind. 152=1934 Cr. C. 114. A surety bond does not cease to have effect by reason of the transfer of a case. 38 C. W. N. 852=A. I. R. 1934 Cal. 785=1924 Cr. C. 1207 ; but see 26 Cr. L. J. 389=2 Rang. 581=A. I. R. 1925 Rang. 153=84 Ind. Cas. 933. Where a person denies execution of bail bond, Magistrate cannot order forfeiture without evidence proving execution by him. A. I. R. 1935 Cal. 336.

Procedure in case of insolvency or death of surety or when a bond is forfeited.

* **514A.** When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court, by whose order such bond was taken, or a Presidency Magistrate or Magistrate of the first class, may

* Section 514 A was inserted by s. 140, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there has been a default in complying with such original order.

Bond required from a minor.

*[514 B. When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond excuted by a surety or sureties only.]

Appeal from, and revision of, orders under section 514.

† 515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate, shall be appealable to the District Magistrate or, if not so appealed, may be revised by him.

Notes.—Vide 25 Cr. L. J. 445 ; 5 P. R. 1905 ; A. I. R. 1934 Sind.

Power to direct levy of amount due on certain recognizances.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Notes.—Vide 14 C. W. N. 259.

CHAPTER XLIII.

Of the Disposal of Property.

Order for custody and disposal of property pending trial in certain cases.

‡[516A. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.]

Notes.—"It is proposed to add to the Chapter a new section to enable the Court to pass order for the custody or disposal of property during an inquiry".—*Statement of Objects and Reasons.* Under section 516 A, Court has to make order for proper custody of property in order to preserve it as evidence. 35 L. W. N. 198=32 Cr. L. J. 983=A. I. R. 1931 Cal. 455. A Motor car cannot be said to have been used by accused for offence under s. 338, and cannot be detained pending conclusion of trial. 33 P. L. R. 386=33 Cr. L. J. 347=A. I. R. 1931 Lah. 565.

Order for disposal of property regarding which offence committed.

517. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal§ by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

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*Section 514B was inserted by s. 140 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

† Section 515 has been declared to apply to the security required by s. 31A of the Rangoon Police Act, 1899 (Bur. Act IV of 1899.)

‡ Section 516A was inserted by s. 141 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ These words were inserted by s. 142, *ibid.*

(2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

*[(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of].

† [(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.]

‡ *Explanation.*—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been orignally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Notes.—Where a Magistrate finds the accused not guilty of the offence of cheating and acquits him, he cannot order that the property in respect of which the offence was alleged to be committed and which is in possession of the accused should be restored to the complainant. 27 Cr. L. J. 853=95 Ind. Cas. 933=A. I. R. 1926 Cal. 1048. The High Court has power to order restitution but a third party before he can be prejudiced by such an order should have notice of the intended order. 105 Ind. Cas. 452. Cash is not, strictly speaking, property within the meaning of section 517, except in so far as it is capable of being possessed and identified in specie. 89 Ind. Cas. 259=26 Cr. L. J. 1315. "Property" includes any property in respect of possession of which whatever offence is committed. 51 M. 606=29 Cr. L. J. 322=54 M. L. J. 312=A. I. R. 1928 Mad. 194=108 Ind. Cas. 65. Section 517 applies only to movable and s. 522 to immovables. 22 Cr. L. J. 110=59 Ind. Cas. 414. Where motor bus was sold under hire purchase agreement, but on default owner launched a complaint, held Court should restore the bus to hirer from whom it was seized and direct complainant to a civil suit. 35 C. W. N. 198=A. I. R. 1931 Cal. 455; see olso 50 M. L. J. 901=A. I. R. 1931 Mad. 17=129 Ind. Cas. 458. Subject of criminal breach of trust is also an article stolen and must be restored to the real owner unconditionally, unless there is a *bona fide* dispute about title. 3 Luck. 494=5 O. W. N. 281=29 Cr. L. J. 988=A. I. R. 1928 Oudh. 277=112 Ind. Cas. 130. If title to seized property is doubtful it must be ordinarily returned to person from whom it was taken. 50 M. 915=53 M. L. J. 309=1927 M. W. N. 692=28 Cr. L. J. 870=A. I. R. 1927 Mad. 797=104 Ind. Cas. 719. Order can be passed at or soon after the close of the case and not before and need not necessarily be in favour of the person from whom the property was taken. 7 L. L. J. 625=26 Cr. L. J. 153=A. I. R. 1926 Lah. 9=89 Ind. Cas. 973. Where elephant was seized from accused on a charge of abetment of theft of the animal, held on his acquittal it should be returned to him and not to complainant. 54 C. 283=28 Cr. L. J. 546=A. I. R. 1927 Cal. 532=102 Ind. Cas. 482. If the property is not proved to have been stolen during the dacoity or to have been complainant's property, it must be restored to person producing it. 26 Cr. L. J. 737=6 L. L. J. 213=86 Ind. Cas. 273. Trial Court can after judgment pass orders as to exhibits; so can an Appellate Court. 26 Cr. L. J. 518=3 Bur. L. J. 302=85 Ind. Cas. 358. The amended Court gives power to order confiscation. 38 C. W. N. 1094=26 Cr. L. J. 300=A. I. R. 1924 Cal. 1340=84 Ind. Cas. 424; see also A. I. R. 1934 Bom. 593=36 Bom. L. R. 324. Where a person was convicted for using a forged note and the genuine one was found in his house, order of Sessions Judge confiscating the true note in respect of which no offence was committed is illegal. 53 B. 344=31 Bom. L. R. 148=30 Cr.

* This sub-section was inserted by s. 142, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was inserted by *ibid.*

‡ *Cf.* Larceny Act (24 & 25 Vict. C. 96) s. 1.

L. J. 588=A. I. R. 1921 Bom. 128. Section does not apply if property has passed out of Court custody, nor does it empower double restoration. 3 P. L. T. 228=23 Cr. L. J. 110=65 Ind. Cas. 494 ; see also 5 Pat. L. J. 32=56 Ind. Cos. 507. If no appeal is pending Sessions Judge cannot set aside order of Magistrate under s. 517. 29 Cr. L. J. 958=A. I. R. 1928 Rang. 240. If lower Court had no jurisdiction under s. 517 neither had the Appellate Court any jurisdiction under s. 520. 7 L. L. J. 625 =26 Cr. L. J. 1453=A. I. R. 1926 Lan. 9=89 Ind. Cas. 973. Order under s. 517 is judicial order and is open to review. A. I. R. 1931 Lah. 527=32 Cr. L. J. 847. Where no case of theft is made out, property should be handed over to one who had possession of it. 351 C. W. N. 198=A. I. R. 1931 Cal. 455 ; see also 56 M. 654 ; A. I. R. 1933 Mad. 434. Order to hand over keys of house amounts to order directing possession. A. I. R. 1931 Lah. 527=32 Cr, L, J. 847. Where no crime is made out the general rule is that property should be returned to party from whom it was taken. A. I. R. 1932 Mad. 495=33 Cr. L. J. 783 ; see also A. I. R. 1931 Lah. 526=32 Cr. L. J. 990 ; A. I. R. 1931 Mad. 17=59 M. L. J. 901=32 Cr. L. J. 355. Any property or document in regard to which an offence appears to have been committed or which has been used for the commission of offence should not be returned by Criminal Court to the persons who has been convicted. 1934 P. L. J. 425=35 Cr. L. J. 1389= A. I. R. 1934 All. 207. Where the property ordered to be restored has been destroyed, the party may be asked to produce the money equivalent of the property. A. I. R. 1934 Cal. 454=35 Cr. L. J. 816. Section 517 does not apply to property not in Court or in respect of which offence is not committed. A. I. R. 1932 Oudh. 218=9 O. W. N. 434=33 Cr. L. J. 569.

Order may take form of reference to District or Sub-divisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Notes.—In a case under Chapter 39, the Magistrate is bound to base his order upon the finding of the jury. An order under this section should be passed only in special and urgent circumstances. 1 J. G. 11.

Payment to innocent purchaser of money found on accused.

***519.** When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has brought the stolen property from him without knowing or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Notes.—This section only authorises payment to a purchaser of stolen property who buys in ignorance of theft, of compensation out of any money found in possession of the party guilty of theft. 2 Weir. 607 ; A. W. N. 1886, 291. An order for compensation cannot be made in favour of the pledgee of a stolen property, as the theft does not cause any injury to the pledgee or give him a right of action. 2 Weir. 672. The rule applies in the case of a mortgagee as well. Rat. Un. Cr. C. 631.

Stay of order under section 517, 518 or 519.

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519 passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

Notes.—A District Magistrate is a Court of Revision as regards all Magistrates in his district. 2 Weir 673. A District Magistrate has no jurisdiction in case of

* *Cf.* the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35) s. 9.

appeal. 13 Bom. L. R. 131=9 Ind, Cas. 947=12 Cr. L. J. 169. Under this section an order restoring a child to his parent cannot be passed. 27 Cr. L. J. 574. A Court of appeal, confirmation, reference or revision can now have an order under this section. 21 A. L. J. 877=A. I. R. 1924 All. 213. Section 520 does not apply unless order relates to property and is passed under s. 517, 518 or 519. A. I. R. 1926 Lah. 487. Application under s. 520 is not in the nature of an appeal. 50 M. 916=53 M. L. J. 309=28 Cr. L. J. 879=A. I. R. 1927 Mad. 797=104 Ind. Cas. 719. Even if there is no appeal against conviction District Magistrate as Court of Revision can interfere under s. 560. 1 Rang. 199=2 Bur. L. J. 241=24 Cr. L. J. 858=A. I. R. 1923 Rang. 227=74 Ind. Cas. 1050. As there is no limitation, application can be made within a reasonable time of acquittal. The last words of s. 520 unable superior Courts to pass proper orders where property is erroneously disposed of under s. 517. 4 Lah. 49=24 Cr. L. J. 713=A. I. R. 1924 Lah. 75=73 Ind. Cas. 937 ; see also 16 Cr. L. J. 813=31 Ind. Cas. 829 ; 31 Cr. L. J. 1085=A. I. R. R. 1930 Mad. 769 ; 30 Cr. L. J. 540=A. I. R. 1929 Rang. 97 (F. B.) ; 29 Cr. L. J. 810=10 Lah. 487=A. I. R. 1928 Lae. 567 ; 5 Rang. 558=28 Cr. L. J. 932=A. I. R. 1927 Rang. 322. Appellate Court can without during stay, deal with the order. 5 Rang. 558=28 Cr. L. J. 932=A. I. R. 1927 Rang. 322=105 Ind. Cas. 452. Where property is dealt with by trial Court under ss. 517, 518 and 519, any Court of appeal or revision can make substantive order in respect of that property. Sessions Court need not refer matter to High Court. 56 P. 369=34 Bom. L. R. 1203=33 Cr. L. J. 807=A. I. R. 1932 Bom. 534 (F. B.) Notice must be given before setting aside a duly made order under this section. 20 Cr. L. J. 823=53 Ind. Cas. 823. No order for confiscation can be made without notice to complainant and bearing his objections. 17 Cr. L. J. 207=9 Bur. L. T. 193=34 Ind. Cas. 319. Court can enforce restitution in the manner it considers most suitable even in the absence of express provision. 19 Cr. L. J. 905=48 Ind. Cas. 175.

Destruction of libellous and other matter.

521. (1) On a conviction under the Indian Penal Code section 292, section 293, section 501, or section 502, the Court may order the destruction of all the copies of thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed.

Power to restore possession of immovable property.

522 (1) Whenever a person is convicted of an offence attended by criminal force * [or show of force or by criminal intimidation] and it appears to the Court that by such force *[or show of force or criminal intimidation] any person has been dispossessed of any immovable property, the Court may, if it thinks fit, * [when convicting such person or at any time within one month from the date of the conviction] order † [the person dispossessed] to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such moveable property which any person may be able to establish in a civil suit.

‡ (3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.]

Notes.—Ths object of this section is to enable the Criminal Court, by a summary order, to restore the state of things which existed at the time of the dispossession by the convicted person or persons. 5 C. W. N. 374. In order to justify an order under this section the Court must be satisfied, first that the offence of which the accused is convicted was attended with criminal force ; and secondly that a person has been dispossessed of immovable property by the use of such force. 25 A. 341 ; 25 C. 434=2 C. W. N. 305 ; 23 B. 494. It is not essential in law that an order res-

* These words were inserted by s. 143 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "such person" by *ibid.*

‡ This sub-section was added by s. 143, *ibid.*

toring possession should find a place in the actual judgment. 14 Cr. L. J. 172=19 Ind. Cas. 172. An order under this section directing restoration of possession of land is quite justified when it was found the accused was putting up a fence and preventing entry by show of force. 93 Ind. Cas. 895. In the absence of any finding that any criminal force has been used, an order under s. 522 Cr. P. Code is without jurisdiction and bad in law. 28 Cr. L. J. 819 ; see also 100 Ind. Cas. 544. An order under this section may be passed within a month of the disposal of a criminal revision petition filed against an order of the lower court. 99 Ind. Cas. 863=28 Cr. L. J. 191. An order under s. 522 Cr. Pro. Code, can only be binding between the parties to the order and can have no finality in favour of one who was not a party and did not claim under any party. 86 Ind. Cas. 744. Section 522 has application when the dispossession is the result of the use of criminal force or the show of it. 17 N. L. J. 27 ; see also 35 Cr. L. J. 788=A. I. R. 1934 Oudh. 185=148 Ind. Cas. 790 ; A. I. R. 1934 Oudh. 199=11 O. W. N. 372=35 Cr. L. J. 686 ; 26 S. L. R. 500=28 Cr. L. J. 954=A. I. R. 1927 Lah. 830=105 Ind. Cas. 676 ; 28 P. L. R. 258=28 Cr. L. J. 320=A. I. R. 1927 Lah. 838 ; 20 Cr. L. J. 488=51 Ind. Cas. 472 ; 28 Cr. L. J. 119=A. I. R. 1927 Lah. 792=104 Ind. Cas. 435. Court has no jurisdiction to act under s. 522 in the absence of criminal force. 23 Cr. L. J. 302=A. I. R. 1922 Mad. 188=68 Ind. Cas. 38 ; see also 62 P. L. R. 1917=18 Cr. L. J. 898=42 Ind. Cas. 130 ; 22 Cr. L. J. 260=24 O C. 352=A. I. R. 1922 Oudh. 444=66 Ind. Cas. 324 ; A. I. R. 1921 Pat. 391=2 P. L. T. 120=61 Ind. Cas. 57. Dispossession must be effected by force against person and not against property. 2 Pat. L. T. 120=A. I. R. 1921 Pat. 391=22 C. L. J. 329=61 Ind. Cas. 57. So make section 522 applicable to immovable property force need not be an ingredient of the offence of which the accused is convicted provided the use of force appears from the evidence. 22 Cr. L. J. 110=59 Ind. Cas. 414. Conviction under s. 448 I. P. Code does not justify an order under s. 522, unless the offence is attended by criminal force and not by mere show of criminal force. 20 Cr. L. J. 270=50 Ind. Cas. 30 ; see also 19 Cr. L. J. 516=45 Ind. Cas. 276 ; 26 Cr. L. J. 159=A. I. R. 1924 All. 762=83 Ind. Cas. 719 ; 21 P. L. J. 593=25 Cr. L. J. 42=75 Ind. Cas. 730 ; 45 A. 25 =24 Cr. L. J. 857=74 Ind. Cas. 1049 ; 72 Ind. Cas. 892=24 Cr. L. J. 476=A. I. R. 1923 Mad. 237 ; 93 Ind. Cas. 895=27 Cr. L. J. 495. A court of appeal or revision cannot compel the trial Court to pass an order under s. 522, where the latter in its discretion has declined. 45 A 553=21 A. L. J. 459=73 Ind. Cas. 773 ; see also 33 P. L. R. 1910=48 Ind. Cas. 510=28 Cr. L. J. 30. Where conviction is set aside, resulting order under s. 522 is also to be set aside. 24 Cr. L. J. 493=A. I. R. 1923 Lah. 15=72 Ind. Cas. 957 ; see also 30 Cr. L. J. 202=118 Ind. Cas. 392. Order of restoration can be passed by Courts of appeal, confirmation, reference or revision at any time. 4 Pat, 438=7 P. L. T. 285=27 Cr. L. J. 137=91 Ind. Cas. 809 ; "Court of appeal" refers to Courts dealing with original conviction or trial and do not refer to High Court in reference from order restoring possession. 33 Cr. L. J. 191=33 P. L. R. 481=A. I. R. 1932 Lah. 260. Appellate Court has jurisdiction to pass order under s. 522 (3), when appeal is pending before it. 33 Cr. L. J. 868=59 C. 1153=36 C. W. N. 624=A. I. R. 1932 Cal. 750. Section 522 (3) does not limit jurisdiction of Apellate Court to pass order within one month either of original conviction or of Appellate Court. In case of delay, Court has discretion either to exercise or not to exercise power under section. A. I. R. 1933 Pat. 617=12 Pat. 787=34 Cr. L. J. 940 ; see also A. I. R. 1934 Pat. 154=15 P. L. T. 163. Appellate Court has no power to pass order under s. 522 if trial Court made no order at all. But under the new Code the High Court can. 46 A. 92=21 A. L. J. 871=26 Cr. L. J. 206=A. I. R. 1924 All. 212=83 Ind. Cas. 910. Notice is not absolutely necessary, though it is usual or proper to give it especially to third parties. Absence of notice does not render order bad. 32 Bom. L. R. 1496=A. I. R. 1931 Bom. 77=129 Ind. Cas. 337. Third person may be dispossessed if Court finds complainant was in possession and was dispossessed by force. A. I. R. 1931 Bom. 77=32 Cr. L. J. 275=53 B. 155=32 Bom. L. R. 1496. Magistrate can take sction only within period specified in s. 522. 36 C. W. N. 624=A. I. R. 1932 Cal. 750=33 Cr. L. J. 168. Order for restoration of possession after one month from date of conviction cannot be made. A. I. R. 1932 Lah. 210=33 Cr.L. J. 191=33 P. L. R. 481. Criminal Court should assist and put person dispossessed in possession. A. I. R. 1933 Nag. 36=34 Cr. L. J. 141=28 N. L. R. 298. Order passed *exparte* is improper. A. I. R. 1932 Lah. 17=32 P. L R. 758. In case of disputed succession order restoring the *status quo* cannot be passed under this section. A. I. R. 1924 Lah. 454=36 P. L. R. 91. Where the Appellate Court acquits the accused of the offence under s. 352 I. P. Code and maintans his conviction under s 447 I. P. Code, there is no flaw in an order under s. 523 Cr. Pro. Code, restoring

possession to the complainant. 1934 P. C. J, 1061=A. I. R. 1934 All. 1035=1934 Cr. C. 1335 ;

Procedure by police upon seizure of property taken under section 51 or stolen.

523. (1) The seizure by any police-officer of preperty taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

(2) If the person so entitled is known the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and estabilsh his claim within six months from the date of such proclamation.

Notes—When a Magistrate once passes an order under this section, it is not open to him subsequently to vary it. 4 Bom. L. R. 12. Where the person entitled to possession of property regarding which the offence of theft has been committed is not known, the Magistrate should, under this section, detain the same and issue the proclamation required by the section. 2 Weir 676. Sub-section (2) does not require a Magistrate to make any enquiry at all. 12 Cr. L. J. 108=9 Ind. Cas. 634. Clause (1) gives the Magistrate power either to deliver the property to the person entitled to its possession, or to pass such order as he desires fit respecting its disposal. 24 M. L. J. 1=18 Ind. Cas. 171=14 Cr. L. J. 27=1913 M. W. N. 851. Property seized should be returned when offence charged is not made out. 33 Cr. L. J. 539=62 M. L. J. 632=A. I. R. 1932 Mad. 428. Adverse decision under s. 523 does not deprive a party of his right of suit to establish his claim. 17 Bom. L. R. 979=40 B. 200=31 Ind. Cas. 498.

Procedure where no claimant appears within six months.

524. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

(2) In the case of every order passed under this section an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Notes—Vide 22 C. 761 ; 40 B. 200 ; 5 P. L. J. 321.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, * [or if the Magistrate] to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner,† [or that the value of such property is less than ten rupees] the Magistrate may at any time direct it to be sold ; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

* These words were substituted for the words "or the Magistrate" by s. 144 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by *ibid.*

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case or itself try it.

526. (1) Whenever it is made to appear to the High Court :—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice, or is required by any provisions of this Code ; it may order—

(*i*) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence ;

(*ii*) that any particular* case of appeal, or class of† cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ;

(*iii*) that any particular † case or appeal be transferred to and tried before itself ; or

(*iv*) that an accused person be committed for trial to itself or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall except when the applicant is the Advocate General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond with or without sureties, conditioned that he will if ‡[so ordered] pay § [any amount which the High Court "may under this section award by way of compensation" ‖ to the person opposing the application,]

Notice to Public Prosecutor of application under this section.

(6) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made ; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

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* The word "Criminal" was ommitted by s. 245 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The word "Such" wss omitted by *ibid.*

‡ These words were substituted for the word "convicted" by *ibid.*

§ These words were substituted for the words "the costs of the prosecutor" by *ibid.*

‖ The words within quotations have been substituted by Act XXI of 1932.

*[(6A) Where any application for the exercise of the power conferred by this section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of "compensation"† to any person who has opposed the application "such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case"]†

(7) Nothing in this section shall be deemed to affect any order made under section 197.

‡(8) If in any inquiry under Chapter VIII or Chapter XVII or in any trial any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under the section, the Court shall upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees, that he will make such an application within a reasonable time to be fixed by the Court, adjourns the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Adjournment on application under this section.

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused.

§[(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.]

‖ [*Explanation.*—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court undrr s. 344.]

"(10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.".‖

Effect of amendment by Act 21 of 1932—"Sub-section (8) of section 526 of the Code of Criminal Procedure, 1898, as it stood prior to its amendment in 1923, provided that in any criminal case or appeal, before the *commencement of the hearing*, the Public Prosecutor, the complainant or the accused notified to the Court before which the case or appeal was pending his intention to make an application to the High Court for transfer of the case or appeal, the Court should exercise the powers of postponement or adjournment given by section 344 in such a manner as would afford a reasonable time for the application being made and an order being obtained thereon, before the accused was called on for this defence, or, in the case of an appeal, before the hearing of the appeal. Act XVIII of 1923 ammended this sub-section so as to provide that if an application for transfer is made at any time in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, "the court shall adjourn the case or postpone the appeal." It also added sub-section (9) empowering a Sessions Court to refuse to

* This sub-section was inserted by s. 145 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The words under quotations have been substituted by Act XXI of 1932.

‡ Substituted by Act 21 of 1932.

§ Sub-section 9 was substituted by Act 18 of 1923.

‖ Inserted by Act 21 of 1932.

adjourn a trial if it is of opinion that the application has been unreasonably delayed. The practical working of this new procedure has been carefully observed by Government over a considerable period, and they have come to the conclusion that it lends itself to grave abuse and is calculated to defeat the ends of justice. This view was recently endorsed in a judgment of *Lort Williams*, J in the case of *Neamut Sha* v. *Emperor*, 59 C. 482, in which he recommended the amendment of the section. He remarks : "The position created by s. 526 (8) is truly amazing, one effect being that no accused person can be convicted except with his own consent. No discretion is given to the Court by the section. If the accused notifies his intention to make an application to the High Court for transfer, the trial must be adjourned immediately. There is no limit to the number of such notifications which may be given during the course of any trial. The abuse of process which sub-section (8) makes possible obviously may be aggravated to almost any extent, where there is a joint trial, and each accused, person is represented by a different pleader." There is indeed a general consensus of opinion among judicial authorities that these provisions are in urgent need or amendment. The Bill proposes to restore the position as it stood before 1923, but in restoring the provisions that then existed, it recasts, them so as to eliminate certain ambiguities that had shown themselves.

"Sub-section (6A) was inserted in the section by the same Amending Act XVIII of 1293. The safeguard provided by this sub-section has been characterised by *Lort Williams* J. in the judgment of the High Court referred to above as "wholly illusory," one reason given being that applications in the High Court are opposed usually by or on behalf of the Legal Remembrancer, who is paid by salary and not by fees, which makes it difficult to asses his reasonable expenses incurred in opposing the application. The amendments in sub-sections (5) and (6A) proposed by the Bill are aimed at meeting this criticism."—*Statement of Objects and Reasons.*

"*Clause 2 (a) and (b)*—While we are of opinion that the provisions here made for payment of compensation are advisible as a further check on the making of frivolous applications for transfer, we consider that maximum limit should be fixed in the Act to the amount of compensation that may be awarded.

"(c) We consider that the power to obtain an adjournment on notifying to the Court an intention to apply for transfer should not be confined to cases in which the notification is made before the enquiry or trial begins. The party may not be aware of the circumstances giving rise to an apprehension that he will not receive an impartial hearing until after the hearing has commenced : those circumstances may arise only in the course of the trial. We recognize the necessity of greater safeguards against the abuse of the section than those now existing. We think that provision should be made for a compulsory adjournment, if a party notifies his intention to move for a transfer at any time before the arguments begin, that is to say at any time before the defence close its case. At the same time we recognise that the power at present enjoyed of paralysing the action of the Court by repeatedly notifying the intention to make an application, sometimes without any intention of following up the notification with an application, must be checked. We have accordingly provided that when once a party has secured an adjournment the Court shall not be bound to adjourn on any subsequent intimation of an intention to apply for a transfer made by that same party, and that where there are more than one accused, it shall not be possible for different accused by a series of successive intimations to secure a series of adjournments.

"We noted that the inherent power of the Court under section 344 to adjourn a case is not affected, but we have inserted an explanation after sub-section (9) of section 526 of the Act to make this absolutely clear.

"Our alternations in the new sub-section (8) have made it necessary for us to retain sub-section (9) of the section in the Act."—*Statement of Objects and Reasons.*

Applicability—This section applies to proceedings pending in subordinate Courts. Panchayat Court is not Court subordinate to High Court. 21 P. L. J. 925 =46 A. 167=A. I. R. 1924 All. 265=83 Ind. Cas. 350. A case is in a Court without jurisdiction cannot be transferred. 24 Cr. L. J. 351=17 M. L. W. 69=A. I. R. 1923 Mad. 326=72 Ind. Cas. 351. Section 526 (8) does not apply to proceedings under s. 57C. 869=31 Cr. L. J. 698=1929 Cr. C. 522=50 C. L. J. 331=34 C. W. N. 59= A. I. R. 1929 Cal. 778=124 Ind. Cas. 522 ; see also 6 Pat. 553=8 P. L. T. 716=28 Cr. L. J. 1035=A. I. R. 1927 Pat. 351=106 Ind. Cas. 219 ; 25 Cr. L. J. 276 : A. I. R. 1934 Lah. 73. "Inquiry or trial" in cl. (8) does not apply to transfer proceedings pending before District Judge. 5 Pat. 229=8 P. L. T. 66=27 Cr. L. J. 1214=A. I. R. 1927 Pat.

59. Section 526 (8) applies when applicant notifies his intention to apply for transfer. Onus is on the applicant to show information was given to Magistrate. 1930 A. L. J. 1320=A. I. R. 1930 All. 835 Except in exceptional cases, preventive proceeding in one district should not be transferred to another district. A. I. R. 1933 Rang. 165=1933 Cr. C. 764. Application must be without delay. A. I. R. 1933 sind. 17=1933 Cr. C. 17=33 Cr. L. J. 908. Application for transfer suppressing fact of dismissal of prior application and based on unfounded allegations should not be allowed. A. I. R. 1933 Sind. 361=1933 Cr. C. 1337. By reason only having made the order by giving consent under s. 196 A. (2), a Magistrate is not incompetent to try the case. A. I. R. 1934 Cal. 391=35 Cr. L. J. 714=38 C. W. N. 581. The power of the High Court under s. 526 clearly cover both class of cases, that is cases exclusively triable by a Court of Session and also cases not so exclusively triable. A. I. R. 1934 Oudh. 349=11 O. W. N. 280=35 Cr. L. J. 928. In case of complaint against and by accused mere dismissal of latter is no ground for transfer. A. I. R. 1935 Sind. 72. Fact that accused person and his witnesses reside at considerable distance is ordinarily no ground for transfer. A. I. R. 1935 Sind. 68.

Apprehension—Where Court uses strong language, party may apprehend unfairness. 47 A. 218=23 A. L. J. 133=26 Cr. L. J. 538=A. I. R. 1925 All. 283=85 Ind. Cas. 78. In an application for transfer what has to be established is a belief in the mind of the accused that his case will not be fairly tried. 27 Cr. L. J. 1062=A. I. R. 1927 Nag. 48=97 Ind. Cas. 38. Question is not whether belief of accused is reasonable or not but whether he believes that justice could not be done. Test is whether a reasonable man would believe so. 38 Cr. L. J. 188=A. I. R. 1927 Nag. 384=99 Ind. Cas. 860 ; see also 27 N. L. R. 99=27 Cr. L. J. 835=95 Ind. Cas. 755 ; 81 Ind. Cas. 560=A. I. R. 1924 Cal. 981=39 L. L. J. 330 ; 29 Cr. L. J. 229=107 Ind. Cas. 160 ; 28 Cr. L. J. 787=A. I. R. 1927 Lah. 709=104 Ind. Cas. 227 ; 24 Cr. L. J. 811=A. I. R. 1923 Oudh 172=74 Ind. Cas. 715 ; 2 P. L. T. 297=22 Cr. L. J. 708=A. I. R. 1921 Pat. 322=63 Ind. Cas. 868. If it is shown that there is reasonable apprehension in the mind of the accused that he would not receive a fair trial, case should be transferred. 5 L. L. T. 63=25 Cr. L. J. 590=A. I. R. 1925 Pat. 115 ; see also 18 Cr. L. J. 719=40 Ind. Cas. 719. Magistrate's attempt to compromise case can reasonably cause suspicion of partiality. 25 Cr. L. J. 570=A. I. R. 1925 Oudh. 179=81 Ind. Cas. 58. Magistrate stopping cross-examination because he believed it was sufficient, may raise reasonable apprehension. 20 Cr. L. J. 359=51 Ind. Casl 847 ; see also 52 Ind. Cas. 54=20 Cr. L. J. 566. But quarrel or unpleasantness between judge and counsel is no ground for transfer. 18 Cr. L. J. 670=40 Ind. Cas. 311. The apprehension of the accused must be reasonable in the opinion of the Court. 11 Cr. L. J. 644=10 S. L. R. 183=40 Ind. Cas. 292. Transfer cannot be granted unless Magistrate has by some personal conduct rendered himself unfit to give accused a fair trial. 28 Cr. L. J. 73=A. I. R. 1927 All. 184=89 Ind. Cas. 105. Magistrate receiving hospitality of complainant's son though he might not have been aware of the fact is sufficient to create apprehension in mind of accused. 27 Cr. L. J. 565=A. I. R. 1926 Lah. 347=94 Ind. Cas. 133. Where accused suspects whole atmosphere is against him and local authorities would influence the Magistrate, it is a good ground for transfer. 7 N. L. J. 155=26 Cr. L. J. 163=A. I. R. 1924 Nag. 243=83 Ind. Cas. 723 ; 21 Cr. L. J. 795=1 Pat. L. T. 522=58 Ind. Cas. 523. The law has regard not so much to the motives which might be supposed to bias the judge, as to the susceptibilities of the parties. 2 P. L. T. 198=22 Cr. L. J. 726=A. I. R. 1921 Pat. 413=64 Ind. Cas. 31. Unreasonable delay in examining complaint and awaiting consideration of evidence in a case not connected with the accused may reasonably lead accused to apprehend unfair trial. 21 Cr. L. J. 504=1 Pat. L. T. 494=56 Ind. Cas. 664. Question to be decided is not whether Judge had any real bias but whether the Judge's remarks had created reasonable apprehension of an unfair trial. 10 Lah. 778=30 Cr. L. J. 129=A. I. R. 1928 Lah. 975=113 Ind. Cas. 321 ; see also 6 Lah. 396=7 L. L. J. 241=26 P. L. R. 273=26 Cr. L. J. 853=A. I. R. 1925 Lah. 361=86 Ind. Cas. 709. It is not necessary to establish actual bias in the mind of Magistrate. The question is whether sufficient grounds are made out to be inferred from facts. 26 A. L. J. 1250=29 Cr. L. J. 750=A. I. R. 1928 All. 396=110 Ind. Cas. 686. Where a Magistrate sends for a party to come to his house and presses him to compromise case should be transferred. A. I. R. 1931 Lah. 32=130 Ind. Cas. 430. The case should be transferred, where the accused was told by his vakil that the Magistrate had tried to dissuade him from defending. 3 L. L. J. 528=A. I. R. 1921 Lah. 331. Petitioner need not establish that the Magis-

trate is actually prejudiced. Reasonable apprehension is sufficient. 29 Cr. L. J. 620=109 Ind. Cas. 812. Where Magistrate commences trial and examines all prosecution witnesses on a public holiday at the request of a police officer it is a fit ground for transfer. 29 Cr. L. L. 294=A. I. R. 1928 Lah. 334=107 Ind. Cas. 779. The criterion for a transfer is that the High Court must be of opinion that the applicant will not receive a fair and impartial trial in the Court below. Absolutely unreasonable belief is not sufficient. 10 N. L. J. 184=28 Cr. L. J. 898=A. I. R. 1928 Nag. 21. Fear of Deputy Magistrate being influenced by his opinion of the District Magistrate in his extra-judicial enquiry is not sufficient ground. 2 O. W. N. 847=27 Cr. L. J. 551=A. I. R. 1925 Oudh. 731=93 Ind. Cas. 1047. Where Magistrate has expressed his opinion that applicant was guilty of abetting in his order in a previous case, there exists reasonable ground for apprehension. 27 Cr. L. J. 210=A. I. R. 1926 Nag. 98=92 Ind. Cas. 162. Whether Magistrate will deal impartially is not to be decided in abstract. But question is whether Magistrate has so behaved as to give room for legitimate fear to one party or not. 1930 A. L. J. 606=31 Cr. L. J. 555=A. I. R. 1930 All. 737=123 Ind. Cas. 685 ; see also 30 Cr. L. J. 728=A. I. R. 1929 Nag. 172=117 Ind. Cas. 213. Degree of intelligence possessed by accused is to be considered while deciding whether he had reasonable apprehension. 25 Cr. L. J. 638=A. I. R. 1925 Lah. 101=81 Ind. Cas. 126 ; 3 Lah. 443=24 Cr. L. J. 286=A. I. R. 1923 Lah. 264=71 Ind. Cas. 1006. It is not proper for Magistrate to frequently cross-examine prosecution witnesses or disallow complainant's question. But this cannot make complainant apprehend unfair trial. 25 Cr. L. J. 1185=A. I. R. 1925 Oudh 52=82 Ind. Cas. 49. Where Magistrate makes remarks unfavourable to prosecution, complainant has reason for apprehending unfair trial. 7 P. L. T. 49=26 Cr. L. J. 1249=A. I. R. 1925 Pat. 818=88 Ind. Cas. 993. Accused believing that Magistrate who had grown angry in another case would be prejudiced against him, may be considered for transfer if accused is an ignorant villager but not if an experienced litigant. 31 Cr. L. J. 764=A. I. R. 1930 All. 495=125 Ind. Cas. 32. Cross-examination of prosecution witness by Magistrate on point suggested by Public Prosecutor after cross-examination by accused was over, may give rise to reasonable apprehension sufficient for transfer. 31 Cr. L. J. 736=A. I. R. 1930 Lah. 173=124 Ind. Cas. 688. Where Magistrate has got outside knowledge of subject-matter of proceeding, the case should be transferred. 31 Cr. L. J. 805=1929 Cr. C. 597=A. I. R. 1929 Cal. 809. Where request to have access to papers seized by police under illegal warrant, was disallowed unreasonably and Magistrate demands heavy bail, there is sufficient reason to create apprehension. 31 Cr. L. J. 532=A. I. R. 1929 Lah. 860=123 Ind. Cas. 534. Where adjournments are repeatedly made to bring pressure on accused to produce absconding co-accused, there exists sufficient ground for transfer. A. I. R. 1933 Lah. 953=129 Ind. Cas. 485. "Reasonable apprehension of not having a fair trial" means apprehension such a reasonable man would entertain. 31 Cr. L. J. 1172=A. I. R. 1933 Lah. 877=127 Ind. Cas. 150. Reasonable apprehension renders transfer advisable. A. I. R. 1931 Bom. 313=32 Cr. L. J. 1147=33 Bom. L. R. 675 ; see also 32 P. L. R. 471=32 Cr. L. J. 1188=A. I. R. 1931 Lah. 540 ; A. I. R. 1933 Oudh 480=10 O. W. N. 906 ; A. I. R. 1933 Oudh 21=34 Cr. L. J. 46=9 O. W. N. 963 ; A. I. R. 1933 Pat. 597=34 Cr. L. J. 1025 ; A. I. R. 1933 Rang. 165=6 R. L. 70 ; A. I. R. 1933 Rang. 89=34 Cr. L. J. 832=6 R. R. 1 ; A. I. R. 1934 Nag. 39=35 Cr. L. J. 411 ; A. I. R. 1934 Lah. 516=36 P. L. R. 290 ; 35 P. L. R. 709=35 Cr. L. J. 1380 ; A. I. R. 1934 Nag. 39=35 Cr. L. J. 411 ; A. I. R. 1934 Oudh. 452

Grounds of communal feeling—Transfer on grounds of communal feeling should be granted with considerable hesitation. But in a proper case it may be a good ground of transfer. A. I. R. 1930 All. 737=31 Cr. L. J. 355=1930 A. L. J. 606=123 Ind. Cas. 685 ; see also 28 Cr. L. J. 588=A. I. R 1927 Lah. 520=102 Ind. Cas. 556 ; 26 Cr. L. J. 1056=26 P. L. R. 267=A. I. R. 1925 Lah. 620=87 Ind. Cas. 976 ; 8 P. L. T. 153=27 Cr. L. J. 1391=A. I. R. 1227 Pat. 86=98 Ind. Cas. 607 ; A. I. R. 1934 Lah. 73=35 Cr. L. J. 624.

Grounds of relationship—The mere fact that the Magistrate's son is a pleader and that he has been engaged by the other side is no ground for granting a transfer. 26 Cr. L. J. 440=A. I. R. 1925 Oudh 348=85 Ind. Cas. 56 ; see also 7 P. L. T. 770=27 Cr. L. J. 144=A. I. R. 1929 Pat. 464=95 Ind. Cas. 764 ; but see 29 C. W. N. 648=26 Cr. L. J. 1183=88 Ind. Cas. 607. Relationship of Magistrate with a person who is interested in prosecution is sufficient ground for transfer. 145 Ind. Cas. 521=34 Cr. L. J. 1024.

Grounds of interest—An interest in the case likely to create suspicion of bias is sufficient grounds. Mere possibility of bias is not enough. 27 Cr. L. J. 1333=20 S. L. R. 171=A. I. R. 1927 Sind. 98=98 Ind. Cas. 405 ; see also 23 Cr. L. J. 704=A. I. R. 1922 Lah. 72=69 Ind. Cas. 384. Magistrate interesting himself by way of obtaining settlement between the parties should not hear the case. 47 A. 411=23 A. L. J. 191=26 Cr. L. J. 869=A. I. R. 1925 All. 289=86 Ind. Cas. 805. Taking more than a formal part in the police investigation would serve as a ground for transfer. 26 Cr. L. J. 1317=4 Bur. L. J. 65=A. I. R. 1925 Rang. 219=89 Ind. Cas. 261. Magistrate taking steps to put down picketting as executive officer, should not try cases arising out of picketting. A. I. R. 1931 Lah. 30=130 Ind. Cas. 330 ; but see 23 Cr. L. J. 88=65 Ind. Cas.. 440. Court issuing warrant for arrest of judgment debtor cannot try persons for having rescued judgment-debtor from lawful custody. 43 C. L. J. 234=27 Cr. L. J. 553=A. I. R. 1926 Cal. 605=93 Ind. Cas. 1049. Where a party has a financial hold over a Magistrate, the case should be transferred. 21 Cr. L. J. 843=58 Ind. Cas. 923. Where Magistrate receives visit from complainant, the case should be transferred. 3 O. W. N. 245=27 Cr. L. J. 498=93 Ind. Cas. 962.

Local influence.—Where Magistrate is influenced by a private individual, the case should be transferred. 22 Cr. L. J. 726=2 Pat. L. T. 198=64 Ind. Cas. 38. When local events raises apprehension in the mind of accused, the case should be transferred. 31 P. L. R. 694=A. I. R. 1930 Lah. 954=129 Ind. Cas. 684. Where a number of officials in the district are personally concerned whether as witnesses or otherwise in the case, it is desirable that it should be tried elsewhere. 28 Cr. L. J. 1011=A. I. R. 1927 All. 708=106 Ind. Cas. 99.

Favour.—Court can examine any witness and it shows no bias unless the Court was assisting the prosecution. 30 Cr. L. J. 728=A. I. R. 1929 Nag. 172=117 Ind. Cas. 213. When case was unnecessarily adjourned on several occasions in order to enable the complainant to appear is not sufficient ground for transfer. 27 Cr. L. J. 1022=A. I. R. 1926 Lah. 628=96 Ind. Cas. 878. An accused is entitled to transfer of a case which is sent to a particular Magistrate at the request of the complainant. 25 Cr. L. J. 989=A. I. R. 1925 Lah. 121=81 Ind. Cas. 637. Where Magistrate acts as mouth piece of public prosecutor the conducting examination of accused under s. 342, it is a valid ground for transfer. 31 Cr. L. J. 560=A. I. R. 1930 Lah. 106=123 Ind. Cas. 570.

Grounds of friendship.—Magistrate being personal friend of complainant is no ground for transfer. A. I. R. 1931 Bom. 309=33 Bom. L. R. 311=131 Ind. Cas. 891 ; see also 30 Cr. L. J. 522=1929 A. L. J. 616=A. I. R. 1930 All. 207 ; but see 8. L. L. J. 257=27 Cr. L. J. 782=27 P. L. R. 843=A. I. R. 1926 Lah. 410 ; 26 Cr. L. J. 1443=A. I. R. 1925 Lah. 615=89 Ind. Cas. 912.

Hostility.—When Magistrate's attitude is clearly hostile to a party, the case must be transferred. 26 P. L. R. 709=27 Cr. L. J. 104=7 L. L. J. 571=A. I. R. 1926 Lah. 151=91 Ind. Cas. 536 ; see also A. I. R. 1923 Lah. 282 31 Cr. L. J. 980=A. I. R. 1630 Lah. 668=125 Ind. Cas. 615 ; but see 19 S. L. R. 117=27 Cr. L. J. 802=A. I. R. 1926 Sind. 953=95 Ind. Cas. 466. When Magistrate expresses opinion adverse to petitioner before hearing evidence, case should be transferred. A. I. R. 1931 Rang. 87=8 Rang. 654=1931 Cr. C. 375. Application for transfer should be granted when conduct of Magistrate indicates that both parties will not be treated with equal fairness. A. I. R. 1931 Lah. 46=129 Ind. Cas, 193. But in the absence of bias or prejudice, transfer cannot be granted. 30 Cr. L. J. 728=1929 Cr. C. 47=A. I. R. 1929 Cr. C. 47=A. I. R. 1929 Nag. 172=172 Ind. Cas. 213.

Opinion formed—Where the Court has already formed a very strong opinion of conduct of the accused, transfer should be ordered. 22 A. L. J. 430=26 Cr. L. J. 139=A. I. R. 1924 All. 533=83 Ind. Cas. 699 ; see also 11 O. L. J. 556=26 Cr. L. J. 158=A. I. R. 1924 Oudh. 433=83 Ind. Cas. 718 ; 11 O. L. J. 657=25 Cr. L. J. 1377=A. I. R. 1925 Oudh. 90=82 Ind. Cas. 766. Expression of opinion in miscellaneous proceeding does not justify transfer of main case. 11 O. L. J. 54=25 Cr. L. J. 433=A. I. R. 1924 Oudh 338=77 Ind. Cas. 721 ; see also 29 Cr. L. J. 589=A. I. R. 1928 Nag. 217=109 Ind. Cas. 605. The mere fact that a District Magistrate has come to the conclusion that there is a *prima facie* case against the accused, is no ground for transfer unless it can be shown that he is influencing its results. 28 Cr. L. J. 120=A. I. R. 1927 Lah. 164=99 Ind. Cas 862. Where a Magistrate in framing the charges against the accused observed that offence had been proved, the case

should be transferred. 23 Cr. L. J. 168=65 Ind. Cas. 632 ; see also 25 Cr. L. J. 194 =A. I. R. 1923 Oudh. 161=76 Ind. Cas. 562 ; 29 C. W. N. 316=26 Cr. L. J. 852= A. I. R. 1925 Cal 480=86 Ind. Cas. 708 ; 2 O. W. N. 688=26 Cr. L. J. 1525=A. I. R. 1925 Oudh. 690=90 Ind. Cas. 309.

Improper procedure—The refusal to give reasonable opportunity to an accused to apply for a transfer of a case, is an illegality which vitiates the whole proceeding. 32 Cr. L. J. 717 (Lah.)=63 Ind. Cas. 877. The refusal to grant an adjournment, thereby depriving the accused of quite a full opportunity of putting forward defence is a ground for transfer. 22 Cr. L. J. 708=2 Pat. L. T. 297=63 Ind. Cas. 861 ; see also 20 S. L. R. 122=27 Cr. L. J. 935=A. I. R. 1926 Sind. 288 =96 Ind. Cas. 391. Prosecution of witness for perjury should be made at the conclusion of the case and not as soon as the examination of witness is concluded. 29 Cr. L. J. 40=A. I. R. 1928 Lah. 180=106 Ind. Cas. 456. Where an offence is being inquired into and tried by a court, contrary to the provisions of s. 177 the error can be rectified by the High Court by transfer to the Court having jurisdiction. 26 Cr. L. J. 577=A. I. R. 1925 Oudh. 490=85 Ind. Cas. 721. When Court itself examines the witnesses and does not allow parties to examine them, the case should be transferred. 11 O. L. J. 333=25 Cr. L. J. 1226=27 O. C. 246=82 Ind. Cas. 154. Where Magistrate, instead of ordering prosecution under s. 190 (1) (c) sends back papers to the police with no order case should be transferred from his court. A. I. R. 1931 All. 273=1931 Cr. C. 337=32 Cr. L. J. 370=129 Ind. Cas. 267.

Other Grounds—Where Magistrate instead of ordering prosecution under s. 190 (1) (c) sends back papers to police, case should be transferred from his Court. A. I. R. 1931 All. 273=32 Cr. L. J. 370=129 Ind. Cas. 267. Case was transferred where witnesses were examined after 9 P. M. A. I. R. 1923 Lah. 440=34 Cr. L. J. 383=14 Lah. 201=33 P. L. R. 1032. Erroneous refusal to accept bail justifies transfer of case. A. I. R. 1932 Lah. 440=34 Cr. L. J. 89=33 P. L R. 416. Refusal of adjournment for revision is no ground for transfer. A. I. R. 1933. Sind. 17=33 Cr. L. J. 908=1933 Cr. C. 17=26 P. L. R. 255 ; see also A. I. R. 1933 Sind. 17=33 Cr. L. J. 908=26 S. L. R. 255. Holding court on Sunday is no ground for suspecting its impartiality. A. I. R. 1933 Sind. 17=33 Cr. L. J. 908= 26 S. L. R. 255. Where Magistrate expresses opinion adverse to petitioner before hearing evidence, the case should be transferred. A. I. R. 1931 Rang. 87=8 Rang. 954=32 Cr. L. J. 938. Why the trying Magistrate did not grant even one adjournment it is a good ground for transfer. A. I. R. 1933 Sind. 307=1933 Cr. C. 1341. ; see also 35 C. W. N. 1112=59 C. 478. Attempt to influence decision of Magistrate in matter before him or to approach him except in manner permitted by law is to be condemned. A. I. R. 1933 Rang. 90=10 Rang. 180=33 Cr. L. J. 550. Where conduct of the Court is unfair to the accused the case should be transferred. A. I. R. 1933 Rang. 164=34 Cr. L. J. 950=1933 Cr. C. 763 ; A. I. R. 1933 Nag. 269=16 N. L. J. 158. The conduct of the police even unjustified is no ground for transferring the case from the district. A. I. R. 1934 Lah. 516=36 P. L. R. 240. When in a cross-case an accused is prejudiced he can claim for transfer. A. I. R. 1934 Lah. 458=35 P. L. R. 427=1934 Cr. C. 704.

Powers of High Court.—The High Court has power to transfer a case to the Court having jurisdiction from a Court not having jurisdiction. 30 Cr. L. J. 1121= A. I. R. 1929 Sind. 250=120 Ind. Cas. 11. 81. High Court has no jurisdiction to transfer criminal case which are in the course of hearing in another province nor to declare that a particular case is triable exclusively in Benares or Calcutta. 24 Cr. L. J. 635=A. I. R. 1924 All. 71=73 Ind. Cas 523. High Court has no inherent powers of transfer over and above that conferred by s. 526. 1 Rang. 632= 2 Ber. L. J. 236=25 Cr. L. J. 485=A. I. R. 1924 Rang. 100=77 Ind. Cas. 885. Transfer of case from one Court to another by High Court under s. 526 is not open to interference by Local Government. 55 B. 576=32 Cr. L. J. 1147=A. I. R. 1931 B. 313 (S. B.)

Who can apply.—"Party interested" includes public prosecutor when case is conducted by Puplic Prosecutor 57 M. L. J. 547=32 C. R. L. J. 1153=A. I. 1929 Mad. 844=120 Ind. Cas. 80 ; see also 6 Lah. 541=27 Cr. L. J. 411=27 P. L. R. 10= 93 Ind. Cas. 75. A private person who lodges information on which criminal prosecution is started is a person interested. 26 Cr. L. J. 1249=A. I. R. 1925 Pat. 818= 7 P. L. T. 49=88 Ind. Cas. 993 ; see also 20 Cr. L. J, 648=4 Pat. L. J. 656=52 Ind. Cas. 424 ; A. I. R. 1934 Lah. 612=35 P. L. R. 567. A person moving the Court to

take action under s. 476 is not an interested person within the meaning of s. 526 (3) and also has no *locus standi* to apply for the transfer, the court being the complainant. 31 P. L. R. 840=31 Cr. L. J. 1174=A. I. R. 1930 Lah. 872=127 Ind. Cas. 152. Application for transfer cannot be made after the case is closed. 52 M. 355=56 M. L. J. 216=A. I. R. 1929 Mad. 201=118 Ind. Cas. 274. A person making an affidavit containing false statement in support of an application for transfer is guilty under s. 191, Penal Code. 28 Cr. L. J. 133=A. I. R. 1927 Sind. 113=99 Ind. Cas. 341. Accused has a right to go to High Court direct without first proceeding under s. 528. 32 Bom. L. R. 1128=A. I. R. 1930 Bom. 480=129 Ind. Cas. 399.

Convenience.—Convenience is no ground for transfer. 27 Cr. L. J. 1261=20 S. L. R. 310=A. I. R. 1927 Sind. 59=98 Ind. Cas. 109. Case should be transferred, where case has been instituted in a district other than the district where accused and complainant reside and offence took place. 28 P. L. R. 211=A. I. R. 1927 Lah. 271.

Cross-complaints.—The mere fact that the complaint of one party is dismissed and that he is apprehensive of a conviction is by itself no good ground for a transfer. 29 Cr. L. J. 934=A. I. R. 1929 Lah. 48=111 Ind. Cas. 854.

Affidavit.—Even accused must file affidavit. A. I. R. 1933 Nag. 201=34 Cr. L. J. 1035. Affidavit must be sworn before High Court. 33 Cr. L. J. 61=A. I. R. 1031 Cal. 710. Court should regard allegations in the affidavit to be correct in absence of evidence in rebuttal or statement by judicial officer concerned. A. I. R. 1932 Rang. 1932 Rang 90=33 Cr. L. J. 550=10 Rang. 180.

Costs.—Cost was refused when the application was not frivolous or vexatious. 36 P. L. R. 240=A. I. R. 1934 Lah. 516. The maximum amount of cost which can be given is Rs. 250. 35 Cr. L. J. 1056=150 Ind. Cas. 79 ; see also A. I. R. 1935 Pat. 120.

High Court to transfer for trial to itself in certain cases.

*[**526A.** (1) Where any person subject to the †[Naval Discipline Act or "other than a person to whom that Act applies by" virtue of the Indian Navy (Discipline) Act, 1934)‡ or to the § Army Act or to the Air Force Act § is accused of any offence such as is referred to in proviso (a) to section 41 of the Army Act,§ the Advocate-General shall, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court shall order that the case be committed for trial to or be transferred to itself and shall thereafter proceed to try the case by jury.

(2) The Governor-General in Council may, by notification in the *Gazette of India*, declare any officer to be the competent authority for the purpose of issuing instructions under sub-section (1) in regard to any class of cases specified in the notification.]

Power of Governor-General in Council to transfer cases and appeals.

527. (1) The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular ¶case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to such Court.

Notes.—The Governor-General alone can under s. 527, pass orders binding on different High Courts. 40 M. 835=18 Cr. L. J. 141=5 L. W. 349=37 Ind. Cas. 516.

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* Section 526A was inserted by s. 32 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† 29 & 33 Vict. c. 109.

‡ Inserted by Act 32 of 1934.

§ 44 & 45 Vict., c, 58.

‖ 7 & 8 Geo. c. 51.

¶ The word "criminal" was omitted by s. 146 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Sessions Judge may withdraw cases from Assistant Sessions Judge.

528. [* (1) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Assistant Sessions Judge subordinate to him.]

District or Sub-divisional Magistrate may withdraw or refer cases.

† [(2)] Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorize District Magistrate to withdraw classes of cases.

† [(3)] The Local Government may authorize the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

‡ [(4) Any Magistrate may re-call any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.]

† [(5)] A Magistrate making an order under this section shall record in writing his reasons for making the same.

§ [(6) The head of a village under the ‖ Madras Village-Police Regulation, 1816, or the ‖ Madras Village-Police Regulation, 1821, is a Magistrate for the purposes of this section.]

Notes.—This section does not require the term that a Magistrate should give any reason for a transfer, but it is a sound rule of practice that there should be something on the record showing why the order was made. The mere omission to record reasons does not vitiate the order. 5 Pat. 229=97 Ind. Cas. 974=27 Cr. L. J. 1214. A transfer of a case under this section is not illegal for want of notice to the opposite party. This section does not require issue of notice. 93 Ind. Cas. 75=6 Lah. 541=27 P. L. R. 80; see also 132 Ind. Cas. 213=28 Cr. L. J. 517. Notice should be given. But want of notice does not amount to illegality but impropriety. 28 Cr. L. J. 517=A. I. R. 1927 Nag. 244=102 Ind. Cas. 213: see also 5 L. L. J. 230=24 Cr. L. J. 187=71 Ind. Cas. 603; 20 Cr. L. J. 320=21 Bom. L. R. 276=50 Ind. Cas. 603; 99 Ind. Cas. 70=28 Cr. L. J. 38=A. I. R. 1927 Lah. 83; 83 Ind. Cas. 345=25 Cr. L. J. 1385=A. I. R. 1923 Pat. 223; 130 Ind. Cas. 330=A. I. R. 1931 Lah. 29; A. I. R. 1929 Mad. 511=119 Ind. Cas. 385; 52 B. 151=30 Bom. L. R. 70=A. I. R. 1928 Bom, 184=108 Ind. Cas. 127; 120 Ind. Cas. 261=31 Cr. L. J. 30=1932 A. L. J. 148; 5 Pat. 229=8 P. L. T. 66. Delay in disposing of a case is no ground for transfer. 19 Cr. L. J. 119=43 Ind. Cas. 407; see also 20 Cr. L. J. 402=51 Ind. Cas. 162. Refusal of Sub-divisional Magistrate to transfer case does not preclude District Magistrate from transfering *suo motu*. 40 M. 791=11 Cr. L. J. 335=38 Ind. Cas. 447. Case should not be transferred on general allegations of communal feeling against a Magistrate. 31 Cr. L. J. 257=A. I. R. 1932 Lah. 168=121 Ind. Cas. 374. When application is made to District Magistrate, trial Court need not adjourn proceedings. 29 Cr. L. J. 935=1929 A. L. J. 60=A. I. R 1928 All. 753=111 Ind. Cas. 855. The convenience of the accused must be regarded in considering whether a fair and impartial trial is likely to be held. 29 Cr. L. J. 373=A. I. R. 1928 Pat. 347=108 Ind. Cas. 329. It is not the object of s. 528 that a case should be transferred merely because it is going against a particular party. 2 Pat. 333=25

* This sub-section was substituted by s. 142 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Original sub-section (1),- (2) and (3) were re-numbered (2), (3) and (5) respectively by *ibid.*

‡ This sub-section was inserted by *ibid.*

§ This sub-section was substituted for original sub-section (4) after it was re-numbered as sub-section (6), by *ibid.*

‖ XI of 1816 and IV of 1821.

Cr. L. J. 1385=A. I. R. 1923 Pat. 228=83 Ind. Cas. 345. Judge having private discussion about the case in the club is a ground for transfer. 23 Cr. L. J. 126=65 Ind. Cas. 358. Chief Magistrate has jurisdiction to recall a case transferred by Additional Chief Presidency Magistrate. 51 C. 820=39 C. L. J. 595=28 C. W. N. 903=83 Ind. Cas. 661. The High Court will not entertain application for a relief, which could equally be granted by a Subordinate Court, until recourse has first been had to the Court. 26 Cr. L. J. 960=A. I. R. 1925 All. 640=97 Ind. Cas. 112. An order for transfer of a criminal case without reasons required by clause (5) is bad and should be set aside. 26 Cr. L. J. 221=A. I. R. 1924 Mad. 873=83 Ind. Cas 1005. Giving reasons by reference to other papers is not proper. A. I. R. 1933 Sind. 205=34 Cr. L. J, 861=1933 Cr. C. 718. Transfer is not vitiated even if reasons. thereof are not recorded. 34 P. L. R. 577=34 Cr. L. J. 630=A. I. R. 1933 Lah. 385. Code does not require Magistrate to issue notice before case is transferred 1933 Cr. C. 639=34 P. L. R. 577=34 Cr. L. J. 630=A. I. R. 1933 Lah. 385. Transfer of case by District Magistrate without notice to other party is illegal. A. I. R. 1931 Lah. 29=32 Cr. L. J. 432=32 Cr. L. J. 356=1931 Cr. C. 93. Application by party is not necessary. Notice is desirable but failure does not make order illegal. A. I. R. 1933 Sind. 205=34 Cr. L. J. 861. Where whole case is transferred to Subordinate Magistrate Sub-divisional Magistrate cannot pass any order as regard s that case unless he acts under s. 528. 14 P. L. T. 176=12 Pat. 341=A. I. R. 1933 Pat. 244. No Sessions Judge and much less Additional Sessions Judge has jurisd ction to transfer appeal on file of Additional Sessions Judge to his own file. A. I. R. 1931 All. 435=1931 A. L. J. 591=135 Ind. Cas. 252. Where absence of notice has led to miscarriage of justice; the order transferring the case should be set aside. 36 P. L. R. 274=35 Cr. L. J. 1439=A. I. R. 1934 Lah. 194.

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* CHAPTER XLIVA.

SUPPLEMENTARY PROVISIONS RELATING TO EUROPEAN AND INDIAN BRITISH SUBJECTS AND OTHERS.

Procedure of claim of a person to be dealt with as European or Indian British subject, or as European or American.

528A. (1) Where, in any case to which the provisions of Chapter XXXIII do not apply, any person claims to be dealt with as an European or Indian British subject, or where any person claims to be dealt with as an European (other than an European British subject) or an American, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject or an Indian British subject or an European or an American, as the case may be, and shall deal with him accordingly.

(2) When any such claim is rejected by the Magistrate and the person by whom it was made is committed by the Magistrate for trial before the Court of Session, and such person repeats the claim before such Court, such Court shall, after such further inquiry, if any, as it thinks fit, decide the claim, and shall deal with such person accordingly.

(3) When any Court before which any person is tried rejects any such claim as aforesaid the decision shall form a ground of appeal from the sentence or order passed in such trial.

Notes.—Before commitment such claim can be made at any time. 51 C. 980. Acused must assert his right to be tried as a person of a particular nationality before the trial Magistrate. If not, he cannot claim it at any subsequent stage of the case under s. 528 B. 22 S. L. R. 472=29 Cr. L. J. 721=A. I. R. 1929 Sind. 28; see also 54 C. 1041=29 Cr. L. J. 245=A. I. R. 1928 Cal. 97; 40 C. L. J. 256=52 C.

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* Chapter XLIVA was inserted by s. 33 of the Criminal Law Amendment Act. 1923 (XII of 1923).

347=29 C. W. N 447=26 Cr. L. J. 401=A. I. R. 1925 Cal. 14=84 Ind. Cas. 1041. Magistrate is not obliged to ask the accused whether he would claim to be tried as a European British Subject. 54 C. 1041=A. I. R. 1928 Cal. 97=167 Ind. Cas. 353. Claim to be tried as an Indian British Subject under s. 528 A, and 528 B is different from claim to be tried by a majority of Indian jury. 51 C. 980=28 C. W. N. 384=26 Cr. L. J. 385=A. I. R. 1925 Cal. 384=84 Ind. Cas. 929. Failure of accused to avail himself of the benefit of s. 528A, does not debar him from urging that conditions maintioned in clause (*a*) or (*b*) of section 443 exist. 52 C. 347=43 C. L. J. 256=26 Cr. L. J. 401=84 Ind. Cas. 1041.

Failure to plead status waiver.

528B. If in any case an European or Indian British subject or an European (other than an European British subject) or an American does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before and rejected by the committing Magistrate, it is not repeated before the Court to which such person is committed, he shall be held to have relinquished his right to be dealt with as an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall not assert it in any subsequent stage of the case.

Notes—Claim on the ground of status when to be made. 84 Ind. Cas. 929=26 Cr. L. J. 385 ; see also 29 C. W. N. 447=84 Ind. 1041=52 C. 347. Revision in High Court from order of Judge of Andamans for reduction of sentence is not subsequent stage of case. A. I. R. 1933 Cal. 240=34 Cr. L. J. 671=60 C. 676. Construction favourable to accused should be adopted. A. I. R. 1933 Cal. 240=34 Cr. L. J. 671=60 C. 676.

Trial of person as belonging to class to which he does not belong.

528C. Where a person not being an European British subject, is dealt with as an European British subject or, not being an Indian British subject, is dealt with as an Indian British subject, or, not being an European (other an European British subject) or American is dealt with as an European or American, and such person does not object, the inquiry, commitment, trial, or sentence, as the case may be, shall not, by reason of such dealing, be invalid.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

528D. (1) Unless there is something repugnant in the context, all enactments made by the Governor-General in Council or the Indian Legislature which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European subjects although such persons are not expressly referred to therein.

(2) Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an Enropean British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects.

CHAPTER XLV.

Of Irregular Proceedings.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely :—

(*a*) to issue a search warrant under section 98 ;
(*b*) to order, under section 155, the police to investigate an offence ;
(*c*) to hold an inquest under section 176 ;
(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;

(*e*) to take cognizance of an offence under section 190, sub-section (1), clause (*a*) or clause (*b*) ;

(*f*) to transfer a case under section 192 ;

(*g*) to tender a pardon under section 337 or section 338 ;

(*h*) to sell property under section 524 or section 525 ; or

(*i*) to withdraw a case and try it himself under section 528 ; erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Notes—This section comes into operation in cases of erroneous transfer. 5 C. W. N. 636 ; 35 C. 243 ; 2 C. L. J. 614 ; 4 C. W. N. 821 ; 36 C. 370. Charge sheet can be complaint to take cognizance in good faith. 34 Bom. L. R. 901=33 Cr. L. J. 733 =A. I. R. 1932 Bom. 610. Proceedings by Magistrate should not be set aside merely on ground that he has no jurisdiction. 34 Cr. L. J. 923=145 Ind. Cas. 280. Where Magistrate erroneously but in good faith took cognizance of case which he is not empowered to do, proceedings are not invalid unless prejudice is caused to accused. A. I. R. 1933 All. 399=34 Cr. L. J. 761=1933 A. L. J. 735=1933 Cr. C. 682. It is not every failure to comply with mandatory provision of the law which renders the proceedings void. 5 Bur. L. J. 100=27 Cr. L. J. 1281=A. I. R. 1926 Rang. 193=98 Ind Cas. 177. Charge and trial for four offences in one trial in contravention of s. 234 is illegal and not merely irregular. A. I. R. 1930 Mad. 508=127 Ind. Cas. 295. Order of transfer of a case by a Magistrate under a *bona fide* mistake that he has power to transfer is not invalid. 30 Bom. L. R. 653=30 Cr. L. J. 467=A. I. R. 1928 Bom. 286=115 Ind. Cas. 399.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things namely :—

(*a*) attaches and sells property under section 88 ;

(*b*) issues a search-warrant for a letter, parcel of other thing in the Post Office, or a telegram in the Telegraph Department ;

(*c*) demands security to keep the peace ;

(*d*) demands security for good behaviour ;

(*e*) discharges a person lawfully bound to be of good behaviour :

(*f*) cancels a bond to keep the peace ;

(*g*) makes an order under section 133 as to a local nuisance ;

(*h*) prohibits under section 143, the repetition or continuance of a public nuisance ;

(*i*) issues an order under section 144 ;

(*j*) makes an order under Chapter XII ;

(*k*) takes cognizance, under section 190, sub-section (1) clause (c), of an offence ;

(*l*) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;

(*m*) calls under section 435, for proceedings ;

(*n*) makes an order for maintenance ;

(*o*) revises, under section 515, an order passed under section 514 ;

(*p*) tries an offender ;

(*q*) tries an offender summarily ; or

(*r*) decides an appeal ;

his proceedings shall be void.

Notes.—The proceedings of a summary trial of a case not so triable are void. Col. Dig. 43 of 1876. Where a person is convicted by a Bench of five Magistrates, one of whom had not heard all the evidence, the conviction is bad. 38 M. 304 ; see also 20 Cr. L. J. 769=13 S. L. R. 166=53 Ind. Cas. 609 "Magistrate" includes a Sessions Judge, so that the dismissal of an appeal by a Sessions Judge when appeal lay only to High Court, is void *ab initio*. 26 Cr. L. J. 293=2 Rang. 386=A. I. R. 1925 Rang 39=84 Ind. Cas. 437. Failure to conduct investigation properly does not necessarily prejudice accused. 32 Cr. L. J. 638=12 P. L. T. 393=A. I. R. 1931 Pat. 150. Where Magistrate is competent to try offences named in complaint, competency

is not lost because charges beyond jurisdiction could have been framed. 32 Cr. L. J. 360=1930 A. L. J. 1422=A. I. R. 1931 All. 10. Where offence under s. 332 I. P. Code is not triable by a second class Magistrate, trial and conviction by him is illegal. 29 Cr. L. J. 798=111 Ind. Cas 126=1928 M. W. N. 465. Where Magistrate having no jurisdiction records a portion of the evidence, and rest is recorded by Magistrate having jurisdiction ; conviction is illegal and retrial is necessary. 55 C. 65=47 C. L. J. 122=29 Cr. L. J. 464=A. I. R. 1928 Cal. 183=109 Ind. Cas. 175. Where Magistrate tries a case transferred to another without the case being transferred to his own file, the trial is without jurisdiction and is void. 1930 M. W. N. 413=31 Cr. L. J. 895=A. I. R. 1930 Mad. 705=125 Ind. Cas. 557. If a Sub-divisional Magistrate not exercising the powers of a District Magistrate hears an appeal from an order passed under s. 514, his proceedings are void. A. I. R. 1934 Lah. 294=1934 Cr. C. 525.

Proceedings in wrong place.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Notes.—This section applies to a case where the Magistrate has authority to commit, but has not territorial jurisdiction over the place where the offence is alleged to have been committed. 26 M. 640=2 Weir, 708. Trying a case in a district where the Court has no jurisdiction, is not a defect of jurisdiction but only of revenue, and is curable under this section. 2 P. R. 1902 Cr.=9 P. L. R. 1902 ; see also 17 A. 36=A. W. N. 1194, 195 ; U. B. R. 1904, 1st Qr. Cr. Pro. Code, 10. When an offence is committed within the jurisdiction of a Sub-divisional Magistrate in one district, but is tried by a Magistrate in another district, the irregularities of the trial is cured by this section. 30 M. 94 ; 21 A. 912. Conviction for an offence under s. 408 Penal Code, committed outside the jurisdiction of the Magistrate is a mere irregularity curable by s. 531 in the absence of prejudice. 22 Cr. L. J. 666=34 C. L. J. 200=63 Ind. Cas. 458. Though the accused is tried at a place in contravention of s. 181 (4) but there is no prejudice, the trial is vitiated. 21 A. L. J. 912=81 Ind. Cas. 40 ; see also 44A. 157=19 A. L. J. 952=23 Cr. L. J. 107 : A. I. R. 1934 Oudh. 200. Commitment to a Sessions Court having no territorial jurisdiction is illegal. 3 Pat. 417=26 Cr. L. J. 49. Finding of Criminal Court cannot be set aside merely for want of jurisdiction. A. I. R. 1931 Oudh. 277 ; see also A. I. R. 1933 Mad. 765 ; A. I. R. 1931 Rang. 164.

When irregular commitments may be validated.

532. (1) If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Sessions or High Court, the Court to which the commitment is made may, after perusal of the proceedings accept the commitment if it considers that the accused has not been injured thereby unless during the injury and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

Notes.—S. 532 does not apply where the prosecution itself is illegal for want of previous sanction. A. I. R. 1934 All. 963 (F. B.)=1934 Cr. C. 1291. Complaint by private person under s. 193, I. P. Code is not cognizable and conviction based on such complaint is not protected by ss. 537 and 532 and should be set aside. 1931 M. W. N. 1314=55 M. 343=A. I. R. 1932 Mad. 255=62 M. L. J. 735. Section 532 does not apply to cases in which the defect in the committal order arises from want of territorial jurisdiction. 20 Cr, L. J. 416=51 Ind. Cas. 176 ; see also 123 Ind. Cas. 433=31 Cr. L. J. 506.

Non-compliance with provisions of section 164 or 364.

533. (1) If the Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds

that any of the provisions of either of such section have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, 1872* section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision.

Notes.—This section is intended to apply to all cases in which the directions of the law have not been complied with, without any distinction between omissions to comply with the law and infractions of it; 23 B. 221; 31 Bom. L. R. 565. This section is to be interpreted liberally. 8 C. P. L. R. Cr. 21. S. 533 completely cures any formal defect in the recording of the confession. 20 A. L. J. 915=45 A. 166=24 Cr. L. J. 6=A. I. R. 1923 All. 90. But this section does not cure a defect which is one of substance. A. I. R. 1930 Oudh. 449=128 Ind. Cas. 215=7 O. W. N. 909. Non-compliance with the formalities as to verification at the end of the confession is an irregularity cured by s. 533. 16 S. L. R. 143=26 Cr. L. J. 609=A. I. R. 1921 Sind. 145=85 Ind. Cas. 833. Deposition of Magistrate that he complied with requirements of s. 164 cures a defect in this compliance. 30 Cr. L. J. 49=11 L. L. J. 5=113 Ind. Cas 65; see also 31 Cr. L. J. 97=31 Bom. L. R. 565=A. I. R. 1929 Bom. 327, A. I. R. 1933 Lah. 534=128 Ind. Cas. 601; A. I. R. 1934 Rang. 78; 7 Rang. 259=31 Cr. L. J. 297=A. I. R. 1930 Rang. 53=121 Ind. Cas. 782. It is advisable for the Magistrate recording a confession to note how he satisfied himself that it was made voluntarily, though it is not imperative. 6 Lah. 58=26 Cr. L. J. 1074=26 P. L. R. 346=A. I. R. 1925 Lah. 315=88 Ind. Cas. 18. When confession is taken down in narrative form and translated to the accused, s. 533 cures defect. 20 A. L. J. 915=24 Cr. L. J. 6=45 A. 166=A. I. R. 1923 All. 90=71 Ind. Cas. 54. When there is no record of warning given by Magistrate while recording confession, defect is curable under s. 523. 2 P. L. T. 773=22 Cr. L. J. 200=A. I. R. 1921 Pat. 337; see also 7 L. L. J. 250=26 P. L. R. 579=26 Cr. L. J. 1458=89 Ind. Cas. 1026=A. I. R. 1925 Lah. 448; 6 Lah. 415=7 L. L. J. 482=27 Cr. L. J. 514. Section 533 cannot cure defect which is one of substance and by which accused is prejudiced. A. I. R. 1933 Oudh. 315=8 Luck. 518=10 O. W. N. 466; see also A. I. R. 1932 Lah. 204=33 P. L. R. 241=33 Cr. L. J. 242. Defect due to non-compliance of provisions of s. 164 can be cured only if no injury is caused to accused by such defect. A. I. R. 1933 Oudh. 315 8 Luck. 518; A. I. R. 1933 Lah. 5 18. Section 164 does not require memorandum to be recorded under confession in handwriting of Magistrate. A. I. R. 1933 Sind. 166=34 Cr. L. J. 808=1933 Cr. C. 530; but see A. I. R. 1932 Bom. 553=34 Cr. L. J. 73=56 B. 542=34 Bom. L. R. 1240.

Omission to give information under section 447.

† [534. An omission to inform under section 447 any person of his rights under Chapter XXIII shall not affect the validity of any proceeding.]

Notes.—89 Ind. Cas 459=26 Cr. L. J. 1371.

Effect of omission, to prepare charge.

535. (1) No finding or sentence pronounced or passed shall be deemed invalid merely in the ground that no charge was framed, unless, in the opinion of the Court of Appeal or Revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of Appeal or Revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Notes.—Under this section mere omission or irregularity in the charge will not justify a reversal of an order of the lower Court unless in the opinion of the Court of Appeal or Revision, a failure of justice has in fact been occasioned thereby. 53 C.

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* I of 1872.

† Section 534 was substituted by s. 34 of the Criminal Law Amendment Act, 1923 (XII of 1923).

738=98 Ind. Cas. 191 ; 103 Ind. Cas. 227 ; 99 Ind. Cas. 692 ; 41 C. L. 7. 474. As to where the accused is prejudiced, vide. 54 C. 476. Trial is not void for non-compliance of the provision of s. 360, where no failure of justice is caused. 21 C. W. N. 271=1927 M. W. N. 103=52 M. L. J. 385=6 Bur. L. J. 65=29 Bom. L. R. 813= 100 Ind. Cas. 227 (P. C.) ; see also 30 Bom. L. R. 653= 30 Cr. L. J. 467=A. I. R. 1928 Bom. 286=115 Ind. Cas. 399 ; 29 Cr. L. J. 374=A. I. R. 1928 Pat. 459=108 Ind. Cas. 333 ; A. I. R. 1931 All. 7=1930 A. L. J. 1314=129 Ind. Cas. 369. Section 535 applies not only where no charge was framed at all, but also where no charge was framed for the offence of which appellant is convicted. 41 C. L. J. 474=26 Cr. L. J. 1379=A. I. R. 1925 Cal. 926=88 Ind. Cas. 1055 ; see also 95 Cr. L. J. 200= A. I. R. 1923 All. 476=76 Ind. Cas. 561 ; A. I. R. 1934 Lah. 227=35 Cr. L. J. 1386. Omission to state particulars in accordance with s. 242 not accompanied by failure of justice is caused by ss. 535 and 537. A. I. R. 1932 Nag. 127=28 N. L. R. 163=33 Cr. L. J. 938.

Trial by jury of offence triable with assessors.

536. (1) If an offence triable with the aid of assessors is tried by a jury, that trial shall not on that ground only be invalid.

Trial with assessors of offence triable by jury.

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Notes.—When a case was triable by jury, but was tried with the aid of assessors and no objection was taken at the trial, *held* that the mere fact that the assessors found the accused guilty but the judge differing from their opinion had convicted them would not make the trial invalid, in as much as no objection was taken at the trial. 23 M. 682=2 Weir. 391 ; see also 99 Ind Cas. 849=28 Cr. L. J. 177. But a Court cannot treat the verdict of the jury as a verdict of assessors in cases triable with assessors. 25 C. 555. Trial by jury of an offence triable only with assessors is not bad. Objection cannot be raised in appeal for the first time. 1903 M. W N. 776 ; see also 1927 M. W. N. 299=29 Cr. L. J. 351=A. I. R. 1928 Mad. 275; A. I. R. 1933 All. 128. In case of trial by assessors where assessors were not chosen according to law, the trial is illegal. A. I. R. 1933 Oudh. 351=10 O. W. N. 619.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

*** 537.** Subject to the provisions hereinbefore contained, on finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

(*a*) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or†

(*c*) of the omission to revise any list of jurors or assessors in accordance with section 324, or

(*d*) of any misdirection in any charge to a jury, unless such error, omission, irregularity,‡ or misdirection has in fact occasioned a failure of justice.

Explanation.—In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earliar stage in the proceedings §

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* *Cf.* the Summary Jurisdiction Act 1847-1848 (11 & 12 Vict. c. 43), s. 9.

† Clause (*b*) was omitted by s. 148 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ The word "want" was omitted by *ibid.*

§ The *Illustration* was omitted by *ibid.*

Scope—Section 537 is wide enough to cure any irregularity. Retrial should not be ordered where the provisions of s. 361 are not complied with unless failure of justice is caused. 31 M. L. J. 386=31 Cr. L. J. 827=A. I. R. 1930 Mad. 168=125 Ind. Cas, 253. Section 537 does not cure irregularities in the constitution of Court. 7 Pat. 61=8 P. L. T. 800=28 Cr. L. J. 881=A. I. R. 1928 Pat. 1=104 Ind. Cas. 897. Irregularities involving breach of rules of procedure under the Code only are covered by s. 537. 1 Pat. L. T. 609=21 Cr. L. J. 621=5 Pat. L. J. 61=57 Ind. Cas. 285. Section 537 applies only to errors of procedure arrising out of mere in advertance and not to disregard or disobedience of mandatory provisions of law. Failure to follow procedure laid down in s. 137 (1) is an irregularity not curable by s. 537. 25 O. L. J. 377=28 Cr. L. J. 291=A. I. R. 1927 All. 350=100 Ind. Cas. 371 ; see also 49 A. 325=25 A. L. J. 246=28 Cr. L. J. 231=A. I. R. 1927 All. 286=99 Ind. Cas. 1031 ; 49 A. 270=25 A. L. J. 155=28 Cr. L. J. 159=99 Ind. Cas. 415. Section 537 does not apply to clause 27 of the Letters Patent. 53 C. 350=30 C. W. N. 276=27 Cr. L. J. 385=43 C. L. J. 310=A. I. R. 1926 Cal. 470 (F. B.)=93 Ind. Cas. 33 ; 24 C. L. J. 400=21 C. W. N. 33=18 Cr. L. J. 385=44 C. 477. (F. B.). Breach of statutory rules is incurable under s. 537. 4 Lah. 376=25 Cr. L. J. 68=6 Lah. L. J. 103=A. I. R. 1924 Lah. 104=75 Ind. Cas. 980. Order forfeiting bond without notice to party whose bond is forfeited is not curable under s. 537. 25 Cr. L. J. 445=A. I. R. 1925 Oudh. 51=77 Ind. Cas. 733. If criminal proceedings are substantially bad, prisoner's consent cannot cure defect. A. I. R. 1931 Oudh. 113=32 Cr. L. J. 218=1931 Cr. C. 273=128 Ind. Cas. 209. Provisions requiring Court to record a finding that an offence has been committed is mandatory and failure to so record is an irregularity which cannot be cured under s. 537. 1928 M. W. N. 229=29 Cr. L. J. 732=A. I. R. 1928 Mad. 783=110 Ind. Cas. 588. Disregard of compliance with the provisions of s. 233 is illegal and cannot be curred under s. 537. 30 Cr L. J. 1073=1930 Cr. C. 126=119 Ind. Cas. 532. Where Court remands case for recording evidence on commission, trial Magistrate is competent to record evidence himself. Even if it is irregularity it is cured by s. 537. 30 Cr. L. J. 948=11 L. L. J. 370=A. I. R. 1929 Lah. 104=118 Ind. Cas. 643 The word "unless such error" in s. 537 (*d*) qualifies not only clause (*d*) but also all the letters of the alphabet. 5 Rang. 53=25 A. L. J. 117=54 I. A. 96=31 C. W. N. 271=8 P. L. T. 115=28 Cr. L. J. 259=52 M. L. J. 585=29 Bom. L. R. 813=45 C. L. J. 441=A. I. R. 1927 (P. C.) 44. The irregularity contemplated under this section is irregularity of procedure and not a substantive error of law or a disregard of a mandatory provision of the Code. 35 Cr. L J. 1234=36 Bom. L. R. 495=A. I. R 1934 Bom. 255. A conviction should be set aside in case of non-compliance of s. 222. A. I. R. 1934 Pat. 132=35 Cr. L. J. 693=15 P. L. T. 647. In case of irregularity or omission, the gravity of the same is to be considered and unless the accused is prejudiced, the irregularity does not vitiate the trial. 35 Cr. L. J. 952=61 C. 588=A. I. R. 1934 Cal. 482 ; see also 152 Ind. Cas. 1061=A. I. R. 1934 Sind. 164 ; A. I. R. 1934 Lah. 827. But where the accused is prejudiced, the irregularity is not cured. A. I. R. 1934 Oudh. 370=35 Cr. L. J. 1161=11 O. W. N. 828. The disregard of an express provision of law as to the mode of trial is not a mere irregularity and as such cannot be cured under s. 537. 35 Cr. L. J. 1066=11 O. W. N. 831=A. I. R. 1934 Oudh. 354 ; see also A. I. R. 1934 Oudh. 186=11 O. W. N. 473. Non-compliance with provision of s. 342 does not vitiate the trial if accused is not prejudiced thereby. A. I. R. 1934 Sind. 67=35 Cr. L. J. 1175=28 S. L. R. 106. Hearing of case within less than seven days from date of service of summons is irregularity. But if no prejudice is caused to accused defect is cured by s. 537, A. I. R. 1935 All. 219. Mere infringement of mandatory provision is not sufficient to hold that Court has failed to administer justice. It must go to root of trial and must in effect vitiate proceedings. A. I. R. 1935 Rang. 98.

Absence of complaint.—Section 537 deals with irregularities in the complaint and not with an entire absence of complaint. 33 C. W. N. 285=49 Cr. L. J. 342=30 Cr. L. J. 658=56 C. 824=A. I. R. 1929 Cal 172=116 Ind. Cas. 638 ; see also 31 Cr. L. J. 1060=A. I. R. 1930 Rang. 153=126 Ind. Cas. 530. Complaint by an unauthorized person is no complaint at all and the defect is not curable under s. 537. 18 Cr. L. J. 511=39 Ind. Cas. 479=4 P. R. Cr. 1917 ; see also 1 Luck. 523=3 O. W. N. 614=27 Cr. L. J. 969=A. I. R. 1926 Oudh. 485 ; 36 P. L. R. 180=A. I. R. 1934 Lah. 672 ; 27 Cr. L. J. 1105=21 S. L. R. 1=A. I. R. 1927 Sind. 10=97 Ind. Cas. 417 ; A. I. R. 1931 Nag. 98. In case of complaint under s. 498, Penal Code by person other than husband, Court's leave must be obtained. Absence of leave is not cured by s. 537. A. I. R. 1933 Cal. 880=145 Ind. Cas. 874. Pure

technical irregularity in the heading of complaint may be cured. A. I. R. 1934 Lah. 981.

Charge.—If misjoinder of charges takes place, the trial is bad and action cannot be taken together. A. I. R. 1931 Rang. 90=8 Rang. 632 ; see also 21 Cr. L. J. 626=1 Lah. 562=7 P. L. R. 1921=A. I. R. 1921 Lah. 381=57 Ind. Cas. 450 ; 22 Cr. L. J. 505=A. I. R. 1922 Lah. 144 ; 27 Cr. L. J. 32. This section covers omission to frame a charge properly and also omission to frame a distinct and separate charge. 1919 M. W. N. 199=20 Cr. L. J. 354=25 M. L. T. 379=10 L. W. 239=50 Ind. Cas. 834. Lumping of charges contrary to s. 233 is curable by s. 237. 8 O. L. J. 10=22 Cr. L. J. 344=A. I. R. 1921 Oudh. 49=61 Ind. Cas. 168. Omission to frame separate charges for District Officers is a mere irregularity curable by s. 537. 23 Cr. L. J. 320=16 S. L. R. 15=66 Ind. Cas. 672. Omission of particulars required by s. 223 from the charge is curable by s. 537. 25 Cr. L. J. 1152=A. I. R. 1925 Nag. 147=81 Ind. Cas. 976 ; see also 18 Cr. L. J. 382=38 Ind. Cas. 766 ; 25 Cr. L. J. 1297=47 M. 746=47 M. L. J. 221=A. I. R. 1925 Mad. 1 (F. B.)=82 Ind. Cas. 465 ; 28 Cr. L. J. 426=A. I. R. 1927 Sind. 161=101 Ind. Cas. 458 ; 27 C. W. N. 821=25 Cr. L. J. 1313=A. I. R. 1924 Cal. 18=12 Ind. Cas. 545. Joinder of two offences in a single charge is only an irregularity cured by s. 537 and not an illegality. 48 C. L. J. 138=32 C. W. N. 839=30 Cr. L. J. 799=A. I. R. 1928 Cal. 700=117 Ind. Cas. 596. Where police files a complaint instead of submitting the charge-sheet in a non-cognizable offence, irregularity is curable by s. 537. 30 Cr. L. J. 469=A. I. R. 1929 Mad. 115=115 Ind. Cas. 481. Prejudice to accused cannot be assumed by mere infringement of a mandatory provision. Section 537 will apply only if actual injustice is caused by such infringement. 53 M. 937=A. I. R. 1930 Mad. 857=127 Ind. Cas. 654 ; see also A. I. R. 1931 Mad. 225=131 Ind. Cas. 458 ; A. I. R. 1930 Lah. 407=129 Ind. Cas. 298 ; 8 Rang. 25=A. I. R. 1930 Rang. 201=125 Ind. Cas. 266 ; 121 Ind. Cas. 862=31 Cr. L. J. 347=1930 M. W. N. 80 ; 28 Cr. L. J. 419=A. I. R. 1927 Lah. 432=101 Ind. Cas. 451 ; 27 Cr. L. J. 909=A. I. R. 1926 Pat. 347=96 Ind. Cas. 221 ; 28 Cr. L. J. 821 ; A. I. R. 1931 Mad. 225. But where failure of justice is proved the defect is not curable. 1930 M. W. N. 698=32 L. W. 320=A. I. R. 1930 Mad. 859=127 Ind. Cas. 652 ; see also A. I. R. 1931 Cal. 357=34 C. W. N. 959=128 Ind. Cas. 816. Joinder of charges more than three is illegal. A. I. R. 1933 Rang. 325=146 Ind. Cas. 176. In case of misjoinder of charges, action cannot be taken under s. 537. A. I. R. 1931 Rang. 90=8 Rang. 632=32 Cr. L. J. 930. Objection as to frame of charge should be raised at an early stage. A. I. R. 1933 Pat. 488=14 P. L. T. 580=34 Cr. L. J. 892. In charge under sections 147 and 149, Penal Code, omission to state common object is a mere irregularity. 9 O. W. N. 1109=34 Cr. L. J. 393=8 Luck. 199=A. I. R. 1933 Oudh. 19 ; see also 33 Cr. L. J. 506=A. I. R. 1932 Oudh. 242=137 Ind. Cas. 684. Particulars should be given in the charge. But omission to give details is not an illegality unless failure of justice is caused. 37 C. W. N. 1078=A. I. R. 1933 Cal. 676. Where two distinct offences are included in charge in alternative, and case does not come under s. 236, defect is mere irregularity and not illegality. 37 C. W. N. 1074=1933 Cr. C. 1158=A. I. R. 1933 Cal. 676. Offences committed at different times under ss. 380 and 457 Penal Code, cannot be charged and tried together. If charged and tried together it is illegality not curable by s. 537. 34 Bom. L. R. 590=33 Cr. L. J. 619=A. I. R. 1932 Bom. 277. Failure to frame separate charges is a formal defect which is cured by s. 537 if no prejudice has been caused to accused in his defence. 35 Cr. L. J. 935=A. I. R. 1934 Oudh. 244 ; see also 28 S. L, R. 119=A. I. R. 1934 Sind. 57=35 Cr. L. J. 1337. Where six items of money embezzled from six different persons constitute six different offences, one single charge and one trial, although defective, yet the defect is cured by s. 537. A. I. R. 1935 Oudh. 273 ; see also A. I. R. 1935 Bom. 24. Errors or omissions in charge can be cured by s. 537. A. I. R. 1935 Sind. 34.

When trial is vitiated.—Every infringement of a mandatory provision does not vitiate trial. Mandatory provisions affecting jurisdiction of Court are different from those relating to the procedure to be followed. Infringements of the former vitiate the whole trial. Section 537 cures only infringement of the latter kind. 26 Cr. L. J. 1336=3 Rang. 139=A. I. R. 1925 Rang. 258=89 Ind. Cas. 312 ; see also 4 Bur. L. J. 213=27 Cr. L. J. 669=A. I. R. 1926 Rang. 53=94 Ind. Cas. 717 ; 20 A. L. J. 874=21 Cr. L. J. 67=45 A. 124=71 Ind. Cas. 115=A. I. R. 1923 All. 81. So mere failure to comply with the mandatory provision of law in the absence of prejudice to accused does not vitiate trial. 1923 M. W. N. 506

=30 Cr. L. J. 623=1919 Cr. C. 25=A. I. R. 1929 Mad. 544=116 Ind Cas. 366. Section 537 (a) has no application where there has been a disregard of the whole of the same mandatory provision but applies only where there has been a failure to comply with some part of such a provision in the course of a general compliance with the whole. 25 Cr. L. J. 1152=A. I. R. 1925 Nag. 147=81 Ind. Cas. 976. Where Magistrate records evidence in English contrary to s. 356, but the accused is not prejudiced, the defect is a mere irregularity. 1930 A. L. J. 150=A. I. R. 1931 All. 3=129 Ind. Cas. 269. Omission to supply accused with a copy of the oral statement made by him to the police is mere irregularity curable by s. 537. 7 O. W. N. 957=A. I. R. 1930 Oudh. 505. When in an enquiry under s. 145 Cr. Pro. Code, s. 356 is not complied with inquiry is not vitiated. 32 Cr. L. J. 368=129 Ind. Cas. 265. Errors of procedure in trial will not vitiate conviction unless breach is so great as to make the trial different from the mode of trial provided for the offence charged or failure of justice has been occasioned thereby. It depends on the gravity of the breach and the results that follow from it. 57 C. 1228=34 C. W. N. 296=51 C. L. J. 171=31 Cr. L. J. 536=A. I. R. 1930 Cal. 212=123 Ind. Cas. 664 ; see also 30 Cr. L. J. 702=A. I. R. 1929 Lah. 867=116 Ind. Cas. 889. Infringement of s. 162 Cr. Pro. Code is an irregularity cured by s. 537, if there is no failure of justice. 54 B. 934=32 Bom. L. R. 1279=A. I. R. 1930 Bom. 595=129 Ind. Cas. 156. Where there are no contravention of express provisions of Cr. Pro. Code, errors are curable by s. 537. 31 Cr. L. J. 750=4 C. L. J. 374=A. I. R. 1929 Cal. 428=124 Ind. Cas 827. Admission of inadmissible evidence which has very little weight and where no injustice has been caused doee not vitiate the trial. 11 P. L. T. 148=31 Cr. L. J. 721=9 Pat. 474=A. I. R. 1930 Pat 247=124 Ind. Cas. 836 ; see also 40 C. L. J. 313=26 Cr. L. J. 307. Any defect in procedure whether of illegality or irregularity is cured by s. 537 if accused is not prejudiced. 1933 A. L. J 188=34 Cr. L. J. 414=1933 Cr. C. 434=55 A. 301=A. I. R. 1933 All. 264 (F. B.) ; see also A. I. R. 1931 All. 3=32 Cr. L. J. 372=1930 A. L. J. 1504. Where accused is prejudiced by not having notice of facts which constitute ingredients of offence his conviction of such offence must be set aside. 1933 M. W. N. 718=65 M. L. J. 723=A. I. R. 1933 Mad 843 Serious defect in conducting trial cannot be cured by consent of pleader of accused. A. I. R. 1931 Oudh. 113=32 Cr. L. J. 91=7 O. W. N. 972 ; see also A. I. R. 1931 Oudh. 113=6 Luck. 386=32 Cr. L. J. 91. Error of not going to root of trial, does not vitiate proceedings and can be cured by s. 537. A. I. R. 1931 All. 2=32 Cr. L. J. 368=129 Ind. Cas. 265. In case of trial of a case under s. 420 I. P. Code by second class Magistrate, defect is not cured by s. 537. A. I. R. 1937 Lah. 1009. Failure to record reasons for not requiring complainant to execute bond is natural irregularity not curable by s. 537. A. I. R. 1933 Cal. 433=37 C. W. N. 626=34 Cr. L. J. 554. Non-compliance with the mandatory condition of s. 342 cannot be cured it does not come within the description of error, omission or irregularity mentioned in s. 537. 35 Cr. L. J. 1417=A. I. R. 1934 Oudh. 457=11 O. W. N. 1206.

Examination of accused—Non-compliance with s. 342 is an illegality vitiating the trial and not a mere irregularity that is curable by s. 537. 1930 M. W. N. 914=A. I. R. 1931 Mad. 241=131 Ind. Cas. 493 ; but see 28 Cr. L. J. 511=A. I. R. 1927 Nag. 210=101 Ind. Cas. 895 ; 7 Rang. 470=30 Cr. L. J. 1164=A. I. R. 1929 Rang. 331=120 Ind. Cas. 230. It is a fatal defect to examine the accused before all the prosecution witnesses are examined and it is not curable by s. 537. 22 Cr. L. J. 598=62 Ind. Cas. 870 ; see also 45 M. 820=16 M. L. W. 420=43 M. L. J. 402=24 Cr. L. J. 124=71 Ind. Cas. 252 ; 25 Cr. L. J. 1152=A. I. R. 1925 Nag. 147=81 Ind. Cas. 976 ; 4 Bur. L. J. 143=27 Cr. L. J. 336=92 Ind. Cas. 752 ; 19 S. L. R. 121=27 Cr. L. J. 1290=A. I. R. 1926 Sind. 281=98 Ind. Cas. 186. Failure to examine accused under s. 342 at the proper time comes under s. 537 and can be interfered with if it has occasioned failure of justice. 25 A. L. J. 379=28 Cr. L. J. 399=49A. 551=A. I. R. 1927 All. 475=100 Ind. Cas. 1055 ; see also 50 C. 985=25 Cr. L. J. 1085=81 Ind. Cas. 909 ; 45 A. 124=20 A. L. J. 874=24 Cr. L. J. 67=A I. R. 1923 All. 81=71 Ind. Cas. 115.

Examination of complainant—The fact that a complainant is not examined on oath is no illegality but a mere irregularity. 52 M. 79=55 M. L. J. 715=30 Cr. L. J. 432=A. I. R. 1928 Mad. 1235=115 Ind. Cas. 242 ; see also 1 Rang. 517=25 Cr. L. J. 273=A. I. R. 1924 Rang. 87=76 Ind. Cas. 865.

Examination of witness—Where defence witnesses are summoned but are not present, refusal of Magistrate to re-summon them is an illegality incurable under

s. 537. 22 Cr. L. J. 497=6 P. L. R, 1922=A. I. R. 1922 Lah. 71=62 Ind. Cas. 321. Refusal to recall prosecution witness for cross-examination is not a proper exercise of jurisdiction and is illegal. 22 Cr. L. J. 219=5 Pat. L. J. 706=60 Ind. Cas. 331 ; see 26 Cr. L. J. 1035=26 P. L. R. 312 ; 25 Cr. L. J. 377 ; but see 19 Cr. L. J. 630=21 O. C. 95=45 Ind. Cas. 678.

Mode of trial—Joint trial of writer and attesting witness of alleged forged document for giving false evidence is an illegality. 18 Cr. L. J. 339=13 N. L. R. 35=38 Ind. Cas. 723. Section 537 may apply to joint trial of persons under s. 110. 25 C. W. N. 334=22 Cr. L. J. 377=A. I. R. 1921 Cal. 625=61 Ind. Cas. 233. The simultaneous trial of two separate cases is illegal and is not curable under section 537. 11 L. B. R. 78=23 Cr. L. J. 49=A. I. R. 1921 L. B. 51=64 Ind. Cas. 833. Joint trial of persons for acts not committed in the course of the same transaction is illegal and cannot be cured under s. 537. 28 Cr. L. J. 357=A. I. R. 1927 Lah. 274=100 Ind. Cas. 965 ; but see 50A. 457=26 A. L. J. 176=30 Cr. L. J. 337=A. I. R. 1928 All. 593=114 Ind. Cas. 721 ; 50B. 174=28 Bom. L. R. 115=27 Cr. L. J. 1335=A. I. R. 1926 Bom. 23=98 Ind. Cas. 407. Serious defect in the method of a criminal trial cannot be cured by the consent of the advocate of the accused. A. I. R. 1931 Oudh. 113=7 O. W. N. 972=32 Cr. L. J. 218=128 Ind. Cas. 209. Where two cross-cases are tried simultaneously the prosecution evidence in one case being considered as defence evidence in the other the whole proceeding is illegal. 4 Lah. 376=A. I. R. 1924 Lah. 104=25 Cr. L. J. 68=6 L. L. J. 103=75 Ind. Cas. 980. Where Magistrate followed procedure in summons case instead of procedure in warrant case and the accused was not prejudiced thereby, *held*, that the trial was not vitiated. 31 Cr. L. J. 123=A. I. R. 1930 Sind. 53=120 Ind. Cas. 526. A direct disobedience of an express provision of Cr. Pro. Code regarding method of trial is not curable under s. 537. 54 Ind. Cas. 173=21 Cr. L. J. 29.

Procedure.—Irregularities in proceedings under s. 476 cannot be cured under the law as it stands after amendment. 4 O. W. N. 640=28 Cr. L. J. 681=103 Ind. Cas. 409=A. I. R. 1927 Oudh. 326. Illegality or irregularity in search which does not prejudice the accused does not vitiate trial. 31 Cr. L. J. 35=1930 A. L. J. 229=A. I. R. 1929=All. 937=120 Ind. Cas. 266. Where Magistrate completes trial on sunday without consent of accused and without affording him opportunity to engage advocate and properly defend himself, the trial is illegal. 31 Cr. L. J. 705=A. I. R. 1930 Nag. 255=124 Ind. Cas. 619. Committing Magistrate's action in conducting jail identifications and giving evidence in his own Court does not vitiate the trial. 2 Luck. 631=A. I. R. 1927 Oudh. 369=29 Cr. L. J. 129=106 Ind. Cas. 721. Omission to record the substance of information received cannot be cured under s. 537. 49A. 5=24 A. L. J. 908=28 Cr. L. J. 9=A. I. R. 1926 All. 759=99 Ind. Cas. 41. Magistrate can take cognizance of non-cognizable offences on police report without sworn testimony of Police-officer. Defect arising out of proceedings so initiated is no ground for setting aside a conviction by Sessions Court. 28 Cr. L. J. 821=A. I. R. 1927 Lah. 702=104 Ind. Cas. 437. Joint trial of two offences which cannot be tried together vitiates the whole trial and is incurable under s. 537. 1 Lah. 562=21 Cr. L. J. 626=57 Ind. Cas. 450. Dismissal of complaint under s. 203 Cr. Pro Code on the report of the accused is an illegality which affects jurisdiction and fair trial and the irregularity cannot be cured under s. 537. 1 P. L. T. 609=21 Cr. L. J. 621=57 Ind. Cas. 285. Omission to examine complainant before issuing a process is an irregularity curable under s. 537. 1 Pat. L. J. 592=18 Cr. L. J. 366=38 Ind. Cas. 750. Omission to serve a copy of preliminary order on the accused can be cured under s. 537. 25 Cr. L. J. 682=A. I. R. 1925 Nag. 33=81 Ind. Cas. 170 ; see also 3 Rang. 169=27 Cr. L. J. 600=A. I. R. 1925 Rang. 270=94 Ind. Cas. 708. Failure of Magistrate to record his reasons for issuing warrant of arrest against alleged abducted woman is a mere irregularity curable under s. 537. 22 Cr. L. J. 111=18 A. L. J. 1149=59 Ind. Cas. 415. Failure to comply with the formalities prescribed by s. 342 is an irregularity incurable under s. 537. 23 C. L. J. 154=A. I. R. 1922 Lah. 45=65 Ind. Cas. 618. Simultaneous trial under s. 411 of three persons in separate independent possession of separate stolen articles is an irregularity incurable under s. 537. 23 Cr. L. J. 154=65 Ind. Cas. 618. Where complainant was not examined on back of complaint, defect is mere irregularity cured by s. 537. A. I. R. 1933 All. 816=1933 A. L. J. 1418=1933 Cr. C. 1415. Where preliminary order under s. 145 Cr. Pro. Code is not in conformity with s. 145 (1), subsequent order under s. 145 (6) cannot be set aside in absence of failure of justice. 54 A. 1002=34 Cr. L. J. 425=1932 A. L. J. 865=A. I. R. 1932 All. 681. Erroneous decision

as to right of reply is not such irregularity as to vitiate whole proceedings and order retrial. A. I. R. 1931 Lah. 534=33 P. L. R. 869=13 Lah. 172=32 Cr. L. J. 944=132 Ind. Cas. 692. Omission to make a note of observations and to place it on record is mere irregularity and cannot be condoned unless it has occasioned failure of justice. A. I. R. 1932 All. 28=1932 A. L. J. 523=33 Cr. L. J. 124=135 Ind. Cas. 226. Where four persons commit certain offence to a person in a particular day and another person commit different offence to same person next day, joint trial of five persons is illegal and is not cured by s. 537. 1933 Cr. C. 627=34 Cr. L. J. 863=A. I. R. 1933 All. 354. Where accuseds' statement was taken after prosecution witnesses are examined and before their cross-examination and there was no further examination of accused under s. 342, omission cannot be cured under s. 537, although no prejudice may have been caused to the accused. 130 Ind. Cas. 845=32 Cr. L. J. 623. Mere recording evidence and saying case is proved is not fulfilling conditions of s. 370, which requires reason to be given for conviction. But where evidence and statements of accused are recorded, failure to give reasons can be cured by s. 537. A. I. R. 1932 Cal. 655=33 Cr. L. J. 729=36 C. W. N. 852=1932 Cr. C. 632. Unless failure of justice is caused, High Court will not interfere. A. I. R. 1933. Oudh. 421=1933 Cr. C. 1294=10 O. W. N. 903. Non-compliance with provisions of ss. 342 and 364 vitiates trial. A. I. R. 1934 Nag. 213=35 Cr. L. J. 1457. Non-compliance with provisions of s. 356 (a) without any prejudice to the accused is a mere irregularity. 61 C. 399=38 C. W. N. 659=35 Cr. L. J. 1479=A. I. R. 1934 Cal. 636. The failure to give notice under s. 87. Cr. Pro. Code, is a mere irregularity which is curable under s. 537. 36 P. L. R. 262=A. I. R. 1934 Lah. 987. Section 526 (8) is imperative. Where adjournment is refused after application under s. 526 (8), subsequent proceedings are not justified by law. Section 537 does not validate such proceedings. A. I. R. 1935 Sind. 27.

Reading over deposition.—Order under s. 145 is not vitiated by omission to read over the evidence to the witness. 5 P. L. T. 237=2 Pat. L. R. Cr. 108=25 Cr, L. J. 89=A. I. R. 1924 Pat. 786=76 Ind. Cas. 25. The violation of s. 360 Cr. Pro. Code cannot be cured under s. 537. 52 C. 159=28 C. W. N. 968=26 Cr. L. J. 201=41 C. L. J. 224=83 Ind. Cas. 905 ; but see 28 Cr. L. J. 514=A. I. R. 1927 All. 764=102 Ind. Cas. 210 ; 4 Bur. L. J. 213=27 Cr. J. 669=A. I. R. 1926 Rang. 53=94 Ind. Cas. 717.

Recording reasons.—Failure to record reasons under s. 256 for questioning the accused forthwith before charge is framed, is an irregularity curable under s. 537. 32 Bom. L. R. 596=51 Cr. L. J. 743=A. I. R. 1930 Bom. 241=124 Ind. Cas. 810 ; but see 6 Lah. 654=27 Cr. L. J. 408=27 P. L. R. 85=A. I. R. 1926 Lah. 155=93 Ind. Cas. 72. Failure to record reasons is neither an illegality nor an irregularity vitiating trial. 5 Lah. L. J. 407=25 Cr. L. J. 174=76 Ind. Cas. 398 ; see also 6 Bur. L. J. 114=28 Cr. L. J. 861=A. I. R. 1927 Rang 248=104 Ind. Cas. 637 ; 31 Cr. L. J. 705=A. I. R. 1930 Nag. 255=124 Ind. Cas. 619.

Judgment.—Trial is not vitiated necessarily by omission to write judgment before pronouncing sentence unless failure of justice is caused thereby. 7 Rang. 370=30 Cr. L. J. 1166=A. I. R. 1930 Rang. 77=120 Ind. Cas. 225 ; see also 25 Cr. L. J. 705=A. I. R. 1925 Lah. 137=81 Ind. Cas 193 ; 23 A. L. J. 8=47 A. 284=26 Cr. L. J. 688=A. I. R. 1925 All. 299 ; 34 Cr. L. J. 1036=1933 A. L. J. 1244. Defect due to Magistrate not writing out the order as required under s. 145 (1) is curable under s. 537. 26 Cr. L. J. 324=3 Bur L. J. 256=A. I. R. 1925 Rang. 111=84 Ind. Cas. 548. Judgment of a Bench of Magistrates must be signed by writing out full names. If a Bench Magistrate merely initials, it is an irregularity incurable under s. 337. 1930 M. W. N 787=32 L. W. 280=59 M, L. J. 674=A. I. R. 1930 Mad. 867=129 Ind. Cas. 633. As regards irregularities in findings in judgments, *vide* 18 Bom. L. R. 1029=27 Cr. L. J. 1153=A. I. R. 1926 Bom. 522=97 Ind. Cas. 737 ; 28 P. L. R. 187=45 C. L. J. 418=A. I. R. 1927 (P. C.) 26=52 M. L. J. 441 (PC). Omission to make reference in judgment to opinion of assessors can be cured by section 537 unless it has occasioned failure of justice. A. I. R. 1933 Lah. 910=1933 Cr. L. 1297.

Verdict of jury.—Non-direction which causes jury to arrive at wrong conclusion is misdirection. 6 Pat. 817=29 Cr. L. J. 81=9 P. L. T. 191=A. I. R. 1928 Pat. 120=106 Ind. Cas. 673. The omission of the Judge to lay down the law for the guidance of the jury is curable under s. 537. 11 O. L. J. 315=25 Cr. L. J. 1129=A. I. R. 1924 Oudh. 411=81 Ind. Cas. 953. Where jury put one question to Judge in chambers it does not vitiate trial. 97 C. W. N. 626=25 Cr. L. J. 343=A. I. R.

1923 Cal. 647=77 Ind. Cas. 221. For setting aside a verdict under s. 537 there must be reasonable ground for suspecting that the misdirection may have affected jury's verdict. 24 A. L. J. 536=27 Cr. L. J. 785=A. I. R. 1926 All. 429=95 Ind. Cas. 385. Where accused was charged with an offence under s. 397 I. P. Code and Jury convicted the accused under s. 325 I. P. Code, *held* that the fact that no charge was framed under s. 325 was not even a defect and was curable under s. 537. 31 Cr. L. J. 557=A. I. R. 1929 Nag. 295=123 Ind. Cas. 477. Where misdirection does not affect jury's verdict High Court will not interfere. 26 C. W. N. 558=24 Cr. L. J. 143=A. I. R. 1922 Cal. 105=71 Ind. Cas. 367. Judge's charge to the jury must be considered as a whole in deciding whether there has been misdirection. 49 C. 573=35 C. L. J. 279=23 Cr. L. J. 657=26 C. W. N. 680=A. I. R. 1922 Cal. 107. Neglect of strict provision of s. 326 does not make constitution of jury illegal or render trial nullity unless failure of justice is caused, 1933 A. L. J. 1446=A. I. R. 1935 All. 941. Wrong explanation as to presumption under s. 114, Evidence Act, amounts to misdirection vitiating trial. 33 Cr. L. J. 40=35 C. W. N. 291=A. I. R. 1931 Cal. 617. Misdirection to jury without any prejudice to the accused is cured by s. 537. A. I. R. 1934 Pat. 309=15 P. L. T. 264=35 Cr. L. J. 1104.

Attachment not illegal, person making same not trespasser or defect or want of form in proceedings.

538. No *[attachment] made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of* [attachment] or other proceedings relating there to.

Notes.—No attachment is valid unless the attaching officer possesses proper warrant of attachment. L. R. 1 A Cr. 140.

CHAPTER XLVI.

MISCELLANEOUS.

Courts and persons before whom affidavits may be sworn.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Notes.—An affidavit sworn before a Bench Magistrate of Sind is one sworn before a proper person under s. 539 according to the rules of the Sind Judicial Commissioner's Court. 28 Cr. L. J. 168=99 Ind. Cas. 600=A. I. R. 1927 Sind 128. Affidavits sworn before a Presidency Magistrate of Calcutta are not admissible in evidence in the Patna High Court. A. I. R. 1925 Pat. 755. In case of transfer application, affidavit sworn before officer of District Judge's Court and not that of High Court, application cannot be entertained. 33 Cr. L. J. 61=A. I. R. 1931 Cal. 710=134 Ind. Cas. 1278. A Nazir of Civil Court has no authority to administer oath for an affidavit to be used in a Criminal Court and a person swearing is not guilty under s. 199 I. P. Code. 31 Bom. L. R. 114=30 Cr. L. J. 593=A. I. R. 1979 Bom. 35. Affidavit sworn before Presidency Magistrates of Calcutta are not admissible in the Patna High Court. 7 P. L. T. 343=27 Cr. L. J. 313=1926 P. H. C. C. 74=A. I. R. 1925 Pat. 755=92 Ind. Cas. 697.

Affidavit in proof of conduct of public servant.

†[**539A.** (1) When any application is made to any Court in the course of an inquiry; trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may

* This word was substituted for the word "distress" by s. 149, of the Code of Criminal Procedure (Amendment) Act, 1923 (Act XVIII of 1923).

† Section 539 A was inserted by s. 150, *ibid.*

give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High Court under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavit under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable grounds to believe to be true, and in the latter case the deponent shall clearly state the grounds of such belief.

Notes.—A person renders himself liable to prosecution for false statements made in an affidavit in support of an application under s. 439 as required by section 539A. 28 Cr. L. J. 161=99 Ind. Cas. 600=A. I. R. 1927 Sind. 128. Where accused make false affidavit in support of application for transfer, he can be prosecuted under Penal Code, s. 193. 55 A. 114=1932 A. L. J. 1976=34 Cr. L. J. 457=A. I. R. 1933 All. 47. Where a deponent swears of his personal knowledge of his allegations and the allegations are found to be false, he is guilty under s. 199, 1 P. Code, although he has not not separately stated what facts he had ground to believe as true. 30 Cr. L. J. 645=1929 Pat. 156=116 Ind. Cas. 755.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

† [**539B.** (1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceedings, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

Local inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost :

Provided that, in the case of a trial by jury or with the aid of assessors, the Judge shall not act under this section unless such jury or assessors are also allowed a view under section 293.]

Notes.—A local inspection by Magistrate is only permitted by s. 539B for the purpose of properly appreciating the evidence in the case and cannot take the place of evidence itself. 49 A. 475. see also 54 M. L. J. 442 ; 23 Cr. L. J. 502. It is irregular on local inspections to take into account the evidence of witnesses not recorded on oath. This irregularity is not curable. 28 Cr. L. J. 495=190 Ind. Cas. 671. Where the Magistrate failed to record a memorandum under the provisions of s. 539B, in connection with certain possession proceedings under s. 145 Cr. Pro. Code, it is a formal defect and the whole proceeding should not be set aside unless the petitioner can show that the Magistrate's omission has prejudiced him. 42 C. L. J. 131. Inquiries from spectators are irregular. 31 C. L. J. 346=10 Lah. 790=31 P. L. R. 39=A. I. R. 1929 Lah. 120=122 Ind. Cas. 95. Section 528 B does not introduce any new principle, for the Calcutta High Court had often laid down that a such memorandum should be prepared ; so that both sides to an enquiry or trial might know what the Magistrate during his enquiry had noticed or failed to notice. 42 C. L. J. 131=26 Cr. L. J. 1524=53 C. 46=A. I. R. 1925 Cal. 1246=90 Ind. Cas. 308. Where a Magistrate holds a local enquiry and uses that for obtaining information which did not appear from the evidence, he commits material irregularity, which vitiates the whole trial. 30 Cr. L. J. 491 (Pat)=115 Ind. Cas. 556. Non-compliance with the provisions of s. 539 B is an illegality vitiating the conviction, if accused is prejudiced. 30 Cr. L. J. 338=A. I. R. 1929 Nag. 233=114 Ind. Cas. 609 ; see also 52 C. 148=25 Cr. L. J. 1375=40 C. L. J. 149=82 Ind. Cas. 767 ; but see 30 Bom. L. R. 954=29 Cr. L. J. 1005=A. I. R. 1928 Bom. 433=112 Ind. Cas. 221. Failure by Magistrate to make a record of any relevant fact that he observed at the inspection is an irregularity falling within s. 537. 50 B. 680=

* Section 539B was inserted by s. 150 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

28 Bom. L. R. 8027=27 Cr. L. J. 1151=A. I. R. 1926 Bom. 534=97 Ind. Cas. 671. Absence of memorandum is not necessarily prejudicial to the accused. 5 Bur. L. J. 100=27 Cr. L. J. 1281=A. I. R. 1926 Rang. 193=98 Ind. Cas. 177. Where local enquiry is made not to understand evidence but to obtain further information, procedure is irregular and *ultra vires*. 29 Cr. L. J. 656=10 P. L. T. 279=A. I. R. 1928 Pat. 567=110 Ind. Cas. 112. The trying Magistrate should never deliver his judgment relying upon his personal investigation without giving an opportunity to the parties to rebut his opinion. 10 Lah. 131=29 Cr. L. J. 710=A. I. R. 1928 Lah. 479=110 Ind. Cas. 463. Where the provisions of this section were not infringed High Court declared to interfere. 28 Cr. L. J. 180=A. I. R. 1927 Nag. 397=99 Ind. Cas. 852. Magistrate can use the evidence of his own eyes to test the truth of what the witnesses have referred to. 45 M. L. J. 279=25 Cr. L. J. 7=A. I. R. 1923 Mad. 694=75 Ind. Cas. 695. The use of the result of local observation cannot be used for the purpose of decviding the main issues in the case. 2 P. L. T. 455=22 Cr. L. J. 442=A. I. R. 1921 Pat. 415=61 Ind. Cas. 794. Though there is no provision in the Code of Criminal Procedure, it has been settled by authorities that a Magistrate must invariably put on record a note of his inspection. 24 Cr. L. J. 234=A. I. R. 1922 Pat. 51=71 Ind. Cas. 699. See also A. I. R. 1932 Mad. 676=33 Cr. L. J. 655=37 M. L. W. 149; 35 Cr. L. J. 708. Omission to make note of observations and to place it on record is mere irregularity and can be condoned unless it has occasioned failure of justice. 33 Cr. L. J 124=1932 A. L. J. 523=A. I. R. 1932 All. 28; see also A. I. R. 1931 All. 433=33 Cr. L. J. 331=53 A. 706=1931 P. L. J. 912. Local inspection must be held sparingly. A. I. R. 1931 Oudh. 388=7 Luck. 208=1931 Cr. C. 820. Trial is not proper when in local inspection, one of the two Magistrates only joined. A. I. R. 1935 Mag. 77. Non-recording of inspection note is only curable irregularity A. I. R. 1935 Nag. 23.

Power to summon material witness or examine person present.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Notes.—Under this section the Court is bound to summon and examine any witnesses whose evidence seems to be essential to the just decision of the case. 6 C. W. N. 98. Neither the prosecutor nor the accused can, as of right, cross-examine a witness summoned and examined by the Court under this section. S. C. 275. Oudh. Where the accused have exhausted the power of summoning witnesses by filing their first list of witnesses they could not summon any other witness otherwise than by moving the Court to act under this section. 11 A. L. J. 986=15 Cr. L. J. 564=36A 13=22 Ind. Cas. 740. A witness summoned under s. 540 can be examined by both parties. Suggestion of questions by the defence to the Court and putting such questions through the Court is not cross-examination. 47A. 147. This section is not controlled by s. 342 and when a witnesses is examined by the Court *suo motu* after the witnesses for the prosecution had been examined and the accused had once been examined under s. 342, there is no duty of the Court to examine the accused again under section 342. 89 Ind. Cas. 842=26 Cr. L. J. 1418. Although it is true that proper discretion has to be exercised under s. 540, still the terms of the section are extremely wide and any Court may at any stage of any inquiry, trial or other proceeding summon any person as a witness, if his evidence appears to it essential to the just decision of the case. 1924 M. W. N. 302=34 M. L. T. H. C. 135=77 Ind. Cas. 290=25 Cr. L. J. 354=1924 Mad. 551 (2)=34 M. L. J. 325. This section provides that any Court may, at any stage of an inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case. 1 Rang. 308=2 Bur. L. J. 127=1923 Rang. 216. Although the terms of this section are very wide Magistrates should exercise their discretion thereunder very cautiously. Where in a criminal trial arguments were heard and the case was postponed for judgment for a certain day, the examination of prosecution witnesses thereafter cannot be jusified. 27 C. W. N. 675=37 C. L. J. 415=24 Cr. L. J. 957. The Court may summon witnesses and if the prosecution declines to examine them, the Court may thereupon acting on

its own initiative cause them to be produced. 37 C. L. J. 173=24 Cr. L. J. 193. The power to summon material witness is absolute. Judge is bound to admit in evidence an essential document overlooked by prosecution. 37 M. L. J. 581=1929 M. W. N. 901=A. I. R. 1929 Mad. 837. Court has power to admit rebutting evidence to contradict defence evidence. 31 Cr. L. J. 918=34 C. W. N. 170=A. I. R. 1930 Cal. 134=125 Ind. Cas. 746. Names of witnesses to be examined should be disclosed to the parties save under exceptional circumstances. 10 Lah. 720=31 P. L. R. 39=31 Cr. L. J. 346=A. I. R. 1926 Lah. 129=122 Ind. Cas. 95. The power of the Magistrate to call a person as a Court witnesses is wide but it ought not to be exercised when the prosecution has wantonly failed to examine the witness and when the application is made after the whole case had closed. 1929 M. W. N. 595. This section confers very wide powers upon a Court but the wider the powers the greater the exercise of discretion required of a Magistrate. 52 M. L. J. 118=28 Cr. L. J. 251=A. I. R. 1927 Mad. 361=100 Ind. Cas. 123; see also 10 L. L. J. 262=29 P. L. R. 703=29 Cr. L, J. 740=A. I. R. 1928 Lah. 647. Examination of prosecution witness after closing of the defence witness is bad and vitiates the trial. 29 P. L. R. 613=29 Cr. L. J. 844=A. I. R. 1928 Lah. 953; see also 22 Cr. L. J. 58=22 Bom. L. R. 1224. No question of bias against the accused can arise unless it is shown that the Court was guiding or assisting the prosecution. Cr. L. J. 728=1929 Cr. C. 47=A. I. R. 1929 Nag. 172=117 Ind. Cas. 213. Court cannot discover witness by its own personal enquiry out of Court. 4 Rang. 106=27 Cr. L. J. 1084=A. I. R. 1926 Rang. 180=97 Ind. Cas. 60. By this section a Sessions Judge is not authorized to summon witnesses after the trial has been concluded and the assessors have given their opinion. 35 Cr. L. J. 1002=35 P. L. R. 390. In the Sessions Court the Court can examine prosecution witnesses who were not examined in the Court below. A. I. R. 1934 Sind. 78=35 Cr. L. J. 1170. Where police fails to examine some material witnesses, the Court is competent to summon them. A. I. R. 1934 Rang. 105=35 Cr. L. J. 1932; see also A. I. R. 1934 Oudh. 362. This section is not confined to prosecution witnesses only. It is equally available to the defence. Essential defence witnesses may also be called by Court. A. I. R. 1934 Mad. 735=40 L. W. 681. Essentiality and expediences of evidence is test for taking evidence under s. 540. A. I. R. 1933 Sind. 49=34 Cr. L. J. 591=1933 Cr. C. 175. Failure to follow provisions of s. 342 vitiates trial. A. I. R. 1933 Cal. 347=34 Cr. L. J. 549=56 C. L. J. 583. Court can call any material witness at any time. Such evidence must be considered while passing order under s. 354. 1933 Cr. C. 819=34 A. L. R. 719=34 Cr. L. J. 725=A. I. R. 1933 Lah. 561. Where persons admittedly present on scene of murder were examined before Magistrate but was not turned up before sessions by defence, persons ought to be examined under s. 540. A. I. R. 1931 Rang. 163=32 Cr. L. J. 1067. Section 139A does not exclude Court's power under s. 540. A. I. R. 1931 Cal. 527=32 Cr. L. J. 1187.

Provision for inquiries and trial being held in the absence of accused in certain.

*[**540A.** (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit. and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.]

Notes.—Accused should not be exempted from attendance in Court for reasons not covered by s. 540A. A. I. R. 1932 All. 504; see also 1930 A. L. J. 1076=A. I. R. 1930 All. 817; A. I. R. 1932 Lah. 103; A. I. R. 1929 Lah. 705.

* Section 540A was inserted by s. 151, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

541. (1) Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place * any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

(2) If any person liable to be imprisoned or committed to custody under this code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

(3) When a person is removed to a criminal jail under "sub-section (1)"† he shall, on being released therefrom, be sent back to the civil jail, unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure ; ‡ or

(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.

Notes.—The terms "prison" "and jail" do not include police lock-up. 7. L. B. R. 62. A Court in awarding sentence cannot divide the imprisonment in different jails. Rat. Un. Cr. 827. Section 541 (1) cannot be invoked in case of custody of approver there being ample provisions for his detention under the Prisons Act. 32 Cr. L. J. 913=12 Lah. 635=32 P. L. R. 493=A. I. R. 1931 Lah. 476. Discretion of Local Government as to some approvers being kept in Lahore Fort under police control is *ultra vires*. 32 P. L. R. 423=32 Cr. L. J. 785=12 Lah. 604=A. I. R. 1933 Lah. 353. Section 541 (1) cannot be invoked for prescribing custody in which person mentioned therein is to be kept. 32 Cr. L. J. 913=12 Lah. 635=32 P. L. R. 493=A. I. R. 1931 Lah. 476.

542. (1) Notwithstanding anything contained in the *Prisoner's Testimony Act*, 1869 any Presidency Magistrate desirous of examining, at a winess or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to be bound to interpret truthfully.

Notes.—*Vide*. 16 W. R. 61 ; 46 C. 808.

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* A place so appointed is not a "prison" within the meaning of s. 3 (1) (b) of the Prisons Act, 1894 (IX of 1894).

† The words within quotations have been substituted by Act 7 of 1924.

‡ *See* now the Code of Civil Procedure, 1908 (V of 1908), s. 58, and the Provincial Insolvency Act, 1920 (V. of 1920) s. 27.

§ *See* now the Prisoners Act, 1900 (III of 1900.)

544. Subject to any rules made by the Local Government,* any Criminal Court may if it thinks fit, order payment, on the part of Government of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Expenses of complainants and witnesses.

Notes.—This section and Rule No. 11 made by the Government of Bombay under this section, regulating the payment, on the part of Government, of expenses complainants and witnesses in cases coming before the Criminal Courts, invest the Magistrate trying a warrant case with a discretionary power exercisable by him within the limits specified in the rule itself. 9 Bom. L. R. 353=5 Cr. L. J. 329. Where witnesses are resummoned under section 350, they need not be paid the cost. 15 Cr. L. J. 687. Costs paid by arrangement cannot be recovered by suit. 29 C. W. N. 1033. The Crown is really the prosecutor and all costs ought to be paid by it for summoning witnesses for the prosecution. 25 Cr. L. J. 458=5 Pat. L. T. 487=A. I. R. 1924 Pat. 695=77 Ind. Cas. 810. A Court should state the amount of travelling allowance to be deposited. 6 P. L. T. 215=3 Pat. L. R. Cr. 127=26 Cr. L. J. 965=87 Ind. Cas. 421. In private prosecution complainant must pay reasonable expenses of witnesses in advance. If not paid, Court can refuse to issue process. 3 Luck. 363=29 Cr. L. J. 664=5 O. W. N. 26=A. I. R. 1928 Oudh. 226=110 Ind. Cas. 216.

545. (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

Power of Court to pay expenses or compensation out of fine.

(*a*) in defraying expenses properly incurred in the prosecution ;

† (*b*) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court] ;

‡[(*c*) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.]

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal be presented, before the decision of the appeal.

Notes.—There is no provision in Chapter XLII, Cr. Pro. Code or in s. 545 which empowers a Court to order payment of money as indemnity in a case of theft. 90 Ind. Cas. 151=26 Cr. L. J. 1495. In the absence of fine money compensation to the complainant cannot be ordered. A. I. R. 1925 Oudh. 110. When a person is dealt with under section 562, and no fine is imposed on him, the Court has no power to direct him to pay compensation to the other party. 25 Cr. L. J. 1116=81 Ind. Cas. 940. Compensation when awardable must be awarded out of the amount of substantive fine imposed. 2 Weir, 715 ; 3 C. L. R. 404 ; Rat. Un. Cr. C. 407, 341 ; 22 B. 717 ; 4 Bom. L. R. 817. Under the old section compensation could not be paid to an innocent purchaser of stolen property. 2 Weir. 716 ; 10 Cr. L. J. 290=6 M. L. T. 241=3 Ind. Cas. 437 ; 6 M. 286 ;

* The words "with the previous sanction of the Governor-General in Council," were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXIII of 1920.)

† This clause was substituted by s. 152 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ This clause was added by *ibid.*

3 Bom. L. R. 449; 20 W. R. 38; 2 P. R. 1908; 13 A. W. N. 61. But now under clause (c) a *bona fide* purchaser can be paid compensation; see also 21 P. R. 1878. But such compensation can be paid only to a *bona fide* purchaser of a stolen property and not pledgee or mortgagee. 46 B. 893=1923 Bom. 22. It is no doubt undesirable to encouurage frivolous complaints by the grant of compensation under this section, but the law intends that compensation should be awarded where there is a substantial cause for it. 2 Weir, 717. If the injury is other than one caused by the offence committed, the order of compensation is unwarranted. U. B. R. (1892—1896) Vol, I, 79. After pronouncing judgment an order under this section cannot be passed. U. B. R. (1892—1896) Vol. I. 80. This section does not apply to such expenses as are incurred in bringing the offender before the Magistrate. Rat. Un. Cr. C. 608. All legitimate costs as pleader's fees and the stamp and the power of attorney, etc., and not merely process fees, may be awarded under s. 545, as well as compensation for the injury caused. L. B. R. (1872-1892) 409. Under the old section compensation could only be given to the person to whom injury has been caused; it cannot be given to the heirs of a person who has been killed. 16 C. P. L. R. 180; 10 W. R. 39. But now heirs can be paid compensation. 36 C. 302; 17 P. R. 1898; 18 P. R. 1913. Sub-clause (c) has been newly added providing for compensating innocent third parties suffering loss in cases of theft, criminal misappropriation, criminal breach of trust, cheating or of receiving stolen property. In absence of fine, money compensation cannot be ordered. 25 Cr. L. J. 1116=A. I. R. 1925 Oudh. 110=81 Ind. Cas. 940. Expenses incurred in successfully prosecuting defendant for a wrongful act can be recovered by civil suit. A. I. R. 1926 Nag. 365=95 Ind. Cas. 35. Costs cannot be awarded to complainant in proceedings under s. 107. 25 Cr. L. J. 476=A. I. R. 1924 All. 694=77 Ind. Cas. 828. A Magistrate cannot award compensation in addition to fine though part of fine may be ordered as compensation. 20 Cr. L. J. 398=23 C. W. N. 387=50 Ind. Cas. 1006. A Court in a prosecution under section 193 I. P. Code can award only the expenses properly incurred in the prosecution, and cannot award compensation for perjury. 19 Cr. L. J. 927=14 N. L. R. 131=47 Ind. Cas. 443. Magistrate has no jurisdiction to distribute among witnesses and police force, the amount of fine inflicted under Public Gambling Act, ss. 3 and 4. 20 Cr. L. J. 303=50 Ind. Cas. 351. The Court cannot award compensation to the injured party out of the fine recovered from the accused who have been convicted under ss. 149 and 325 I. P. Code. 35 P. L. R. 370=A. I. R. 1934 Lah. 519.

Payments to be taken into account in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Notes.—*Vide*, 22 W. R. 336.

Order of payment of certain fees paid by complainant in non-cognizable cases.

* [**546A.** (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant—

(*a*) the fee (if any) paid on the petition of complaint, or for the examination of the complainant, and

(*b*) any fees paid by the complainant for serving processes on his witnesses or on the accused,

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or by the High Court, when exercising its powers of revision.]

Notes.—Costs of the complainant cannot be awarded where the offence is not a cognizable one. 25 Cr. L. J. 1161=Ind. Cas. 985.

* Section 546 A. was inserted by s. 153 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Moneys ordered to be paid recoverable as fines.

547. Any money (other than a fine) payable by virtue of any order made under this Code * [and the method of recovery of which is not otherwise expressly provided for] shall be recoverable as if it were a fine.

Notes.—*Vide* Rat. Un. Cr. C. 213 ; 23 Cr. L. J. 157 ; 29 C. W. N. 1033 ; 19 A. 112 ; 6 A. 96 ; 7 M. 563 ; 2 P. L. R. 1904.

Copies of proceedings.

548. If any person affected by a judgment or order passed by Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith :

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Notes.—Where a complaint is dismissed a complainant is affected by the order of dismissal and is therefore entitled to a copy of the order of discharge. Rat. Un. Cr. C. 305 ; 8 C. 166=10 C. L. R. 190. When a party applies for the copy of a particular order the Magistrate cannot force him to pay for and take copies or other orders not applied for. 6 Lah. 396=7 L. L. J. 241=26 P. L. R. 273=26 Cr. L. J. 853=86 Ind. Cas. 709=A. I. R. 1925 Lah. 361. The information which leads to action under s. 107, does not form part of the record, to a copy of which the accused is entitled. 1930 M. W. N. 1100=32 M. L. W. 784=A. I. R. 1930 Mad. 975=129 Ind. Cas. 70. As regards right of accused to get copies of statement of new witnesses, where at Sessions trial proposal is made to examine new witnesses. *Vide*, 39 Bom. L. R. 950. Third party not affected is not entitled to certified copy. A. I. R. 1932 Bom. 636=34 Bom. L. R. 1445 ; but see A. I. R. 1931 All. 364=1931 A. L. J. 405. An accused is entitled to copies of documents and copies of this defence. 14 W. R. 77. A charge is not an order of a Criminal Court by which an accused is said to be affected within the meaning of this section, where the trial has not advanced beyond the examination of the prosecution witnesses. A. W. N. 1892, 140. The accused person is entitled to a copy of the judgment under this section. Rat. Un. Cr. C. 73.

Delivery to military authorities of persons liable to be tried by Court-martial.

549. (1) The Governor-General in Council may make † rules, consistent with this Code and the "Army Act, the Naval Discipline Act and that Act as modified by the Indian Navy (Discipline) Act ; 1934" ‡ and the Air Force Act and"§ any similar law for the time being in force, as to the cases in which persons subject to "military, "naval" ‡ or air force law" § shall be tried by a Court to which this Code applies, or by Court-martial, † and when any person is brought before a Magistrate and charged with an offence for which he is liable "to be tried either by a Court to which the Code applies or by a Court-martial"‖ such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the Commanding Officer of the regiment, corps, "ship"‡ or detachment to which he belongs, or to the Commanding Officer of the nearest "military" "naval" ‡ or air force station, as the case may be" § for the purpose of being tried by a Court-martial.†

Apprehension of such person.

(2) Every Magistrate shall, on receiving a written application for that purpose by the Commanding Officer of any body of "soldiers, sailers or airmen"‖ stationed or

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* These words were inserted by s. 154 *ibid.*

† For notification making rules as to cases in which persons subject to military law shall be tried by a Court to which this Code applies or by a Court-martial, *see Gazette of India* 1902, Pt, I, p. 383.

‡ Inserted by Act 35 of 1934.

§ Substituted by Act X of 1927.

‖ Substituted by Act 35 of 1934.

employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Powers to Police to seize property suspected to be stolen.

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.

Notes.—A police-officer cannot issue order to station-master to detain stolen goods. 16 O. C. 371. He himself may seize such property. 2 S. L. R. Cr. 82=10 Cr. L. J. 198. This section does not empower police-officers to seize other cattle mixed up with stolen cattle. 11 Cr. L. J. 99; 7 P. R. 1889 Cr. Where Sub-Inspector of Police closes shop on report of cheating, his action is unnecessary but not illegal. A. I. R. 1929 Nag. 334=1929 Cr. C. 590.

Powers of superior officers of police.

551. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local areas to which they are appointed, as may be exercised by such officer within the limits of his station.

Notes.—Search is not illegal where it is made by a Sub-Inspector not incharge of a police-station but under supervision of Circle Inspector. 28 Cr. L. J. 652=A. I. R. 1927 All. 518=103 Ind. Cas. 108.

Powers to compel restoration of abducted females.

552. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of "sixteen"* years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Notes.—The purpose contemplated by this section must not be construed so as to make it include purposes which although not unlawful in themselves, might only become so when entertained towards a child in opposition to the wishes of its guardian. 4 Bom. L. R. 609. This section applies only to women and female children. 16 C. 487. Detaining a married daughter in father's house is not unlawful detention. 15 Cr. L. J. 712=26 Ind. Cas. 160; see also 10 C. W. N. 75 (N). In cases under s. 552 procedure adopted in cases under s. 491 should be followed. A. I. R. 1933 Nag. 374. District Magistrate cannot order preliminary inquiry under s. 202 in a case under s. 552 either by himself or by his Sub-divisional Magistrate. A. I. R. 1933 Nag. 374. Where father detains minor married daughter contrary to the wishes of girl or her husband, detention is for unlawful purpose within s. 552. A. I. R. 1933 Nag. 374.

Compensation to persons groundlessly given in charge in presidency-town.

553. (1) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrates by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

* The word within quotations was substituted by Act 18 of 1924.

554. (1) With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of Chartered High Courts to make rules for inspection of records of subordinate Courts.

(2) Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,—

Power of other High Courts to make rules for other purposes.

(*a*) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(*d*) make rules for regulating the execution of warrant issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the local official Gazette.

Notes.—Copies of judgments ought to be accesible to public particularly when rights and liberties of people are affected. By such publicity only public can be satisfied that law is being properly administered. A. I. R. 1931 All. 354=53A. 724=32 Cr. L. J. 864=1931 A. L. J. 405.

555. Subject to the power conferred by section [554],* and by section † [107 of the Government of India Act, 1915,] the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

Forms.

Notes.—*Vide*, 45 C. 1095; 38 C. L. J.

556. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Case in which Judge or Magistrate is personally interested.

Explanation.—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

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* These figures were substituted for the figures "553" by the Repealing and Amending Act, 1903 (I of 1903)—*see* Part II of the Second Schedule.

† These words and figures were substituted for the words and figures "15 of the Indian High Courts Act, 1861" by s. 2 and Schedule of the Amending Act, (XIII of 1916).

Illustrations.

A, as Collector, upon consideration, of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

Notes.—This section is based on the maxim *Nemo debit esse judex in propria causa sua.* The expression "party or person interested therein" means a direct personal pecuniary interest however small in the result of the case and where such interest is not pecuniary, it should have substantially the same effect so as to create a reasonable suspicion of bias. 98 Ind. Cas. 405=20 S. L. R. 171=27 Cr. L. J. 1332=A. I. R. 1927 Sind. 98. A Court which sanctions or directs a prosecution is not thereby rendered incompetent to try the offence or to hear an appeal against a conviction for it for in directing a prosecution, the Court merely directs further enquiry into the matter. 89 Ind. Cas. 1049; see also 1924 Nag. 23. Where a prosecution is by a Town Committee, the mere fact that the Magistrate trying is the President of the Town Committee does not give him any personal interest in the proceedings. Rang 517; see also 71 Ind. Cas. 359=24 Cr. L. J. 135; 1923A. 483. A Sessions Judge is not prohibited in law from hearing an appeal from conviction by a Magistrate in which as an insolvency Judge he allowed the prosecution to proceed. 21 A. L. J. 90=71 Ind. Cas. 368=24 Cr. L. J. 144= 1923 A. 193. The mere fact that a Magistrate had issued a search warrant prior to the institution of the case does not disqualify him from trying the case within the meaning of this section. 24 A. L. J. 568=27 Cr. L. J. 783=A. I. R. 1926 All. 428. Where a verbal complaint is made to a Magistrate, and subsequently a written complaint is made to him the fact that under the order of a superior Court passed at the instance of the complainant the Magistrate records his own evidence and is examined and cross-examined as a witness in regard to the oral complaint made to him, would not make the Magistrate personally interested in the case, so as to oust his jurisdiction and render the trial invalid, his evidence being only formal. 97 Ind. Cas. 953=27 Cr. L. J. 1193. Where a Sessions Judge made a complaint against a person under s. 194 I. P. Code he is not competent to hear revision petition against an order or discharge made by the Magistrate trying the offence. 28 Bom. L. R. 1302=28 Cr. L. J. 53. Pecuniary interest even to small extent is a sufficient disqualification, independently of question whether he is really biassed. 53 B. 716=31 Bom. L. R. 925=A. I. R. 1929 Bom. 404. So a Magistrate who is himself a share-holder in a company against whose auditors prosecution under s. 282 Companies Act. is started is disqualified to try the case. Neither consent of parties or want of *bona fide* in objectors affects it. 53 B. 716=31 Bom. L. R. 925. A Magistrate in close business relation or friendly relationship with a party should not try latter's case. 8 Pat. 575=10 P. L. T. 711=A. I. R. 1929 Pat 151=116 Ind. Cas. 762 (F. B) Where Magistrate presides over meeting sanctioning prosecution he is disqualified. 30 Cr. L. J. 698=10 Lah. 718=30 P. L. R. 706=A. I. R. 1929 Lah. 718 116 Ind. Cas; see also 9 L. L. J. 583=29 Cr. L. J. 371. Where a Magistrate at the time of making local inspection creates evidence and introduces it into case for its decision, he goes beyond his jurisdiction. 30 Cr. L. J. 652=A. I. R. 1929 Pat. 160= 116 Ind. Cas. 767. Cantonment Magistrate can try a complaint lodged by Cantonment Board even though he is a member of the Board. 29 Cr. L. J. 822=A. I R. 1928 Lah. 946=111 Ind. Cas. 328. Explanation merely means that the transfer is from file of Magistrate making local inspection is advisable but not necessary. 1930 A. L. J. 606=31 Cr. L. J. 555=A. I. R. 1930 All. 737=123 Ind. Cas. 685. Examination of the trying Magistrate as a witness does not prevent him from deciding the case. 2 Luck. 503=28 Cr. L. J. 673=A. I. R. 1927 Oudh. 296=103 Ind. Cas. 401; see also 3 O. W. N. 914=21 Cr. L. J. 65=A. I. R. 1927 Oudh. 31=99 Ind. Cas. 47. A Magistrate may try a case of which he has taken cognizance under s. 190 (c) provided he has complied with s. 191. 3 Bur. L. J. 121=26 Cr. L. J. 249=A. I. R. 1924 Rang. 352=84 Ind. Cas. 249. Although it is undesirable that a Magistrate whose lawful orders are disobeyed should himself try the charge of disobedience save in exceptional cases the High Court will not interfere if justice has been done. 1 Rang. 549=2 Bur. L. J. 146=76 Ind. Cas. 693. Magistrate issuing warrant may not try when required to give evidence in the case. 5 L. L. J. 429=24 Cr. L. J. 633=A. I. R. 1924 Lah. 247=73 Ind. Cas. 521. The judgment of Magistrate is not vitiated by the fact that he suspected the *locus in quo* and stated what he saw there. 43 M. L. J. 229=25 Cr. L. J. 7=A. I. R. 1923 Mad. 694=75 Ind. Cas. 695. A Magistrate issuing a warrant under s. 6 of the Gambling Act is disqualified from himself trying

the case. 22 Cr. L. J. 451=13 Bur. L. T, 154=61 Ind. Cas. 835 ; see also A. I. R. 1934 All, 987=1934 Cr. C. 1305. The words "try any case" are comprehensive enough to include the hearing of an appeal. 4 L. L. J. 452=61 P. L. R. 1922=23 Cr. L. J. 446=67 Ind. Cas. 622. Magistrate cannot both be prosecutor as well as judge. 22 Cr. L. J. 603=23 Bom. L. R. 842=A. I. R. 1921 Bom. 365=62 Ind. Cas. 875. District Magistrate, who is Inspector of Factories cannot try case under Factories Act. 22 Cr. L. J. 717=63 Ind. Cas. 877 ; see also 75 P. L. R. 1920=21 C. L. J. 389=1 Lah. 35=55 Ind. Cas. 997. Magistrate influenced by preliminary enquiries as to the guilt of the accused is disqualified. 19 Cr. L. J. 899=4 Pat. L. J. 7=47 Ind. Cas. 95. Where before commencement of commitment proceedings committing Magistrate held identification parade at which accused was identified, he cannot be called personally interested. A. I. R. 1932 Lah. 196=33 P. L. R. 641=33 Cr. L. J. 188=135 Ind. Cas. 675. As to where defect of not taking permission under s. 556 was held fatal, *vide*, A. I. R. 1935 Sind. 1.

Practising pleader not to sit as Magistrate in certain Courts.

557. No pleader who practises in the Court of any Magistrate in a presidency-town or district, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

Notes—This section does not forbid a pleader to practise in any Court but forbids him to sit as a Magistrate in certain Courts. 1923 Rang. 119.

Power to decide language of Courts.

558. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

Provision for powers of Judges and Magistrates being exercised by their successors in office.

* [**559.** (1) Subject to the other provisions of this Code the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency-town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.]

Notes.—Under s. 559 a complaint under s. 195 relating to an offence in connection with a proceeding in a Magistrate's Court can be made by the successors in office of the Magistrate. 7 Lah. 108=27 P. L. R. 314=95 Ind. Cas. 312.

Officers concerned in sales not to purchase or bid for property.

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provisions with respect to offence of rape by a husband.

561. (1) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(*a*) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(*b*) commit the man for trial for the offence.

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* Section 559 was substituted by s. 155 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(2) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer, with respect to such an offence as is referred to in sub-section (1) no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

Saving of inherent power of High Court.

*[561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.]

Notes.—This section is in no way limited or governed by s. 369 Criminal Procedure Code, and the High Court has power to reconsider the question of sentence when the ends of justice require it. 9 Lah. L. J. 42=99 Ind. Cas. 1039=28 Cr. L. J. 230 ; see also 5 O. W. N. 641=29 Cr. L. J. 893=3 Luck. 680=A. I. R. 1928 Oudh. 402 ; 9 L. L. J. 42=28 Cr. L. J. 239=A. I. R. 1927 Lah. 139=99 Ind. Cas. 1039. Section 561A merely declares that inherent powers shall not be limited or affected by anything in the Code. But the inherent powers are as much controlled by principle and precedent as are its express powers by a statute. 10 Lah. 1=29 Cr. L. J. 669=30 P. L. R. 247=A. I. R. 1928 Lah. 462=110 Ind. Cas.221. Section 561A does not modify s. 369 nor clothe Court with any fresh power. A. I. R. 1935 All. 466. Mere institution of civil suit is not sufficient to drop proceedings under s. 145. Proceedings can be dropped by use of inherent power under s. 561 A. A. I. R. 1935 Oudh. 255. Inherent power may be exercised only by High Court. A. I. R. 1935 Sind. 84 (F. B.). The High Court as the Supreme Court of revision must be deemed to have power to see that Courts below do not usually and without any lawful excuse take away the character of a party or of a witness or of a counsel before it. Thus under this section it has an inherent power to delete objectionable remarks against witnesses or accused persons. 25 A. L. J. 100=49 A. 254=27 Cr. L. J. 140. Where the subject matter of both a Criminal case and a Civil suit pending in another Court is the same, the Criminal case should be stayed. 97 Ind. Cas. 426=27 Cr. L. J. 1114. The High Court has got jurisdiction to grant bail in a case which has been disposed of by that Court and in which an appeal may be or is, pending in the Privy Council. 49A. 247=98 Ind. Cas. 593=25 A. L. J. 97. This section recognises the inherent power of the High Court to make such orders as may be necessary to prevent the abuse of process of Court. But the power to expunge a portion of judgment delivered by a competent Court is reserved for case of exceptional circumstances and should be exercised sparingly. 27 Cr. L. J. 510=93 Ind. Cas. 974=A. I. R. 1926 Lah. 332. Where the Police deny the accused a right of interviewing his legal adviser the High Court can interfere under s. 568A and direct that the accused person shall have reasonable access to his legal advisers from the moment of arrest. Such interference is justified as being necessary to prevent an abuse of the process of Court or as conducing to the "ends of justice". 28 Bom. L. R. 1043=50 B. 741. Under this section the High Court is at liberty to interfere with an order granting bail passed by a Sessions Judge. A. I. R. 1925 Nag. 228. The Court could not pass an order under this section which would conflict with the provisions of section 86 of the Code in the exercise of its inherent power. 26 Bom. L. R. 719=82 Ind. Cas. 365=25 Cr. L. J. 1293=1924 Bom. 485. This section does not apply to a case under s. 411 I. P. C. 1 Pat. L. R. 174 ; 1923 Pat. 237 ; 1923 P. 227. In this section the word "misappropriation" covers ss. 404 and 405 of I. P. Code as well as s. 403 and the word "cheating" covers ss. 418, 419 and 420 as well as s. 417. 71 Ind. Cas. 795. Special jurisdiction under this section can only be invoked to cases for which no provision is made in Code and to grant immediate relief. It must be exercised with due care. A. I. R. 1930 Lah. 465. Court has inherent powers to revise its own *ex parte* orders. But such power cannot be invoked when Code has made express provision. A. I. R. 1931 Pat. 81=11 P. L. T. 892=130 Ind. Cas. 538. "Process" is a general word meaning in effect anything done by the Court. *Ibid.* But jurisdiction under s. 561 A. should be exercised sparingly and in rare cases to prevent injustice. 31 P. L. R. 992=A. I. R. 1930 Lah. 1048=129 Ind. Cas. 273. The inherent jurisdiction of the Court cannot be invoked for doing an act conflicting with statutory provisions. 11 Lah. 220=31 Cr. L. J. 977=31 P. L. R. 824=A. I. R. 1929 Lah. 705=126 Ind. Cas. 72. High

* Section 561A was inserted by s. 156 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Court can pass an order excusing the personal attendance of the accused. 26 N. L. R. 50=12 N. L. J. 180=31 Cr. L. J. 284=A. I. R. 1930 Nag. 61=121 Ind. Cas. 651. The High Court should avoid staying proceeding in a Criminal case merely because the same question is in issue in a Civil suit. 52 M. L. J. 80=25 M. L. W. 52=28 Cr. L. J. 181=A. I. R. 1927 Mad. 308=99 Ind. Cas. 853. Appellate Court has no power to entertain appeal beyond limitation even under s. 561A. A. I. R. 193 Nag. 101=31 Cr. L. J. 381=1931 Cr. C. 453. Order of Magistrate executing warrant under section 7 Extradition Act, can be revised. 31 Bom. L. R. 62=53 B. 149=31 Cr. L. J. 772=A. I. R. 1929 Bom. 81=517 Ind. Cas. 321. Review of order or sentence by High Court is not permissible under s. 561A. 134 Ind. Cas. 686=27 N. L. R. 163=32 Cr. L. J. 1222=A. I. R. 1931 Nag. 169. Separate trials in respect of various sums of money misappropriated on several different dates, may in appropriate cases be stopped if it is offensive or an abuse of process of Court. A. I. R. 1930 Mad. 978 =58 M. L. J. 554=126 Ind. Cas. 75. High Court should not interfere with an order of its own Judge exercising original jurisdiction. 32 C. W. N. 889=56C. 32=30 Cr. L. J. 254=A. I. R. 1928 Cal. 367=114 Ind. Cas. 132. Absolutely unfounded remarks made against a stranger by a Magistrate can be expunged. 29 Cr. L. J. 1102=A. I. R. 1929 Lah. 201=112 Ind. Cas. 686 ; 35 Cr. L. J. 1138 ; 29 Cr. L. J. 336=A. I. R. 1928 All. 182 ; 9 Lah. 269. So also if High Court thinks necessary to expunge any improper remarks from the judgment of a subordinate Court to secure the ends of justice and in fairness to the witness or the party concerned, it may do so. 33 Cr. L. J. 534=137 Ind. Cas. 850=33 P. L. R. 608 ; but see 23 S. L. R. 432=30 Cr. L. J. 970=A. I. R. 1929 Sind. 243. Proceedings in Subordinate Courts constitute "process". Abuse of process can be set right by High Court and the proceedings are set aside in exceptional cases. 3 Luck. 287=29 Cr. L. J. 102=A. I. R. 1928 Oudh. 104=106 Ind. Cas. 694. Section is general and does not empower High Court to review its judgment. 26 P. L. R. 616=27 Cr. L. J. 23=A. I. R. 1926 Lah. 196=91 Ind. Cas 55. Inherent power can be invoked to stay proceedings in Civil and Criminal Courts. 48 A. 60=26 Cr. L. J. 1485=23 A. L. J. 956=A. I. R. 1926 All. 30=89 Ind. Cas. 1052. If a charge is framed where none should have been framed the High Court has power to interfere. 23 A. L. J. 21=26 Cr. L. J. 748=A. I. R. 1925 All. 311=86 Ind. Cas. 284. The Court cannot by invoking its inherent powers, extend the powers given to it by statute. Criminal Courts are not primarily for the purpose of preventing private parties from sustaining pecuniary loss. 49 M. L. J. 593=27 Cr. L. J. 126=A. I. R. 1926 Mad. 139=91 Ind. Cas. 702. Where an appeal has been dismissed without the appellant or his pleader being given an opportunity of being heard the Court can direct the appeal to be reheard. 7 L. L. J. 108=26 Cr. L. J. 1169=A. I. R. 1925 Lah. 355=88 Ind. Cas. 593. The High Court can revise proceedings of a Magistrate under s. 176, either under s. 435 or s. 439. 29 Cr. L. J. 1083=30 Bom. L. R. 1050=A. I. R. 1928 Bom. 390=112 Ind. Cas. 567.

Section 561A does not add to powers of High Court. Inherent powers does not include power to review order made in criminal appellate jurisdiction. 38 C. W. N. 25=145 Ind. Cas. 937=A. I. R. 1933 Cal. 870. Irrelevant remarks made in order of reference can be expunged. A. I. R. 1933 Lah. 36=33 Cr. L. J. 915= 33 P. L. R. 935. Where case is *prima facie* of civil nature and the complaint is vexatious, High Court can quash proceedings. A. I. R. 1933 Lah. 233=34 P. L. R. 126=34 Cr. L. J. 377. High Court can direct arrest of person released on bail under its orders. Magistrate or Sessions Judge cannot however cancel such bail bond. A. I. R. All. 534=33 Cr. L. J. 684=1932 A. L. J. 701=1932 Cr. C. 630. High Court can order stay. A. I. R. 1932 Mad. 720=1932 M. W. N. 726=63 M. L. J. 594=33 Cr. L. J. 826=56 M. 149. Where conduct is unfair to accused, case should be transferred. 16 N. L. J. 158=1933 Cr. C. 1003=A. I. R. 1933 Nag. 269=146 Ind. Cas. 149. High Court will not ordinarily interfere at interlocutory stage of criminal proceedings in subordinate Court. 10 O. W. N. 807=1933 Cr. C. 1088=A. I. R. 1933 Oudh. 387. High Court can independently of the Code, interfere with an order for search of houses of a public servant or subject of the Crown. 30 Cr. L. J. 62=1929 A. L. J. 57=51 A. 377=A. I. R. 1928 All. 756=113 Ind. Cas. 78. High Court can order re-delivery of things which are wrongly ordered to be delivered under s. 144. 50 A. 414=26 A. L. J. 83=28 Cr. L. J. 991=A. I. R. 1928 All. 14=105 Ind. Cas. 815. Court has inherent power to exempt any particular juror on good cause shown. 28 Cr. L. J. 177=A. I. R. 1027 Nag. 117=99 Ind. Cas. 849. The High Court can expunge *suo motu* without notice to trying Magistrate or the District Magistrate. 29 Cr. L. J. 313=A. I. R. 1928 Nag. 242=107 Ind. Cas. 912. The use of extra-ordinary powers under

s. 561A, ought to be reserved as far as possible for extra-ordinary cases. They are not usually invoked where there is another remedy is available. 58 B. 152=35 Cr. L. J. 1028=36 Bom. L. R. 88=A. I. R. 1934 Bom. 74. Wrong sentence by the lower Court can be rectified by the High Court. A. I. R. 1934 Pat. 551=15 P. L. T. 475. In a fit case the High Court can quash the proceedings of a lower Court. A. I. R. 1934 Oudh. 114=35 Cr. L. J. 576. Under section 561 A. Cr. Pro. Code. the High Court can review an order dismissing criminal revision application passed under s. 369 after it has been signed and sealed. 1934 P. L. J. 704=35 Cr. L. J. 1485=151 Ind. Cas 714. Power of review is not allowed in Criminal cases. Remedy of aggrieved party is to move Local Government. A. I. R 1935 All. 60.

First Offenders.

Power of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.

*[562. (1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or transportation for life and no previous conviction is proved against the the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.

Conviction and release with admonition.

†[(1A) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code ‡ punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted, may, if it thinks fit having regard to the age, character, antecedents or physical or mental condition of the offender and to the trival nature of the offence or any extenuating circumstances under which the offence was committed, instead, of sentencing him to any punishment, release him after due admonition.]

(2) An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision.

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law.

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* Section 562 was substituted by s. 157, *ibid.*

† Sub-section (1A) was inserted by section 4 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXVII of 1923).

‡ XLV of 1860.

Provided that the High Court shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(4) The provisions of sections 122, 126A and 406A shall so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.]

Scope.—This section applies even when imprisonment is obligatory. 27 Bom. L. R. 111=26 Cr. L. J. 694=A. I. R. 1925 Bom. 122=86 Ind. Cas. 70. This section applies only to a case of simple cheating falling under s. 417 of the Penal Code and not to aggravated forms of cheating under ss. 418 to 420, Penal Code. 22 Cr. L. J. 150=1 Lah. 612=59 Ind. Cas. 854. Section 562 is not restricted to juvenile offenders only. 11 P. R. 1916 Cr.=17 Cr. L. J. 254=34 Ind. Cas. 974. In framing s. 562, legislature intended to apply it to those offenders (especially youthful) who without being persons of depraved character may on occasions succumb to sudden temptation. 19 P. R. 1916 Cr.=17 Cr. L. J. 310=144 P. L. R. 1916=35 Ind. Cas. 486; see also 14 A. L. J. 1158=17 Cr. L. J. 524=39A. 141=36 Ind. Cas. 492. Section 562, Cr. Pro. Code does not apply to the case of a person convicted of house breaking. The age of the accused is probably immaterial in determining whether the Court should act under s. 562. 18 Cr. L. J. 469=39 Ind. Cas. 309. "Cheating" covers all kinds of cheating. 8 N. L. J. 97=24 Cr. L. J. 251=A. I. R. 1923 Nag. 158=71 Ind. Cas. 795; but see 5 Pat. L. J. 267=1 Pat. L. T. 297=21 Cr. L. J. 468=A. I. R. 1920 Pat. 224=56 Ind. Cas. 500; 19 Cr. L. J. 934=47 Ind. Cas. 658; 16 Cr. L. J. 781. This section does not apply where the accused has not only been convicted but also sentenced. 20 Cr. L. J. 391=17 A. L. J. 426=50 Ind. Cas. 1000. The proviso in sub-section (1) of section 562, governs sub-section 1A also. Sub-section 2 B added to s. 562 in 1923 is not only a part of the same section as the proviso but a part of the same section. 30 Cr. L. J. 220=11 N. L. J. 245=A. I. R. 1928 Nag. 343=113 Ind. Cas. 911; see also 27 Bom. L. R. 1019=29 Cr. L. J. 1461=89 Ind. Cas. 1029. Section should not be applied to the case of people discovered with cocaine and other dangerous drugs in defence of the Excise Act. 1930 Cr. C. 35=31 Cr. L. J. 32=A. I. R. 1930 All. 19=120 Ind. Cas. 264. Section does not apply to an offence under the Motor Vehicles Act. 28 Bom. L. R. 297=27 Cr. L. J. 528=A. I. R. 1926 Bom. 230=93 Ind. Cas. 992. The proviso to sub-section (1) must be read as a part of the said sub-section. A second class Magistrate who have convicted an accused under Penal Code. s. 279 can order his release after due admonition under section 562 (IA). 47 A. 353=26 Cr. L. J. 624=A. I. R. 1925 All. 644=85 Ind. Cas. 848. All second class Magistrates in the Punjab are duly empowered to exercise the power prescribed by s. 562. 29 Cr. L. J. 581=10 L L. J. 153=29 P. L. R. 215=109 Ind. Cas. 604; See also 8 Lah. 38=28 Cr. L. J. 316=28 P. L. R. 285=A. I. R. 1927 Lah. 102=100 Ind. Cas. 540. Offence under s. 381 Penal Code is not covered by s. 562. 2 Bur. L. J. 75=A. I. R. 1924 Rang. 12. Section does not apply in a case under s. 411 I. P. Code. 26 Cr. L. J. 419=A. I. R. 1923 Pat. 297=85 Ind. Cas. 35. Section has no application to a conviction under Gambling Act. 25 O. C 111=9 O. L. J. 667=24 Cr. L. J. 14=A. I. R. 1922 Oudh. 224=71 Ind. Cas. 62. The offence under s. 409, Penal Code is beyond the scope of section 562. 28 Cr. L. J. 257=A. I. R. 1927 Lah. 735; 100 Ind. Cas. 225. Section also does not apply to an offence under Cl. 2 of s. 457. 61 Bur. L. J. 83=28 Cr. L. J. 759=A. I. R. 1927 Rang. 254=103 Ind. Cas. 839. As one of the alternative punishments for an offence under s. 307, Penal Code, is transportation for life, s. 562 is not applicable. 30 Cr. L. J. 789=A. I. R. 1928 Lah. 920=117 Ind. Cas. 239; see also 36 P. L. R. 379=A. I. R. 1934 Lah. 746. Sub-section 1A does not apply to an offence under the city of Bombay Municipal Act. 52 B. 250=30 Bom. L. R. 375=29 Cr. L. J. 566=A. I. R. 1928 Bom. 152=109 Ind. Cas. 502. An order under s. 562 cannot be said to be a punishment; the sentence of punishment is postponed and something not a punishment is substituted therefor. 24 Cr. L. J 738=22 N. L. R. 166=A. I. R. 1924 Nag. 37=74 Ind. Cas. 66. There is no middle course between a real sentence of imprisonment (with or without a fine) and an order under s. 562. 27 Cr. L. J. 1229=A. I. R. 1927 Nag. 49=97 Ind. Cas. 1053. Magistrate to whom case is referred under s. 562 (2) has no power to set aside conviction under s. 380. A. I. R. 1933 Mad. 728=65 M. L. J. 405. Women convicted of offence punishable with transportation for life are ineligible for release on probation under s. 562. A. I. R. 1932 Nag. 130=28 N. L. R. 250=33 Cr. L. J. 844=1932 Cr. C. 666. A Magistrate to whom case is referred under s. 562 (2) has no power to set aside conviction under s. 380. He can only either convict or make or direct further enquiry. 145 Ind. Cas. 659=34 Cr. L. J. 1045=1933 Cr. C. 1312=65 M. L. J. 405=A. I. R. 1933 Mad. 728.

Interpretation of wording in ss. 497 and 562 is equally to be considered disjunctively. A. I. R. 1932 Nag. 130=28 N. L. R. 260=33 Cr. L. J. 844=1932 Cr. C. 666. Exercise of discretion under s. 562 needs great sense of responsibility. When Cattle lifting is common in locality, even first offender should be punished. 27 S. L. R. 34=34 Cr. L. J. 420=A. I. R. 1933 Sind. 44. When case is submitted under s. 349 there is no conviction by submitting Magistrate but only an opinion is expressed. In case of s. 562 there is conviction by submitting Magistrate. A. I. R. 1933 Mad. 728=65 M. L. J. 405=34 Cr. L. J. 1045. A perusal of s. 562 makes it clear that the order of imprisonment on failure to furnish security cannot be added to the order of release on probation of good conduct. 35 P. L. R. 368=A. I. R. 1934 Lah. 582. The terms "dishonest misappropriation" and "cheating" refer to the offences in the Penal Code. 12 Rang. 259=35 Cr. L. J. 1241=A. I. R. 1934 Rang. 203. Section 562 Cr. Pro. Code is not applicable when a person is convicted under s. 181 I. P. Code. A. I. R. 1934 Nag. 193=1934 Cr. C. 892. Sub-section (1) covers case of conviction under any law and is not limited to convictions under Penal Code. A. I. R. 1935 Bom. 188. Sub-section 1A covers offences punishable only with fine. A. I. R. 1935 Bom. 156. Even in case of technical conviction, accused should have benefit. A. I. R. 1935 Sind. 90 (F. B) Offences under s. 114 of the Railways Act, are not easily detected. But when detected offender should be punished irrespective of no previous conviction. A. I. R. 1935 Sind. 90. In case of offence under s. 317, Penal Code by woman of 18, this section should not be applied and the High Court can interfere in case of failure of justice. A. I. R. 1935 Pesh. 48. Release after admonition for offence of house-breaking is illegal. A. I. R. 1935 Mad. 157.

Powers when to be exercised.—The mere fact that the accused comes of a respectable family cannot be a justification for imposing a lighter sentence. 31 Cr. L. J. 874=A. I. R. 1930 Pat. 216=125 Ind. Cas. 572. Where accused deliberately commits perjury he cannot be dealt with under s. 562. 29 Cr. L. J. 219=A. I. R. 1928 Lah. 296=107 Ind. Cas. 707. It is not applicable where a juvenile offender has shown criminately rather than thoughtlessly and also crafts and deceit. 18 S. L. R. 61=25 Cr. L. J. 1224=A. I. R. 1925 Sind. 75=82 Ind. Cas. 152. An offence punisbable with fine only but which becomes punishable with imprisonment in default of payment of the fine is not covered by the section. 28 Bom. L. R. 1031=27 Cr. L. J. 1158=A. I. R. 1926 Bom. 544=97 Ind. Cas. 742. This section cannot be invoked by a person convicted of an offence which not only implies previous preparation but often escapes detection. 7 Lah. 32=27 Cr. L. J. 56=27 P. L. R. 221=A. I. R. 1926 Lah. 166=24 Ind. Cas. 129. In case of rape of a reprehensible nature on a helpless infant, offender though a lad of 17 should not be released under s. 562. 29 Cr. L. J. 1093=A. I. R. 1929 Lah. 198=112 Ind. Cas. 680. But in the case of enticing away widow of 16 years for honourably marrying her, the accused may be treated under this section. 331 Cr. L. J. 25=A. I. R. 1929 All. 930=120 Ind. Cas. 257. Section 562 is not enacted with the intention of letting off every juvenile offender. Magistrates should carefully consider the attendant circumstances, along with age, character and antecedents of the offender. 31 P. L. R. 115=10 Lah. 876=31 Cr. L. J. 348=1930 Cr. L. J. 291=A. I. R. 1930 Lah. 289=122 Ind. Cas. 97 ; see also 27 Cr. L. J. 934=A. I. R. 1926 Lah. 611=96 Ind. Cas. 390 ; 20 S. L. R. 7=27 Cr. L. J. 309=A. I. R. 1926 Sind. 101=92 Ind. Cas. 693 ; 2 O. W. N. 593=26 Cr. L. J. 1278=A. I. R. 1925 Oudh. 673=88 Ind. Cas. 1054 ; 38 C. W. N. 362=A. I. R. 1934 Cal. 608 ; 27 S. L. R. 463=150 Ind. Cas. 763=35 Cr. L. J. 1149=A. I. R. 1934 Sind. 93.

Compensation and fine.—The order directing the convicts released under s. 562 to pay compensation to the complainant is illegal. 29 Cr. L. J. 88=A. I. R. 1928 Lah. 134=106 Ind. Cas. 454. Fine cannot be imposed when an order under s. 562 had been passed. 10 Lah. 722=30 P. L. R. 702=30 Cr. L. J. 46=A. I. R. 1930 Lah. 56=112 Ind. Cas. 910.

Second offence.—When two cases against the same accused are tried consecutively and the accused in both is convicted, s. 562 will not apply at the time when second judgement is written. 27 Cr. L. J. 1016=A. I. R. 1926 Lah. 651=96 Ind. Cas. 872. Where an accused is already under probation on an earlier conviction, a sentence again placing him under probation for a subsequent offence is illegal. 31 Cr. L. J. 926=32 Bom. L. R. 356=A. I. R. 1930 Bom. 176=125 Ind. Cas. 712. But in a fit case an offender committing a second offence can be dealt with under the section. 31 Cr. L. J. 653=31 P. L. R. 334=A. I. R. 1930 Lah. 92=124 Ind. Cas. 315.

Security.—Accused is liable to punishment, in case of failure to furnish security. 26 Cr. L. J. 683=A. I. R 1925 Mad, 496=86 Ind. Cas. 59. The Magistrate should satisfy himself that security can be given before passing the order. But if the person fails to furnish security, the Magistrate is to pass sentence according to law. 26 Cr. L. J. 285=2 Rang. 360=A. I. R. 1925 Rang. 42=84 Ind. Cas. 349. Order by Presidency Magistrate under s. 562 directing accused to be released on execution of bond for Rs. 200 with surety for good behaviour for t wo years is not appealable. A. I. R. 1932 Cal. 488=33 Cr. L. J. 639=36 C. W. N. 459=138 Ind. Cas. 627.

Appeal or revision.—Appeal lies to the Session's Judge from the order of Magistrate under s. 562. 46 A. 828=22 A. L. J. 751=25 Cr. L. J. 1244=A. I. R. 1924 All. 765=82 Ind. Cas. 172 ; see also 28 Bom. L. R. 671=27 Cr. L. J. 873=A. I. R. 1926 Bom. 382 ; 41 C. L. J. 45=29 C. W. N. 151=52 C. 463=26 Cr. L. J. 455=A. I. R. 1925 Cal. 329=85 Ind. Cas. 135; see also A. I.R. 1935 Mad 157. Release under s. 562 is discretionary with Magistrate. High Court cannot interfere if it is judicially exercised. 31 Cr. L. J. 618=1929 Cr. C. 386=A. I. R. 1929 Cal. 785=124 Ind. Cas. 76 ; see also 30 Cr. L. J. 220=11 N. L. J. 245=A. I. R. 1928 Nag. 343=113 Ind. Cas. 911 ; 29 Cr. L. J. 291=A. I. R. 1928 Lah. 926=107 Ind. Cas. 775 ; 28 Cr. L J. 255=A. I. R. 1927 Lah. 353=100 Ind. Cas. 127 ; 94 Ind. Cas. 368=27 Cr. L. J. 624=94 Ind. Cas. 368; 2 O.W.N. 593=26 Cr. L.J. 1278=A.I. R. 1925 Oudh. 673=88 Ind. Cas. 1054 ; A. I. R. 1933 Lah. 393. Where an accused has been convicted on the strength of his own pleas and is released under s. 562, his right of appeal is barred as no sentence has been passed against him. 20 P. L. R. 1917 Cr=18 Cr. L. J. 401=38 Ind. Cas 961. Sub-section (3) empowers the High Court to set aside an order under s. 562 and substitute a sentence of imprisonment without ordering retrial. 24 A. L. J. 228=27 Cr. L. J. 303=A. I. R. 1926 All. 226=92 Ind. Cas. 591 ; see also 140 Ind. Cas. 59=33 Cr. L. J. 844=28 N. L. R. 260=A. I. R. 1932 Nag. 130 ; A. I. R. 1934 Lah. 36 ; A. I. R. 1934 Lah. 514=35 P. L. R. 439.

Provision in case of offender failing to observe conditions of his recognizances.

563. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either demand him in custody until the case is heard or admit him to bail with a sufficient surety condition on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

Conditions as to abode of offender.

564. (1) The Court, before directing the release of an offender under section 562 *"sub-section 1" shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(2) Nothing in this section or in sections 562 and 563 shall affect the provisions of section 31 of the Reformatory Schools Act, 1897.†

Previously convicted Offenders.

Order for notifying address of previously convicted offender.

‡**565.** (1) When any person having been convicted—

(*a*) by a Court in British India of an offence punishable under section 215, section 489 A, section 489B, section 489C, or section 489D

* The words within quotation have been inserted by Act 7 of 1924.

† VIII of 1897.

‡ Section 565 was substituted by s. 158 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

of the Indian Penal Code * or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment or either description for a term of three years or upwards, or

(*b*) by a Court or Tribunal in the territories of any Prince or State in India acting under the general or special authority of the Governor-General in Council, or of any Local Government, of any offence which would if committed in British India, have been punishable under any of the aforesaid sections or Chapters of the Indian Penal Code* with like imprisonment for a like term,

is again convicted, of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of or absence from such residence after release be notified as hereinafter provided for a term not exceediding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Local Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(5) Any person against whom an order has been made under this section and who refuses or neglects to comply with any rule so made shall be deemed within the meaning of section 176 of the Indian Penal Code to have ommitted to give a notice required for the purpose of preventing the commission of an offence.

(6) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.]

Notes.—Magistrate is not entitled to use an order which had been set aside, as proof that the accused was an old offender, on the ground that the previous order was set aside either in appeal or revision on technical grounds. 3 Rang. 156=89 Ind. Cas. 320=26 Cr. L. J. 1344=A. I. R. 1923 Rang. 277. An order to remain under police survillance is not proper where the accused is not an old convict. A. I. R. 1934 Lah. 675=35 P. L. R. 615=1934 Cr. C. 1001. A convict who after release was bound to notify his change of residence to the police, absented himself for one night leaving his effects and family in the place in which he was residing. *Held*, that this was no change of residence to necessitate a notification to the police and a conviction for not notifying the same is bad. 18 Cr. L. J. 638=40 M. 7839=9 Ind. Cas. 1006.

SCHEDULE I

ENACTMENTS REPEALED.

[*Repealed by Act X of 1914.*]

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* XLV of 1860.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE,—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code" are not intended as definition of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies also to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not. ...	According as the offence abetted is compoundable or not. ...	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto.	Ditto.	Ditto	Ditto	Ditto	Ditto ...

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
111	Abetment of any offence, when one act is abetted and a different act is done, subject to the Proviso.	May arrest without warrant if arrest for the offence abetted may be made without warrant but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence intended to be abetted.	The Court by which the offence abetted is triable.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under I P. C.	By what Court triable.
115	Abetment of an offence, punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If an act which causes harm to be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years. or fine, or both.	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life if the offence be committed.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons,	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	If the offence be not committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	Accoording as a warrant or summons may issue for the offence abetted.	*[Bailable]	According as the offence abetted is compoundable or not.	Imprisonment of either description for 3 years and fine.	The Court by which the offence abetted is triable.
119	A public servant concealing a design to commit an offence which it is his duty to prevent if the offence be committed.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation for life.	Ditto.	Ditto.	Not bailable.	Ditto ...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not-committed.	Ditto.	Ditto.	*[Bailable]	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto.	Ditto.	*[According as the offence concealed is bailable or not.	Ditto ...	Ditto	Ditto

* Substituted by s. 259 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	If the offence be not committed.	Ditto,	Ditto,	bailable or not]. *[Bailable]	Ditto ...	Imprisonment extending to one eight part of the longest term, and of the description, provided for the offence, or fine or both.	Ditto.
	† CHAPTER VA.—CRIMINAL CONSPIRACY.						
120B	Criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two or upward.	May arrest without warrant if arrest for the offence which is the object of the conspiracy may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence which is the object of the conspiracy.	According as the offence which is the object of the conspiracy is bailable or not.	Not compoundable.	The same punishment as that provided for the abetment of the offence which is the object of the conspiracy.	Court of Session when the offence which is the object of the conspiracy is triable exclusively by such Court; in the case of all other offences Court of Session, Presidency Magistrate or Magistrate of the first class.
	Any other criminal conspiracy...	Shall not arrest without	Summons ...	Bailable...	Ditto ...	Imprisonment of either description for six months	Presidency Magistrate or

* Substituted by s, 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923),

† This chapter was inserted by s, 6 and the Sch. of the Indian Criminal Law Amendment Act, 1913 (VIII of 1913).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant of summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
		a warrant.				and fine or both.	Mag strate of the [first class.]
	CHAPTER VI.—OFFENCES AGAINST THE STATE.						
121	Waging or attempting to wage war, or abetting the waging of war against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Death, or transportation for life, and *[fine].	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for ten years † [and fine].	Ditto.
122	Collecting arms, etc., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and †[fine].	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor-General, Government, etc., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
‡124A	Sedition	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Trsnsportation for life or for any term and fine, or imprisonment of either description for	Court of Session, Chief Presi d e n c y Magistrate or

* Substituted by Act 18 of 1923.

† This word was substituted for the words "forfeiture of property by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923. (XVIII of 1923).

‡ Vide A. I. R. 1932 Bom. 63.

1	2	3	4	3	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not,	Punishment under the I. P. C.	By what Court triable.
						3 years and fine, or fine.	District Magistrate or Magistrate of the first class specially empowered by the Local Government in that behalf.
125	Waging war against any Asiatic power in alliance or at peace with the Queen or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Court of Session.
126	Committing depredation on the territories of any power in alliance or at peace with Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine, forfeiture of certain property.	Court of Session.
128	Public servant voluntarily allowing prisoners of State or war in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or war in his custody to escape.	Ditto ...	Ditto ...	Bailable.	Ditto ...	Simple imprisonment or 3 years and fine.	Court of Session, Presidency Magistrate of the first class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
130	Aiding escape of, rescuing or harbouring such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life. or imprisonment of either description for 10 years fine.	Court of Session.
	CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.						
131	Abetting mutiny, or attempting to seduce an officer, soldier or from his alligiance or duty.	May arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death or transportation for life, or imprisonment of either description fot 10 years and fine.	Ditto.
133	Abetment of an assult by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine,	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assult, if the assault is commited.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...	Bailable.	Ditto ...	Imprisonment of either description for 2 years, for fine or both.	Presidency Magistrate or Magistrate of the first or second class,

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
136	Harbouring such an officer, soldier or sailor, who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons.	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant.	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidedcy Magistrate or Magistrate of the first or second class.
140	Wearing the dress or carrying any token used by a soldier with intent that it may be believed that he is such a soidier.	Ditto ...	Summons.	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
	CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.						
143	Being member of an unlawful assembly.	May arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly, armed with any deadly weapon.	Ditto ...	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto
145	Joining or continuing in an unlawful assembly knowing it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting, armed with a deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three	Court of Sessions, Presi-

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
						years, or fine, or both.	dency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto ...	The same as for the offence	The Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto ...	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	May arrest without warrant.	Summons.	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, etc.	Ditto ...	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or, fine or both.	Court of Session, Presidency Magistrate or Magistrate of the first Class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	If not committed ...	Ditto ...	Summons.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine or both.	Ditto.
153A	Promoting enmity between classes.	Shall not arrest without warrant.	Warrant.	Not bailable.	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate of the first class.
154	Owner or occupier of land not giving information of riot etc.	Ditto ...	Summons.	Bailable.	Ditto ...	Fine of 1,000 rupees.	Presidency Magistrate or Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot, takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
157	Harbouring persons hired for an unlawful assembly or not.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or not.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
*	Or to go armed.	Ditto ...	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine or both.	Ditto.

* The figure "159" has been repealed by Act of 37 of 1925.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
160	Committing affray	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for one month, or fine of 100 rupees, or both.	Any Magistrate.
	CHAPTER IX—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.						
161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an oficial act.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gatification in order by corrupt or illegal means to influence a public servant	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Dit to ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offence defined in the last two preceeding clauses with reference to himself.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either cription for 3 years, or fine, or both	Court of Session. Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Shall not arrest without warrant.	Summons.	Bailable.	Ditto ...	Simple imprisonment for 1 year of fine, or both.	Presidency Magistrate or Magistrate of the first Class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine ; or both and confiscation of property, if purchased.	Ditto.
170	Personating a public servant.	May arrest without warrant.	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 2 years. or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons.	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees or both.	Ditto.
	* CHAPTER IXA OFFENCES RELATING TO ELECTIONS.						
171E	Bribery	Shall not arrest without warrant.	Summons.	Bailable...	Not compoundable	Imprisonment of either description for 1 year, or fine, or both or if treating only, fine only.	Presidency Magistrate or Magistrate of the first class.

*These entries were added by s. 3 of the Indian Elections Offences and Inquiries Act, (XXXI of 1920).

1	2	3	4	5	6	7	8
Section.	Offence	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
171F	Undue influence and personation at an election.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
171G	False statement in connection with an election.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine...	Ditto.
171H	Illegal payments in connection with elections.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 500 rupees.	Ditto.
171I	Failure to keep election account	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 500 rupees.	Ditto.]
	CHAPTER X—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.						
172	Absconding to avoid service of summons or other proceedings from a public servant.	Shall not arrest without warrant.	Summons.	Bailable	Not compoundable.	Simple imprisonmenf for 1 month, or fine of 500 rupees or both.	Any Magistrate
	If summons or notice require attendance in person, etc, in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Shalt not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magtstrate or Magistrate of the first or second class.
	If summons etc., require attendance in person, etc. in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1.000 rupees, ot both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	If the order require personal attendance, etc., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Shall not arrest without warrant	Summons	Bailable.	Bailable	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice for information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ... ... Imprisonment of either description for 2 years or fine, or both.	Ditto. Ditto.
	If the information required respects the commission of an offence, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...		
178	Refusing oath when duly required to take oath by a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple Imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto ...
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees or both.	...
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 3 years. and fine.	Court of Session, Presidency Magis-

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
							trate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it for property at a lawfully athorized sale, or bidding without intending to perform the obligations incurred thereby.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgatee by a public servant if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	If such disobedience causes danger to human life, health or safety etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
189	Threatening a public servant injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
	CHAPTER XI—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.						
193	Giving or fabricating false evidence in a judical.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment I. P. C.	By what Court triable.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto ...
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Difto ...	Ditto ...	Ditto ...	Ditto ...	Death, or as above.	Ditto ...
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for 7 years or upwards.	Ditto ...	Ditto ...	*[Not bailable.]	Ditto ...	The same as for the offence.	Ditto ...
196	Using in a judicial proceeding evidence known to be false or fabricate.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...	Bailable.	Ditto ...	The same as for giving false evidence.	Ditto ...

* The words "Not bailable" were substituted for the word "Bailable" by Part II of the Second Schedule to the Repealing and Amending Act, 1903 (I of 1903).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...
199	False statement made in any declaration which is by law receivable as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Ditto ...	Ditto ...
201	Causing disappearance of evidence of an offence committed or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Sessions.
	If punishable with transportation for life or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with less than 10 years imprisonment.	Ditto ...	Ditto ..	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
202	Intentional omission to give information of an offence by a	Ditto ...	Summons.	Ditto ...	Ditto ...	Imprisonment of either description for 6	Presidency Magistrate or

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons,	Bailable or not	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	person legally bound to inform.					months, or fine, or both.	Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto ...	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or dostroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
206	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, of in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class or second class.
207	Claiming property without right, or practising description touching nny right to it, to prevent its being taken as a forfeiture on in satisfaction of a fine under sentence, or in execution of a decree.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Non-compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
208	Fradulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice.	Ditto ...	Ditio ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.	Ditto.
	If offence charged be punishable with imprisonment for 7 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session, Prsidency Magistrate or Magistrate of the first class.
	If offence charged be capital. or punishable with transportation for life.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
212	Harbouring an offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

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Section.	Offence,	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	If punishable with imprisonment for 1 year and not for 10 years,	May arrest without warrant.	Warrant.	Bailable.	Not Compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence or fine or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable,
213	Taking gift, etc, to screen an offender from punishment, if the offence be capital.	[*May arrest without warrant.]	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years. and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto. ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	*[Shall not arrest without warrant.]	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session.

* These words were substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine or both.	Presidency Magistrate or Magistrate of the first class. or Court by which the offence is triable.
215	Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	*[May arrest without warrant.]	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, of both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who escaped from custody, or whose apprehension has been ordered, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for 1 year, and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest	Presidency Magistrate or

* These words were substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XIII of 1923).

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
						term, and of the description provided for the offence, or fine, or both.	Magistrate of the first class, or Court by which the offence is triable.
216A.	Harbouring robbers or dacoits.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first clas.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of etiher description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judical proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description fot 7 years, with or without fine.	Ditto ...
	If punishable with transportation for life, or imprisonment for 10 years	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice if under sentence of death.	Ditto ...	Ditto ...	Not bailable	ditto ...	Transporation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years with or without fine.	Ditto
	If under sentence of imprisonment for less than 10 years or lawfully committed to custody.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Ma-

1	2	3	4	5	6	7	8
Section.	Offence	Cognizable or not.	Warrant or Summons.	Bailable or not	Compoundable or not.	Punishment under the I. P. C.	By what Court triable,
							gistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both,	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest-without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Ditto	Ditto.
	If under sentence of death ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisoment of either	Ditto.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
						description for 10 years and fine.	
225A	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for—						
	(*a*) in cases of intentional omission or sufferance.	Shall not arrest without warrant.	Ditto ...	Bailable.	Ditto ...	Imprisoment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	(*b*) in cases of negligent omission or sufferance.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
225B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	May arrest without warrant,	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine or both.	Ditto.
226	Unlawful return from transportation.	Ditto ...	Ditto ...	No bailable.	Ditto ...	Transportation for life, and fine, and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of conditon of remission of punishment.	Shall not arrest without warrant.	Summons.	Ditto ...	Ditto ...	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not	Punishment under the I. P. C.	By what Court triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable.	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed subject to the provisions of Chapter XXXV.
229	Personation of a juror or assessor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
	CHAPTER XII—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.						
231	Counterfeiting, or performing any part of the process of counterfeiting coin.	May arrest without warrant	Warrant.	Not bailable.	Not compoundable.	Imprisonment of either description for 2 years, and fine.	Court of Session.
232	Counterfeiting or performing any part of the process of counterfeiting the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Preidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session.

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Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not,	Punishment under the I. P. C.	By what Court triable.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session. Presidency Magistrate or Magistrate of the first class.
	If Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Court of Session.
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, etc., the same to any person	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

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Section	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
240	The same with respect to the Queen's coin.	May arrest without warrant.	Warrant.	Not bailable.	Not Compoundable.	Imprisonment of either description for 10 years, and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
246	Fraudulently diminishing the Weight or altering the composition of any coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

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Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
247	Fraudulently diminishing the weight or altering the composition the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisoment of either description for 3 years, and fine.	Ditto ...
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine,	Ditto ...
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Dltto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, and fine.	Ditto ...
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	May arrest without warrant.	Ditto ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first pos-	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years,	Presidency Magistrate or Ma-

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warant or Summons.	Bailable or not.	Compoundable or not.	Punishment nnder the I. P. C.	By what Court triable.
	sessed, the deliverer did not know to be altered.					or fine of ten times the value of the coin.	gistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto ...	Ditto ...	Bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Sessions Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a Substance bearing a Government stamp, or removing from a document a stamp used for it	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

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Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Cnmpoundable or not.	Punishment under the I. P. C.	By what Court triable.
	with intent to cause loss to Government.						
262	Using a Government stamp known to have been before used.	May arrrest without warrant.	Warrant ...	Bailable ...	Not compoundable	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first and second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years. or fine, or both.	Court of Session, presidency Magistrate or Magistrate of the first class.
263A	Fictitious stamps	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Presidency Magistrate or Magistrate of the first class.
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second calss.
265	Fraudulent use of false weight or measure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compound able or not.	Punishment under the I. P. C.	By what Court triable.
269	Negligently doing act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons.	Bailable ...	Not compoundable.	Imprionment of either description for 6 monmonths, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto ...
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto ...
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine 1,000 rupees, or both,	Ditto ...
273	Selling any food or drink, as food or drink, knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...
274	Adulterating any drug or medical preparation intended for sale so as to lesson its efficacy, or to change its operation, or to make it noxious.	Shall not arrest without warrant.	Summons.	Baible ...	Not compoundable.	Imprisonment :of either dercription for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated,	Ditto ...	Dittto ...	Ditto ...	Ditto ...	Ditto	Ditto.

1	2	3	3	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compounda-ble or not.	Punishment under the I. P. C.	By what Court triable.
276	Knowingly selling or issuing from a dispensary any drug or medical preparatio as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fineof 400 rupees.	Ditto
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, of 1,000 rupees, or both.	Ditto
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy.	Ditto ...	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person, by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees	Ditto
284	Dealing with any poisonous substance so as to endanger human life, etc.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 6 months or fine of 1,000 rupees or both.	Presidency Magistrate or Magistrate of the first or second class.
285	Dealing with fine or any combustible matter so as to endanger human life, etc.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
289	A person omitting to take order with any animal in his possesion, so as to guard against danger to human life, or of grevious hurt, from such animal.	May arrest without warrant.	Ditto ...	Bailable.	Not compoundable.	Ditto	Any Magistrate

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compounndable or not.	Punishment under the I. P. C.	By wat Court triable.
290	Committing a public nuisance.	Shall not arrest without.	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, etc, of obscene books. etc.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine or both.	"Presidency Magistrate or Magistrate of the first class."*
293	"Sale, etc, of obscene objects to young persons."*	Ditto ...	Ditto ...	Ditto ...	Ditto ...	"Imprisonment of either description for 6 months, or fine or both."*	Ditto.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	†[Any Magistrate.]
294A	Keeping a lottery office.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees.	Ditto.
	CHAPTER XV.—OFFENCES RELATING TO RELIGION.						
295	Destroying, damaging or defiling a place of worship or	May arrest without war-	Summons ...	Bailable.	Not compoundable.	Imprisonment of either description for 2 years,	Presidency Magistrate or

* These words within quotations have been substituted by Act 8 of 1925.
† Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Coguizable or not.	Warrant or Summons.	Bailable or not.	Compoundable re not.	Punishment under the I. P. C.	By what Court triable.
	sacred object with intent to insult the religion of any class of persons.	rant.				or fine, or both.	Magistrate of the first or second class.
295A*	Maliciously insulting the religion or the religious beliefs of any class.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Ditto ...	Ditto	Court of Session, or Presidency Magistrate.
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imorisonment of either description for 1 year, or fine or both.	Presidency Magistrate Magistrate of the first or second class.
297	Trespassing in place of worship or sepulture, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
298	Uttering any word or making any sound in the hearing, or making any gesture or placing any object in the sight of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Compoundable.	Ditto	Ditto

* Inserted by Act 25 of 1927.

CHAPTLR XVI.—OFFENCES AFFETINC THE HUMAN BODY.

Of Offences affeeting life.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
302	Murder	May arrest without warrant.	Warrant ...	Not bailable.	Ditto ...	Death or transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death	Ditto
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportotion for life, or tmprisonment of either description for 10 years, or fine.	Ditto
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Ditto ...	Ditto ...	Ditto ...	Ditio ...	Imprisonment of either description for 10 years, or fine or both.	Ditto
304A	Causing death by rash or negligent act.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person or an idiot, or a person in oxicated.	Ditto ...	Ditto ...	Not bailable.	Dtto ...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
306	Abetting the commission of suicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
307	Attempt to murder	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Dltto	Ditto.
	If such act causes hurt to any person,	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
	Attempt by life-convict to murder, if hurt is caused.	Ditto ...	Dittn ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
308	Attempt to commit culpable homicide.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life and fine.	Court of Session.
	Of the Causing of Miscarriage ; of Injuries to Unborn Children ; of the Exposure of Infants ; and of the Concealment of Births.						
312	Causing miscarriage ...	Shall not arrest without warrant.	Warrant ...	Bailable.	Not compoundablh.	Imprisonment of either description for 3 years, or fine or both.	Court of Session.
	If the woman be quick with child.	Shall not arrest without warrant.	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not Bailable.	Ditto ...	Transporation for life or imprisonment of either, description for 10 years, and fine.	Ditto.
314	Death caused, by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
	If act done without woman's consent.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine or both.	Ditto
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable.	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	* Court of Session, Presidency Magistrate or Magistrate of the first class.
318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

* This entry was substituted by s, 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).
† The words "or second" were omitted by *ibid.*

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
323	Voluntarily causing hurt ...	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto
326	Voluntarily causing grievous hurt by dangerous weapons or means.	May arrest without warrant.	Summons.	Not bailable.	Not Compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security or to constrain to do	Ditto ...	Warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	*[Court of session, Presidency Magistra-

* Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	compoundable or not.	Punishmeut under I. P. C.	By what Court triable.
	anything which is illegal or which may facilitate the commission of an offence.						te or Magistrate of the first class.]
328	Administering stupefying drug with intent to cause hurt, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Session.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment, of either description for 10 years, and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Dilto ...	Ditto ...	Bailable.	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable.	Ditto ...	Imprisonment of either description for 3 years, or fine or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years, and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation	Shall not arrest without	Summons.	Bailable...	Compoundable.	Imprisonment of either description for 1 month.	Any Magistrate.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	not intending to hurt any other than the person who gave the provocation.	warrant.				or fine of 500 rupees. or both.	
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2000 rupees or both.	Court of Session. Presidency Magistrate or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto ...	Dltto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, etc.	Ditto ...	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years,	Ditto.

Of Wrongful Restraint and Wrongful Confinement.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compounda-ble or not.	Punishable under the I. P. C.	By what Court triable.
	life, etc.					or fine of 1,000 rupees, or both.	
341	Wrongfully restraining any person.	May arrest without warrant.	Summons ...	Bailable ...	Compound-able.	Simple Imprisonment for one month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year or fine of 1,000 rupees or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	*[Compoundable when permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
344	Wrongfully confining for 10 or more days.	Ditto ...	Ditto ...	Ditto ...	*[Not compoundable.]	Imprisonment of either description for 3 years, and fine.	Court of Session. Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Summons ...	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto ...	Ditto ...	*[Compoundable when permission is given by the Court before which the prosecution is pending.]	Ditto ...	Ditto
347	Wrongful confinement for the purpose of extorting property or constraining to an illegal Act, etc	Ditto ...	Ditto ...	Not compoundable.	Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
			Of Criminal Force and Assault.				
352	Assault or use of Criminal force otherwise than on grave	Shall not arrest with	Summons. ...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months,	Any Magistrate.

*Substituted by s. 169 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	provocation.	out warraut.				or fine of 500 rupees, or both.	
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant. ...	Warrant ...	Ditto ...	Not Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of crlminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto ...
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Ditto	Ditte ...
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	* [Compoundable when permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto ...

* Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant of summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Of Kidnapping, Abduction, Slavery and Forced Labour.						
363	Kidnapping.	May arrest without warrant.	Warrant ...	*[Bailable]	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
366A	Procuration of minor girl ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
366B	Importation of girl from foreign country.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

* Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	May arrest without warrant.	Warrant. ...	Not bailable.	Not compoundable.	Punishment for kidnapping or abduction.	*[Court of Session Presidency Magistrate or Magistrate of the first Class.]
369	Kidnapping or abducting a child with intent to take property from such person of such child.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable.	Ditto ...	Ditto	Court of Session.
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto ...	Not bailable.	Ditto ...	Transportation for life. or imprisonment of either description for 10 years, and fine.	Ditto ...
372	Selling or letting to hire a minor for purposes of prostitution, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto ...

* Substituted by Act 29 of 1925.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
374	Unlawful compulsory labour.	[*Shall not arrest without warrant.	Ditto ...	Bailable.	Compoundable.	Imprisonment of either description for 1 year, or fine or both.	Any Magistrate.
			Of Rape				
*376	Rape— If the sexual intercourse was by a man with his own wife not being under 12 years of age.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Chief Presidency Magistrate or District Magistrate.
	If the sexual intercourse was by a man with his own wife being under 12 years of age.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
	In any other case	May arrest without warrant.	Warrant ...	Not bailable.	Ditto ...	Ditto	Ditto ...
			Of Unnatural Offences.				
377	Unnatural offences	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

Of Theft.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
379	Theft.	May arrest without warrant.	Warrant ...	Not Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel.	Ditto.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session Presidency Magistrate or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it.	Ditto.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years, and fine.	Court of Session Presidency Magistrate or Magistrate of the first class.

Of Extortion.

384	Extortion	Shall not arrest without	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years,	Court of Session, Presi-

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
		warrant.				or fine, or both.	dency Magistrate or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years, and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Ditto.
	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life...	Ditto.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
	If the offence be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life...	Ditto.

Of Robbery and Dacoity.

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
392	Robbery	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If committed on the high way between sunset and sunrise.	Ditto ...	Ditto ...	Ditto. ...	Ditto ...	Rigorous Imprisonment for 14 years, and fine.	Ditto.
393	Attempt to commit robbery ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years, and fine.	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
395	Dacoity	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
396	Murder in dacoity, ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto ...
397	Robbery or dacoity with attempt to cause death or grievous hurt.			Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years	Ditto ...
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto ...
399	Making preparation to commit dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto ...

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under I P. C.	By what Court triable.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine,	Ditto ...
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
403	Dishonest misappropriation of movable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable.	Ditto ... *[Compoundable when permission is given by the Court before which the prosecution is pending]	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate
404	Dishonest misappropriation of property knowing that it was in possession of a deceased person at his death and that	Ditto ...	Warrant ...	Bailable.	Not Compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magis-

Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	it has not since been in the possession of any person legally entitled to it.						trate of the first class or second class.
*	If by clerk or person employed by deceased.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
			Of Criminal Breach of Trust.				
406	Criminal breach of trust.	May arrest without warrant	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
407	Criminal breach of trust by a carrier, wharfinger, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, etc,	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Court of Session Presidency Magistrate or Magistrate of the first class.

* The fignres "405" were omitted by s 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Of the receiving of Stolen Property.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 3 years or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
413	Habitually dealing in stolen property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto ...
414	Assisting in concealment for disposal of stolen property knowing it to be stolen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine or both.	Court of Session Presidency Magistrate or Magistrate of the first or second class.
			Of Cheating.				
417	Cheating	Shall not arrest without warrant.	Ditto ...	Bailable	*[Compoundable when permission is given by the Court	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

* Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not,	Punishment under the I. P. C.	By what Court triable.
					before which the prosecution is pending.]		
418	Cheating a person whose interest the offender was bound, either by law or by legal contract to protect.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both,	Court of Session. Presidency Magistrate or Magistrate of the first or second class.
419	Cheating by personation ...	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property or making, alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session, presidency Magistrate or Magistrate of the first class.
		Of Fraudulent Deeds and Disposition of Property.					
421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant.	Bailable.	Not compoundable	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second Class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property, of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
			Of Mischief.				
426	Mischief	Ditto ...	Summons.	Ditto ...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Not compoundable.	Ditto	Ditto.

1	2	3	4	5	6	7	8
Section.	Offence,	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second Class.
430	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Ditto ...	Ditto ...	Ditto ...	*Compoundable when permission is given by the Court before which the prosecution is pending.	Ditto	Ditto.
431	Mischief by injury to public road, bridge, navigable river, or navigable channel and rendering it impassable or less safe for travelling or conveying property.	Ditto ...	Ditto ...	Ditto ...	*Not compoundable.	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years,	Court of Session.

* Substituted by s. 159 ofthe Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	punishment under the I. P. C.	By what Court triable.
	light-house or sea-mark, or by exhibiting false lights.					or fine, or both.	
434	Mischief by destroying or moving, etc., a land-mark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto ...
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Dtto ...	Transportation for life or imprisonment of either description for 10 years, and fine.	Ditto.
43	Running vessel ashore with intent to commit theft, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
440	Mischief committed after preparation made for causing death, or hurt, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
			of Criminal. Trespass.				
447	Criminal trespass	May arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass	Ditto ...	Warrant. ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable.	*[Compoundable when per-	Imprisonment of either description for 2 years, and fine.	Any Magistrate.

* Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not,	Punishment under the I. P. C.	By what Court triable.
					mission is given by the Court before which the prosecution is pending.		
	If the offence is theft ...	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto
453	Lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, and fine.	Presidency Magistrate or Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	If the offence is theft. ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto ...
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	May arrest without warrant.	Warrant ...	Not bailable.	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, and fine.	Ditto.
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years, and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night after preparation made for causing hurt, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto ...
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Warrant ..	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
CHAPTER, XVIII—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS							
*465	Forgery	Shall not arrest without Warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	[Court of Session, Presidency Magistrate or Magistrate of the first class.]

*Vide A. I. R. 1932 Mad. 216.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
466	Forgery of a record of a Court of Justice or of a Register of Births, etc., kept by a public servant.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment, of either description for 10 years, and fine.	Ditto ...
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto ...
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto ...
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery of such document.	Same Court as that by which the forgery is triable.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
472	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc. knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either, description for 7 years, and fine.	Ditto
473	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate etc., knowing the same to be counterfeit.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine ; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto
475	Counterfeiting a device or mark used for authenticating documents described in section 467	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto

1	2	3	4	5	6	7	8
Section.	Offence.	Cog. or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	of the Indian Penal Code,* or possessing counterfeit marked material.						
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
477A	Falsification of accounts.	Ditto ...	Ditto ...	*[Bailable.]	Ditto ...	[*Imprisonment of either description for 7 years, or fine, or both.]	*[Court of Session, Presidency Magistrate or Magistrate of the first class.]
			Of Trade and Property Marks.				
482	Using a false trade or property mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant.	Bailable.	*[Compoundable when permission is given by	Imprisonment of either description for 1 year, or fine, or both,	Presidency Magistrate or Magistrate of the first or second class.

* Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
					the Court before which the posecution is pending.]		
483	Counterfeiting a trade or property mark used by another, with intent to cause damage or injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either cription for 2 years, or fine, or both.	Ditto.
484	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	Ditto ...	Summons.	Ditto ...	*Not Compoundable.	Imprisonment of either description for 3 years. and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 year, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	* [Compoundable with permission of the Court before	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

* Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

† This portion was added to the Schedule by s. 3 of the Currency Notes Forgery Act, 1899 (XII of 1899.)

1	2	3	4	5	6	7	8
Section	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
					which the prosecution is pending.]		
487	Fraudulently making a false mark upon any package or receptacle containing goods with intent to cause it to be believed that it contains goods which it does not contain, etc.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark.	Shall not arrest without warrant.	Summons. ...	Bailable.	Not Compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
	** Of Currency-Notes and Bank-Notes.*						
489A	Counterfeiting currency-notes or bank-notes.	May arrest without warrant.	Warrant.	Not bail-bail.	Not compoundable.	Transportation for life or imprisonment of either description for 10 years, and fine.	Court of Session.
489B	Using as a genuine forged or counterfeit currency-notes or bank-notes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or imprisonment, of either description for 10 years. and fine.	Ditto.

* This portion was added to the Schedule by s. 3 of the Currency Notes Forgery Act, 1899 (XII of 1899.)

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
489C	Possession of forged or counterfeit currency-notes or bank-notes.	Ditto ...	Ditto ...	Bailable. ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
489D	Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life or imprisonment of either description for 10 years, and fine.	Ditto
	CHAPTER XIX—CRIMINAL BREACH OF CONTRACTS OF SERVICE.						
490	Being bound by contract to render personal service during a voyage or journey or to convey or guard any property or person and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons.	Bailable.	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsonndness of mind or disease, and voluntarily omitting to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
492	Being bound by contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditio ...	Ditto ...	Imprisonment of either description for 1 month, or fine of double the expense incurred or both.	Ditto.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	compoundable or not.	Punishment under I. P. C.	By what Court triable.
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant	Not bailable.	Not Compoundable.	Imprisonment of either description for 10 years, and fine.	Court of Session.
494	Marrying again during the life time of a husband or wife.	Ditto ...	Ditto ...	Bailable.	*[Compoundable with permission of the Court before which a prosecution is pending.]	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto ...	Ditto ...	* Bailable	*Not compoundable.	Imprisonment of either description for 10 years, and fine.	[* Court of Session.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisoment of either description for 7 years, and fine.	Ditto
497	Adultery.	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magis-

* Substituted by s. 150 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923.)

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	trate or Magistrate of the first class. Presidency Magistrate or Magistrate of the first or second class.
	CHAPTER XXI.—DEFAMATION.						
500	Defamation.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine or both.	Court of Session. Presidency Magistrate or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Ditto	Presidency Magistrate or Magistrate of the first class.

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
506	Criminal intimidation.	Ditto ...	Ditto ...	Bailable.	Compoundable.	Ditto	* [Presidency Magistrate or Magistrate of the first and second class.] Court of Session, or Presidency Magistrate or Magistrate of the first class.
	If threat be to cause death or grievous hurt, etc.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 7 years or fine, or both.	Ditto.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ..	Ditto ...	Ditto ...	† [Compoundable].	Imprisonment of either description for 1 year, or fine, or both	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Shall not arrest without warrant.	Warrant ...	Ditto ...	† [Compoundable when permission is given by	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

* These words were substituted for the word "Ditto" by Part II of the Second Schedule to the Repealing and Amending Act, 1903 (1 of 1903).

† Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
					the Court before which the prosecution is pending].		
510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ..	*[Not compoundable.	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.
	CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.						
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence or fine, or both.	The Court by which the offence attempted is triable.
	Offences Against Other Laws.						
	If punishable with death, transportation or imprisonment for 7 years or upwards.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	.....	Court of Session.

* Substituted by s. 159 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

1	2	3	4	5	6	7	8
Section.	Offence.	Cognizable or not.	Warrant or Summons.	Bailable or not.	Compoundable or not.	Punishment under the I. P. C.	By what Court triable.
	If punishable with imprisonment for 3 years and upwards, but less than 7.	Ditto ...	Ditto ...	Not bailable except in cases under the Indian Arms Act 1878, section 19, which shall be bailable.		Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with imprisonment for 1 year and upwards, but less than 3 years.	Shall not arrest without warrant.	Summons ...	Bailable.	Ditto ...	.....	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If punishable with imprisonment for less than 1 year, or with fine only.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	... ...	Any Magistrate.

SCHEDULE III.

(*See section* 36.)

Ordinary Powers of Provincial Magistrates.

I.—Ordinary Powers of a Magistrate of the Third Class.

(1) Power to arrest or direct the arrest of, and to commit to custody, a person committing an offence in his presence, section 64.
(2) Power to arrest, or direct the arrest in his presence of, an offender, section 65.
(3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant sections 83, 84 and 86.
(4) Power to issue proclamations in cases judicially before him, section 87.
(5) Power to attach and sell property* [and to dispose of claims to attached property] in cases judicially before him, section 88.
(6) Power to restore attached property, section 89.
(7) Power to require search to be made for letters and telegrams, section 95.
(8) Power to issue search-warrant, section 96.
(9) Power to endorse a search-warrant and order delivery of thing found, section 99.
(10) Power to command unlawful assembly to disperse, section 127.
(11) Power to use civil force to disperse unlawful assembly, section 128.
(12) Power to require military force to be used to disperse unlawful assembly, section 130.
† * * * * *
(14) Power to authorise detention [†not being detention in the custody of the police] of a person during a police-investigation, section 167.
‡[(14*a*) Power to postpone issue of process and inquire into case himself, section 202.]
(15) Power to detain an offender found in Court, section 351.
(16) Power to take cognizance of offence, although committed by European British subject, and to issue process returnable before a Magistrate having jurisdiction, section 445.
(17) Power to apply to District Magistrate to issue commission for examination of witness, section 506 (2).
(18) Power to recovery forfeited bond for appearance before Magistrate's Court, section 514 ‡[and to require fresh security, section 514A]
[§(18*a*) Power to make order as to custody and disposal of property pending inquiry or trial, section 516A.]
(19) Power to make order as to disposal of property, section 517.
(20) Power to sell‖ property of suspected character, section 525.
¶[(21) Power to to require affidavit in support of application. section 539A.]
¶[(22) Power to make local inspection 539B.]

II.—Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of a third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.
**[(3) Power to postpone issue of process and to inquire into a case or direct investigation, section 202.]††

III—Ordinary Powers of a Magistrate of the first Class.

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.

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* These words were inserted by s. 160 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).
† These items were omitted by *ibid.*
‡ These items were inserted by *ibid.*
§ These words, figures and letter were added by s. 160 of Act 18 of 1923.
‖ Inserted by Act 18 of 1923.
¶ The word "perishable" was omitted by *ibid.*
** This item was substituted by *ibid.*
†† Items omitted by *ibid.*

(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107.
(5) Power to require security for good behaviour, section 109.
(6) Power to discharge sureties, section * [126A].
the Code of Criminal Procedure (Amendment) Act, 1923 [XVIII of 1923).
†[(6*a*) Power to make orders as to local nuisances, section 133].
(7) Power to make orders. etc., in possession cases, sections 145. 146 and 147.
‡[(7*a*) Power to record statements and confessions during a police investigation, section 164.]
†[(7*aa*) Power to authorize detention of a person in the custody of the police during a police investigation, section 167.]
†[(7*b*) Power to hold inquests, section 174.]
(8) Power to commit for trial, section 206.
(9) Power to stop proceedings when no complaint, section 249.
†[(9*a*) Power to tender pardon to accomplice during inquiry into case by himself, section 337.]
(10) Power to make orders of maintenance. sections, 488 and 489.
(11) Power to take evidence on commission, section 503.
(12) Power to recover penalty on forfeited bond, section 514.
†[(12*a*) Power to require fresh security, section 514A.]
†[(12*b*) Power to re-call case made over by him to another Magistrate, section 528 (4).]
(13) Power to make order as to first offenders, section 562.
‡ [(14) Power to order released convicts to notify residence, section 565.]

IV—Ordinary Powers of a Subdivisional Magistrate § [*appointed under section 13*].

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(3) Power to require security for good behaviour, section 110.

‖ * * * * * *

(5) Power to make orders prohibiting repetitions of nuisances, section,143.
(6) Power to make orders under section 144.
(7) Power to depute Subordinate Magistrate to make local inquiry, section 148.
(8) Power to order police investigation into cognizable case, section 156.
(9) Power to receive report of police-officer and pass order, section 173.

‖ * * * * * *

(11) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(12) Power to entertain complaints, section 190.
(13) Power to receive police-reports, section 190.
(14) Power to entertain cases without complaints, section 190.
(15) Power to transfer cases to a Subordinate Magistrate, section 192.
(16) Power to pass sentence on proceedings recorded by Subordinate Magistrate, section 349.
(17) Power to forward record of inferior Court to District Magistrate, section 435 (2).
(18) Power to sell property alleged or suspected to have been stolen, etc., section 524.
(19) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

¶ * * * * * *

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* These figures and letter were substituted for the figure "126" by section 160 of the Code of Crimisal Procedure (Amendment) Act, 1923 (XVIII of 1923).
† These items was inserted by s. 160 of Act, 18 of 1923.
‡ This item was added by *ibid.*
§ These words and figures were inserted by *ibid.*
‖ The items (4) and (10) were omitted by *ibid.*
¶ The item of 20 were omitted by s. 160 of the Code of Criminai Procedure (Amendment) Act, 1923 (XVIII of 1923).

V.—Ordinary Powers of a District Magistrate..

(1) The ordinary powers of a Sub-divisional Magistrate.
*[(1*a*) Power to try juvenile offenders section " 29B. "]†
(2) Power to require delivery of letters, telegrams, etc., section 95.
(3) Power to issue search-warrants for documents in cutsdy of postal or telegraph authority, section 96.
(4) Power to require security for good behaviour in case of sedition, section 108.
(7) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
(6) Power to cancel bond for keeping the peace. section 125.
‡[(6*a*) Power to order preliminary investigation by police-officer not below the rank of Inspector in certain cases, section 196B.]
(7) Power to try summarily, section 260.
‡[(7*a*) Power to tender pardon to accomplice at any stage of a case section 337.]
(8) Power to quash convictions in certain cases, section 350.
(9) Power to hear appeals from orders requiring security for ‡[keeping the peace or] good behaviour, section 406.
†[(9*a*) Power to hear appeals from orders of Magistrates refusing to accept or rejecting sureties, section 406A.]
†(10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(11) Power to call for records, section 435.
§[(12)] Power to order inquiry into complaint dismissed or case of accused discharged section ‖[436]
§[(13)] Power to order commitment, section ¶ [437].
(14) Power to report case to High Court, section 438.
(15) Power to try European British Subjects, section 443.
(16) Power to sentence European British Subjects to more than three months' imprisonment or one thousand rupees fine, or both, section 446.
(17) Power to appoint person to be public prosecutor in particular case, section 492 (2).
(18) Power to issue commission for examination of witness, sections 503, 506.
(19) Power to hear appeals from or revise orders passed under sections 514, 515,
(20) Power to compel restoration of abducted female, section 552.

SCHEDULE IV.

(*See sections* 37 *and* 38.)

Additional powers with which Provincial Magistrates may be invested.

Powers with which a Magistrate of the first class may be invested.

By the Local Government.

(1) Power to require security for good behaviour in case of sedition, section 108.
(2) Power to require security for good behaviour, section 110.
** * * * *
(4) Power to make orders prohibiting repetitions of nuisances, section 143.
(5) Power to make orders under, section 144.
**[* * * *

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* These items were inserted by s. 160 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)
† Substituted by Act 24 of 1934.
‡ These words were inserted by *Ibid.*
§ Original items (12) and (13) were re-numbered (13) and (12) respectively by s. 190 of Act. 18 of 1923.
‖ These figures were substituted for the figures "437" by *ibid.*
¶ These figures were substituted for the figures "436" by *ibid.*
** Items (3), (6) and (14) were omitted by s. 161 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(8) Power to take cognizance of offences upon complaint. section 190.
(9) Power to take cognizance of offences upon police reports, section 190.
(10) Power to take cognizance of offences without cemplaint, section 190.
(11) Power to try summarily, section 260.
(12) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407.
(13) Power to sell property alleged or suspected to have been stolen etc., section 524.
* * * * *
(15) Power to try cases under section 124A of the Indian Penal Code.

By the District Magistrate.

(1) Power to make orders prohibiting repetitions of nuisances, section 144.
(2) Power to make orders under section 144.
† * * * *
(4) Power to take cognizance of offences upon complaint, section 190.
(5) Power to take cognizance of offences upon police-reports, section 190.
(6) Power to transfer cases, section 192.

Powers with which a Magistrate of the second class may be invested.

By the Local Government.

‡ * * * * *
(2) Power to make orders prohibiting repetitions of nuisances, section 143.
(3) Power to make orders under, section 144.
§[(3*a*) Power to record statements and confessions during a police investigation, section 164]
§[(3*b*) Power to authorize detention of a person in the custody of the police during a police investigation, section 167].
(4) Power to hold inquests, section 174.
(5) Power to take cognizance of offences upon complaint, section 190.
(6) Power to take cognizance of offences upon police-reports, section 190.
(7) Power to take cognizance of offences without complaint, section 190.
(8) Power to commit for trial, section 206.
(9) Power to make order as to first offenders, section 562.

By the District Magistrate.

(1) Power to make orders prohibiting repetitions of nuisances, section 143.
(2) Power to make orders under, section 144.
(3) Power to hold inquests, section 174.
(4) Power to take cognizance of offences upon complaint, section 190.
(5) Power to take cognizance of offences upon police-reports, section 190.

Powers with which a Magistrate of the third class may be invested.

By the Local Government.

(1) Power to make orders prohibiting repetitions of nuisances, section 143.
‖ * * * *
(3) Power to hold inquests, section 174.
(4) Power to take cognizance of offences upon complaint, section 190.
(5) Power to take cognizance of offences upon police-reports, section, 190.
‖ * * * *

By the District Magistrate.

(1) Power to make orders prohibiting repetitions of nuisances section 143.
¶ * * *

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* Items (3), (6) and (14) were omitted by s. 161 of the Code of Criminal Procedure (Amendment) Act, 1923 XVIII of 1923).
† Item (3) was omitted by the Whipping Act, 1909 (IV of 1909.)
‡ Item (1) was repealed by the Whipping Act, 1909 (IV of 1909).)
§ These items were inserted by s. 161 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)
‖ Items (2) and (6) were omitted by s. 161 of Act 18 of 1923.
¶ Item (2) was omitted by *ibid.*

(3) Power to hold inquests, section 174.
(4) Power to take cognizance of offences upon complaint, section 190.
(5) Power to take cognizance of offences upon police-reports, section 190.

Powers with which a Subdivisional Magistrate may be invested.

By the Local Government.

Power to call for records, section 435.

SCHEDULE V.

*(See section 555)**

FORMS.

I—Summons to an accused person.

(See section 68.)

To of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*) before the (*Magistrate*) of on the day of . Herein fail not.

Dated this day of 18.

(*Seal.*) (*Signature*)

II—Warrant of Arrest.

(See section 75.)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said and to produce him before me. Herein fail not.

Dated this day of 18 .

(*Seal.*) (*Signature.*)

(See section 76.)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of with one surety in the sum of (or two sureties each in the sum of) to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of 18 .

(*Signature.*)

Notes.—Arrest is not invalidated where endorsement on warrant does not give designation of constable executing warrant A. I. R. 1932 Pat. 171=13 P. L. T. 135.

III.—Bond and bail-bond after arrest under a warrant.

(See section 86.)

I (*name*) of , being brought before the District Magistrate of (*or as the case may be*) uuder a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next, to answer to the said charge, and to continue so to attend until otherwise, direct-

* These figures were substituted for the figures "554" by part II of the Second Schedule to the Repealing and Amending Act, 1903 (I of 1903).

ed by the Court ; and, in case of my making default herein, I bind myself to forfeit, to Her Majesty the Queen, Empress of India the sum of rupees.

Dated this day of 18 .

(*Signature.*)

I do hereby declare myself surety for the abovenamed of , that he shall attend before in the Court of on the day of next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court ; and in case of his making default therein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees.

Dated this day of 18 .

(*Signature.*)

IV.—Proclamation requiring the appearance of a person accused.

(*See section 87.*)

WHEREAS complaint has been made before me that (*name, description and address*) had committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found, and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant) ;

Proclamation is hereby made that the said of is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint [on the day of],*

Dated day of 18 .

(*Signature.*)

V.—Proclamation requiring the attendance of a witness.

(*See section 87.*)

WHEREAS complaint has been made before me that (*name description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name description and address of the witness*) before this Court to be examined touching the matter of the said complaint ; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he absconded (*or* is concealing himself to avoid the service of the said warrant) ;

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next at o'clock to be examined touching the offence complained of.

Dated this day of 18 .

(*Seal.*) (*Signature,*)

VI.—Order of attachment to compel the attendance of a witness.

(*See section 88.*)

To the Police-officer in charge of the Police-station at

WHEREAS a warrant has been duly issued to compel the attendance of (*name. description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served ; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself

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* These words were substituted for the words "within days from the date" by Part II of the Second Schedule to the Repealing and Amending Act 1903 (I of 1903.)

to avoid the service of the said warrant) ; and thereupon a *[Proclamation has been or is being duly issued] and published requiring the said to appear and give evidence at the time and place mentioned therein.†

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the District of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(*Seal*) (*Signature.*)

Order of attachment to compel the appearance of a person accused.

(*See section 88.*)

To (*name and designation of the person or persons who is or are to execute the warrant,*)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* concealing himself to avoid the service of the said warrant), and thereupon a ‡[Proclamation has been or is being duly issued] and published requiring the said to appear to answer the said charge within days ; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town) of in the District of , *viz*, , and an order has been made for the attachment thereof ;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(*Seal*) (*Signature.*)

Order authorizing an attachment by the Deputy Commissioner as Collector.

(*See section 88.*)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code and has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant) and thereupon a †[proclamation has been or is being duly issued] and published requiring the said to appear to answer the said charge within days § ; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the District of

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* These words were substituted for the words "Proclamation was duly issued" by s. 162, of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The words "and he has failed to appear" were omitted by *ibid.*

‡ These words were substituted for the words "Proclametion was duly issued by section s. 62 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

§ The words "but he has not appeared" were ommitted by *ibid.*

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of the Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of 18 .

(*Seal*) (*Signature.*)

VII—Warrant in the first instance to bring up a witness.

(*See section 90.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant.*)

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*mention the offence conciesly*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so.

This is to authorize and require you to arrest the said (*name*) and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court this day of 18 .

(*Seal*) (*Signature.*)

VIII—Warrant to search after information of a particular offence.

(*See section 96.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant.*)

WHEREAS information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence conciesly*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made *or* about to be made into the said offence or suspected offence;

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place or part thereof to which the search is to be confined*) and, if found to produce the same forthwith before this Court, returning this warrant with an endorsement certifying what you have done under it, immediatetly upon its execution.

Given under my hand and the seal of the Court, the day of 18 .

(*Seal.*) (*Signature.*)

IX—Warrant to search suspected Place of Deposit.

(*See section 98.*)

To (*name and designation of a Police-officer above the rank of a Constable.*)

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or* sale) of stolen property *or if for either of the other purposes expressed in the section state the purpose in the words of the section.*

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use if necessary reasonable force for that purpose and, to search every part of the said house (*or other place, or if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or* documents. *or* stamps, *or* seals, *or* coins, "or obscence objects"* *as the case may be*)—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, counterfeit stamps, *or* false seals *or* counterfeit coin (*as the case*

* The words within quotations have been substituted by Act 8 of 1925.

may be)], and forthwith to bring before this Court such of the said things as may be taken possession of returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

X—Bond to keep the peace.

(*See section 107*)

WHEREAS I (*name*), inhabitant of (*place*), have been called upon to enter into a a bond to keep the peace, for the term of, † [or until the completion of the inquiry in the matter of now pending in the Court of ,] I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion breach of the peace, during the said term *[or until the completion of the said inquiry] and in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the queen, Empress of India, the sum of rupees

Dated this day of 18 .

(*Signature.*)

XI.—Bond for Good Behaviour.

(*See sections 108, 109 and 110.*)

WHEREAS I (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all Her subjects for the term of (*state the period*) *[or until the completion of the inquiry in the matter of

now pending in the Court of ,] I hereby bind myself to be of good behaviour to Her Majesty and to all Her subjects during the said term *[or until the completion of the said inquiry] ; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees

Dated this day of 18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*)—We do hereby declare ourselves sureties for the above-named that he will be of good behaviour to Her Majesty the Queen. Empress of India, and to all Her subjects during the said term *[or until the completion of the said inquiry] ; and in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees.

Dated this day of 18 .

(*Signature.*)

XII.—Summons on information of a Probable breach of the peace.

(*See section 114.*)

To of

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*, and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorised agent) at the Office of the Magistrate of on the day of 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [*when sureties are required add*, and also to give security by the bond of one [*or* two, *as the case may be*) surety

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* These words were inserted by s. 162 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(*or* sureties) in the sum of rupees . (each *if more than one*)] that you will keep the peace for the term of .

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XIII—Warrant of Commitment on Failure to find Security to keep the peace.

(*See section 123.*)

To the Superintendent (*or* keeper) of the Jail at

WHEREAS (*name and address*) appeared before me in person (*or* by his authorized agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (*or* a bond with two sureties each in rupees), that he, the said (*name*), would keep the peace for the period of months ; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime *[be lawfully ordered to be released] and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18

(*Seal.*) *Signature.*)

XIV.—Warrant of commitment on Failure to find Security for Good Behaviour.

(*See section 123*)

To the Superintendent (*or* keeper) of the Jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the district of having no ostensible means of subsistence (*or*, that he is unable to give any satisfactory account of himself ;

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded, from which it appears that he is an habitual robber (*or* house breaker, etc,, *as the case may be*) .

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime* [be lawfully ordered to be released] and to return the warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of

(*Seal.*) (*Signature.*)

* There words were substituted for the words "comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received, and the said (*name*) released" by Part II of the Second Schedule to the Repealing and Amending Act, 1903 (I of 1903) s. 3 and Part II of Second Schedule.

XV.—Warrant to discharge a Person imprisoned on failure to give Security

(*See sections 123 and 124.*)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is.*

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of the Court, dated the day of and has since duly given security under section of the Code of Criminal Procedure ;

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community ;

This is to authorize and require you forthwith to discharge ths said (*name*) from custody unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of 18

(*Seal*) (*Signature.*)

XVI.—Order for the removal of Nuisances.

(*See seetion* 133.)

To (*name, description and address,*)

WHEREAS it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*) which etc,, (*describe the road or public place*), by etc (*state what it is that causes the obstruction or nuisance*), and that snch obstruction (*or* nuisance) stiil exists ;

or

WHEREAS it has been made to appear to me that you are carrying on as owner or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (or comfort) by roason (*state briefly in what manner the injurious effects are caused*) and should be suppressed or removed to a different place :

WHEREAS it has been made to appear to me that you are owner (*or* are in possession of or have the control over) a certain tank (*or* well or excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of public is endangered by reason of the said tank (*or* well or excavation) being without a fence (*or* insecurely fenced) ;

or

WHEREAS etc., (*as the case may be*) ;

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance.*) or to appear at in the Court of on the day next, 2nd to show cause why this order should not be enforced ;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc. ;

or

I do hereby direct and require yon within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*) ; or to appear etc. ;

or

I do hereby direct and require you, etc ; (*as ihe case may be*).

Given under my hand and the seal of the Court, this day of 18

(*Seal.*) (*Signature.*)

XVII—Magistrate's Order constituting a Jury.

(*See section 138.*)

WHEREAS on the day of 18 , an order was issued to (*name*) requiring him (*state the effect of the order*) and whereas the

said (*name*) has applied to me, by a petition bearing date the day of or an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, etc., of the five or more Jurors*) to be the Jury to try and decide the said question, and do require the said Jury to report their decision within days from the date of this order at my office at

Given under my hand and the seal of the Court, this day of 18

(*Seal,*) (*Signature.*)

XVIII.—Magistrate's Notice and Peremptory Order after the finding by a Jury.

(*See section* 140),

To (*name, description and address*),

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*), on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of 18.

(*Seal.*) (*Signature.*)

XIX—Injunction to provide against Imminent Danger pending Inquiry by Jury.

(*See section* 142.)

To (*name, description and address*).

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the day of 18 is reasonable and proper is still pending and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18

(*Seal*), (*Signature.*)

XX.—Magistrate's Order Prohibiting the Repetition, etc, of a Nuisance.

(*See section* 143)

To (*name, description and address*).

WHEREAS it has been made to appear to me that, etc., (*state the proper recital, guided by* Form No. XVI or Form No. XXI *as the case may be*);

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, etc., (*as the case may be*) ;

Given under my hand and the seal of the Court, this day of 18

(*Seal.*) (*Signature.*)

XXI.—Magistrate's Order to prevent Obstruction, Riot, etc.

(*See section* 144.)

To (*name, description and address*).

WHEREAS it has been made to appear to me that you are in possession *or* (have the management) of (*describe clearly the property*), and that, in digging a drain on the said land you are about to throw or a place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road ;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious

procession along the public street, etc., (*as the case may be*), and that such procession is likely to lead to a riot or an affray

or

WHEREAS etc. etc., (*as the case may be*) ;

I do hereby order you not to place or permit to be placed any of the earth or stones dug from land on any part of the said road ;

or

I do hereby prohibit the procession passing along the said street and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Given under my hand and the seal of the Court, this day of 18

(*Seal.*) (*Signature.*)

XXII.—Magistrate's Order declaring Party entitled to retain Possession of land, etc., in Dispute.

(*See Section* 145.)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, only if the dispute be between bodies of villagers*) concerning certain (*estate concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true ;

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by the due course of law, and do strictly forbid any disturbance of his (*or* their) possession in in the meantime.

Given under my hand and the seal of the Court this day of

(*Seal.*) (*Signature.*)

XXIII—Warrant of attachment in the Case of a Dispute as to the Possession of Land, etc.

(*See Section* 146.)

To the Police officer in charge of the Police-station at

[*or* To the Collector of].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) [situate within the limits of my jurisdiction and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*) and whereas, upon due inquiry into the claims, I have decided that neither of the said parties was in possession of the said (*the subjec of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid] ;

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession. shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature*).

XXIV.—Magistrate's Order prohibiting the doing of anything on Land or Water.

(*See section 147.*)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me on due inquiry into the same, that the said land (*or* water, has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons describe him or them*) and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the instruction of the said inquiry (*or, if the use is enjoyable only at particular seasons, say* "during the last of the seasons at which the same is capable of being enjoyed");

I do order that the said (*the claimant or claimants of possession*), or any one in their interest, shall not take (or retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or* they) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*) (*Signature.*)

XXV.—Bond and Bailbond on a Preliminary injuiry before a Police-officer.

(*See section 169.*)

I (*name*) of being charged with the offence of and after inquiry required to appear before the Magistrate of

or

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at , in the Court of on the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forefeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of 18 .

(*Signature.*)

I hereby declare myself (*or* we jointly and severally declare ourselves and each of us) surety (*or* sureties) for the abovesaid that he shall attend at in the Court of , on the day of next (*or* on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of 18.

(*Signature*).

XXVI—Bond to prosecute or Give Evidence.

(*See section 170.*)

I (*name*) of (*place*), do hereby bind myself to attend at in the Court of at o'clock on the day of next and then and there to prosecute (*or* to prosecute and give evidence) (*or* to give evidence) in the matter of a charge of against one *A.*, *B.*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of 18.

(*Signature.*)

XXVII—Notice of Commitment by Magistrate to Government Pleader.

(*See section 218.*)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions ; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, etc., (*state the offence as in the charge.*)

Dated this day of 18 .

XXVIII—Charges.

(*See sections 221, 222, 223.*)

(*a*) I [*name and office of Magistrate, etc.*,] hereby charge you [*name of accused person*] as follows ;—

(*b*) that you, on or about the day of at waged war against Her Majesty the Queen Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code and within the cognizance of the Court of Session [*when the charge is framed a Presidency Magistrate, for* Court of Session *substitute.* High Court]

On Penal Code, section 121.

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

[*To be substituted for* (b)] :—

(2) That you, on or about the day of at with the intention of inducing the Hon'ble *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 124.

(3) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*] a gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 161.

(4) That you, on or about the day of at did [*or* omitted to do, *as the case may be*] such conduct being contrary the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code and within the cognizance of the Court of Session [*or* High Court].

On section 166.

(5) That you, on or about the day of at in the course of the trial of before , stated in evidence that " " which statement you either knew or believed to be false or did not believe to be true, and thereby committed an offence punishable under section 393 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.]

On section 193.

(6) That you, on or about the day of at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code and within the cognizance of the Court of Session [*or* High Court.]

On section 304.

(7) That you, on or about the day of at abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code and within the cognizance of the Court of Session [*or* High Court].

On the section 306.

(8) That you, on or about the day of at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On the section 325.

(9) That you, on or about the day of at , robbed (*state the name*), and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

(10) That you, on or about the day of at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 395.

[*In cases tried by Magistrate substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," and in (*c*) omit "by the said Court."]

(II) Charge with two or More Heads.

(*a*) I [*name and office of Magistrate etc.*,] hereby charge you [*name of accused person*] as follows :—

(*b*) *First*—That you, on or about the day of at knowing a coin to be counterfeit, delivered the same to another person by name *A.* B., as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.]

On section 241.

Secondly.—That you, on or about the day of at knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.]

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*)

[*To be substituted for* (b)] ;—

(2) *First*.—That you, on or about the day of at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code. and within the cognizance of the Court of Session [*or* High Court.]

On sections 302 and 304.

Secondly.—That you, on or about the day of at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code and within the cognizance of the Court of Session [*or* High Court].

(3) *First*.—That you, on or about the day of at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.]

On section 379 and 382.

Secondly.—That you, on or about the day of at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishhble under section 382 of the Indian Penal Code, ond within the cognizance of the Court of Session [*or* High Court.]

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charge on section 193.

(4) That you, on or about the day of , in the course of the inquiry into , before , stated in evidence that " " and that you, on or about the day of at to the course of the trial of before , stated in the evidence that " " one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrate substitute* "within my cognizance" *for* "within the cognizance of the Court of Session" *and in* (*c*) *omit* "by the said Court".]

(III) Charge for theft after previous Conviction.

I (name and office of Magistrate, etc.,). hereby charge you (*name of accused person*) as follows :—

That you, on or about the day of . at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* $\frac{\text{High Court}}{\text{Magistrate}}$ *as the case may be.*]

And you, the said (*name of accused*), stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*), at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried etc.

XXIX.—Warrant of Commitment on a Sentence of imprisonment or Fine if passed by Magistrate.

(*See section 245 and 258.*)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS on the day of 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calender for 18 was convicted before me (*name and official designation*) of the offence (*mention the offence or offences concisely*) under section (*or* sections) of the Indian Penal Code (*or* of Act), and was sentenced to (*state the punishment fully and distinctly*) ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court this day of 18 .

(*Seal.*) (*Signature.*)

XXX—Warrant of Imprisonment on failure to recover amends by *[attachment and sale].

(*See section 250.*)

To Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*) and the same has been dismissed as † [false and] frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends ; and whereas the said sum has not been paid ‡ and an order has been made for his simple imprisonment in Jail for the period of days. unless the aforesaid sum be sooner paid ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XXXI.—Summons to Witness.

(*See section 68 and 252.*)

To of

WHEREAS complaint has been made before me that has (*or* is suspected to have) committed the offence of (*state the offence concisely with time and place,*) and it appears to me that you are likely to give material evidence for the prosecution ;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court ; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*). (*Signature*).

XXXII.—Precept to District Magistrate to summon Jurors and Assessors.

(*See section 326.*)

To the District Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of Jurors and Assessors furnished to this Court ; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*) (*Signature*)

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* These words were substituted for the word "Distress" by s. 162 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by *ibid.*

‡ The words "and cannot be recovered by distress of the moveable property of the said (*name of complainant*)" were omitted by s. 162 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

XXXIII.—Summons to Assessor or Juror.

(*See section 328*).

To (*name*) of (*place*).

PURSUANT to a precept directed to me by the Court of Session of requiring your attendence as an Assessor (*or* a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next,

Give under my hand and the seal of office this day of 18 .

(*Seal*). (*Signature*).

XXXIV.—Warrant of Commitment under Sentence of Death.

(*See section 374*).

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS at the Session held before me on the day of 18 . (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

This is to authorize and require you the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and him there safely to keep untill you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of 18.

(*Seal*). (*Signature*).

XXXV.—Warrant of Execution on a Sentence of Death.

(*See section 381*).

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name of prisoner*) the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calender at the Session held before me on the day of , 18 , has been by warrant of this Court, dated the day of , committed to your custody under sentence of death ; and whereas the order of the Court of confirming the said sentence has been received by this Court ;

This is to authorize and require you, the said Superintendent (*or* Keeper) to carry the said sentence into execution by causing the said to be hanged by the neck untill he be dead at (*time and place of excution*), and to turn this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*). (*Signature*).

XXXVI—Warrant after a Commutation of a Sentence.

(*See sections 381 and 382*).

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS at a Session held on the day of 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calender at the said Session, was convicted of the offence of punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody ; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or as the case may be*) ;

This is to authorize and require you, (the said Superintendent *or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said Jail as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said

order *or if the mitigated sentence is one of imprisonment, say, after the words,* custody in the said Jail, "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of 18 ,

(*Seal*) (*Signature*).

XXXVII—Warrant to levy a fine by* (Attachment) and Sale.

(*See section* 386 † [(*1*) (*a*).]

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant.*)

WHEREAS (*name and description of the offender*) was on the day of 18 , convicted before me of the offence of (*mention the offence concisely*), and sentenced to pay a fine of rupees ; and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof ;

This is to authorize and require you ‡ to [attach any] moveable property belonging to the said (*name*) which may be found within the district of ; and if within (*state the number of days or hours allowed*) next after § [such attachment] the said sum shall not be paid (*or* forthwith) to sell the moveable‖ [property attached], or so much thereof as shall be sufficient to satisfy the said fine returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18

(*Seal*) (*Signature*).

¶XXXVIIA.—Bond for appearance of offender released pending realisation of fine.

(*See sec. 388*).

WHEREAS I, (*name*), inhabitant of (*place*), have been sentenced to pay a fine of rupees and in default of payment thereof to undergo imprisonment for ; and whereas the Court has been pleased to order my release** on condition of my executing a bond for my appearance †† [on the following date (*or* dates) namely :—] ;

I hereby bind myself to appear before the Court of at o'clock†† [on the following date (*or* dates) namely :—] and in case of making default herein. I bind myself to forfeit to His Majesty the King Emperor of India, the sum of Rupees

Date this day of 19 .

(*Signature*),

Where a bond with sureties is to be executed, add—

We do hereby declare ourselves sureties for the above-named that he will appear before the Court of ††[on the following date (*or* dates) namely :—] and in case of his making default therein, we bind ourselves jointly and severally to forfeit to His Majesty the King, Emperor of India, the sum of Rupees

(*Signature*),

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* This word substituted for the word "Distress" by s. 162 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The figure, letter and brackets were inserted by *ibid.*

‡ These words were substituted for the words "make distress by seizure of any" by *ibid.*

§ These words were substituted for the words "such distress" by sec. 162 of Act XVIII of 1923.

‖ These words were substituted for the words "property distrained" by *ibid.*

¶ Form XXXVIIA was inserted by *ibid.*

** The words "until the day of " were omitted by s. 5 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923).

†† These words were substituted for the words "on that day" "on the said day of next" and "on the day of next" by *ibid.*

XXXVIII—Warrant of Commitment in certain cases of Contempt when a Fine is imposed.

(*See section 480.*)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the Superintendent (*or* Keeper) of the said jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless the fine be sooner paid; and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*). (*Signature*).

XXXIX—Magistrate's or Judge's Warrant of Commitment of Witness refusing to answer.

(*See section 485*).

To (*name and description of officer of Court*).

WHEREAS (*name and description*), being summoned (or brought before this Court as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorize and require you to take the said (*name*) into custody and him safely to keep in your custody for the space of days unless in the meantime he shall consent to be examined and to answer the question asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*). (*Signature*).

XL.—Warrant of Imprisonment on Failure to pay Maintenance.

(*See section 488*).

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [or his child (*name*) who is by reason of (*state the reason*) unable to maintain herself (*or himself*)] and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the the said (*name*) in wilful disregard of the said order has failed to pay rupees : being the amount of the allowance for the month (or months) of : And thereupon an order was made adjuding him to undergo simple (or rigorous) imprisonment in the said Jail for the period of ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant, with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature*).

XLI.—Warrant enforce the payment of Maintenance by *[Attachment] and Sale.

(*See section 488.*)

To (*name and designation of the Police officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees.

, and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ;

This is to authorize and require you to †[attach any] moveable property belonging to the said (*name*) which may be found within the district of and if within (*state the number of days or hours allowed*) next after *[such attachment] the said sum shall not be paid (*or* forthwith), to sell the moveable †[property attached], or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature*).

XLII.—Bond and bail-bond on a Preliminary Inquiry Before a Magistrate.

(*See sections 496 and 499*).

I (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge and, should the case be sent for trial by the Court of Session, to be, and appear before the said Court when called upon to answer the charge against me ; and, in case of my making default herein. I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of 18 .

(*Signature*).

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein. I bind myself (*or* we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees.

Dated this day of 18 .

(*Signature*).

Notes.—Form 42 includes Succeeding Court. 24 A. L. J. 325=27 Cr. L. J. 377.

XLIII.—Warrant to discharge a Person imprisoned on Failure to give security.

(*See Section 500*).

To the Superintendent (*or* Keeper) of the Jail at

(*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of

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* This word was substituted for the word "distress" by s. 102 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "such distress" by *ibid.*

‡ Vide foot note* at p. 504.

§ These words were substituted for the words "property distrained" by s. 102 of Act XVIII of 1923.

, and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure ;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*). (*Signature*).

XLIV.—Warrant of Attachment to enforce a Bond.

(*See section 514*).

To the Police-officer in charge of a Police station at

WHEREAS (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*) ; and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him ;

This is to authorise and require you to attach any moveable property of the said (*name*) that you may find within the district of , by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*). (*Signature*).

XLV.—Notice to Surety on Breach of a Bond.

(*See section 514*).

To of

WHEREAS on the day of 18 , you became surety for (*name*) of (*place*) that he should appear before this Court on the day of and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India ; and whereas the said (*name*) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal,*) (*Signature*).

XLVI—Notice to Surety of forfeiture of Bond for Good Behaviour,

(*See section 514*).

To of

WHEREAS on the day of 18 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India ; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety whereby your security bond has become forfeited.

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature*).

XLVII—Warrant of Attachment against a Surety.

(*See section 514*).

To of

WHEREAS (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*) ;

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the district of by seizure and detention : and, if the said amount be not paid within three days. to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid, and may return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature*).

XLVIII—Warrant of Commitment of the Surety of an Accused Person admitted to Bail.

(*See section 514*).

To the Superintendent (*or* Keeper) of the Civil Jail at

WHEREAS (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*) and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India ; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil jail for (*specify the period*) ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*) and to return this warrant warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 ,

(*Seal.*) (*Signature*).

XLIV—Notice to the Principal of forfeiture of a Bond to keep the Peace.

(*See section 514*)

To (*name, description and address*).

WHEREAS on the day of 18 , you entered into a bond not to commit etc. (*as in the bond*), and proof of the forfeiture of the same has given before me and duly recorded ;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*). (*Signature*).

L—Warrant to attach the Property of the Principal on Breach of a Bond to keep the Peace

(*See Section* 514)

To (*name. and designation of Police-officer*), at the Police-station of

WHEREAS (*name and description*) did on the day of 18 , enter into a bond for the sum of rupees binding himself not to commit a breach of the peace, etc., (*as in the bond*), and proof of the forefeiture of the said bond has been given before me and duly recorded ; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the satd sum ;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you my find within the district of and, if the said sum be not paid within , to sell the property so attached or so much of it as may be sufficient to realise the same ; and to make return of what you have done under this warrant immediately upon its execution.

Given under may hand and the seal of the Court, this day of 11 .

(*Seal*). (*Signature*).

LI—Warrant of imprisonment on Breach of a Bond to keep the Peace.

(*See Section* 514.)

To the Superintendent (*or* Keeper) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*) ;

This is to authorize and require you the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and to keep him sefely in the said Jail for the said period of (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal*). (*Signature*)

LII.—Warrant of Attachment and sale on Forfeiture of Bond for Good Behaviour.

(*See section* 514.)

To the Police-officer in charge of the Police-station at

WHEREAS (*name, description and address*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name etc, of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of whereby the said bond has been forfeited ; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, aud he has failed to do so or to pay the said sum ;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of Rs. which you may find

within the district of , and, if the said sum be not paid within to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediateiy upon its execution.

Given under my hand and the seal of the Court, the of 18 .

(*Seal*), (*Signature*)t

LIII.—Warrant of Imprisonment on Forfeiture of Bond for Good Behaviour.

(*See seetion* 514)

To the Superintendent (*or* Keeper) of the Civil Jail at

WHEREAS (*name description and address*) did, on the day of 18 , give security by bonnd in the sum of rupess for the good behaviour of (*name etc., of the principal*), and duly recorded, whereby the said (*name*) has forfeited to Her Majesty Queen, Empress of India, the sum of rupees and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*nzme*) in the Civil Jail for the period of (*term of imprisonment*) :

This is to authorize and require you, the Superintendent (*or* Keeper) to receive the said (*name*) into your custody, tegether with this warrant. and to keep him safely in the said Jail for the said period of (*term of imprisonment*), returning this warrant with an endorsement certifying the manner of its execution,

Given under my hand and the seal of of the Court, this day of 18 .

(*Seal*). (*Signature*).

SUPPLEMENT TO N. D. BASU'S CRIMINAL PROCEDURE CODE

AMENDMENTS TO CR. PRCEDURE CODE

BY

Government of India (Adaptation of Indian Laws) Order, 1937

TO BE IN FORCE IN BRITISH INDIA.

Section 4.—In clause (j) of sub-section (1) omit "Rangoon"; and for "Governor-General in Council substitute "Provincial Government."

Section 25.—Omit from "the Governor-General" (where those words first occur) to "the Governor-General and."

Omit sections 26 and 27.

Section 30.—Leave out "and Burma."

Section 45.—In sub-section (1) for "Government" substitute "the Crown", and in clause (ii) of sub-section (2) for "the Governor-General in Council" substitute "the Central Government or the Crown Representative."

Section 72.—For "Government" substitute "Crown."

Sections 88 and 89.—For "Government" substitute "the Provincial Government."

Section 108.—Omit "the Governor-General in Council or", and for "by the Governor-General in Council" substitute "by the Provincial Government."

Section 178.—After "Act, 1915" insert "or section 224 of the Government of India Act, 1935."

Section 194.—After "Act, 1915" insert "or the Government of India Act, 1935"; omit "the Governor-General in Council or" and for "shall belong to the Government of India" substitute "shall form part of the revenues of the Province."

Sections 196 and 196A.—For "the Governor-General in Council", the Local Government or some officer empowered by the Governor-General in Council" substitute "the Provincial Government or some officer empowered by the Provincial Government."

Section 197.—In sub-section (1) for "previous sanction of the Local Government" substitute "previous sanction—

(*a*) in the case of a person employed in connection with the affairs of the Federation, of the Governor-General exercising his individual judgment; and

(*b*) in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exercising his individual judgment."

In sub-section (2) for "such Government" substitute "the Governor-General or Governor, as the case may be, exercising his individual judgment."

After sub-section (2) insert—

"(3) In relation to the period elapsing between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation, the reference in this section to the Federation and to the Governor-General exercising his individual judgment shall be construed as references to the Governor-General in Council."

Section 266.—For the words from "means" to "*Gazette of India*" substitute "means a High Court within the meaning of the Government of India Act, 1935, and includes such other Courts as the Provincial Government may by notification in the official Gazette".

Section 267.—After "Act, 1915", insert "or the Government of India Act, 1935."

Section 315.—For sub-section (4) substitute—

"(4) The Provincial Government may exempt any salaried servant of the Crown from serving as a juror."

Section 320.—For clause (*aa*) substitute—

"(*aa*) Members of any Legislature in British India;"

Section 329.—For "Government" substitute "Crown".

Section 335.—In sub-section (1) for the words from "Governor-General" to "other High Courts" substitute "Provincial Government", and in sub-section (2) omit "in the case of the High Court at Fort William with the consent of the Governor-General in Council and in all other cases."

Section 401.—In sub-sections (1), (2) and (3) omit "the Governor-General in Council or"; in sub-sections (2) and (3) omit "as the case may be", and in the sub-section (6) omit "Governor-General in Council and the."

Section 402.—Omit "Governor-General in Council or the."

After section 402 insert—

"402A. The Powers conferred by sections 401 and 402 upon the Provincial Government may, in the case of sentences of death, also be exercised by the Governor-General in his discretion."

Sentences of death.

Omit section 448.

Section 491.—In clause (d) of sub-section (1) omit from "acting under" to "Governor-General in Council."

Section 492.—Omit "Governor-General in Council or the."

Section 503.—In sub-section (2) for "the territories of any Prince or Chief in India" substitute "any Indian State or tribal area" and for "British Indian Government" substitute "the Central Government or the Crown Representative."

Section 524.—For "Government" substitute "Provincial Government."

Section 527.—For "Governor-General in Council" substitute "Provincial Government", and at the end of sub-section (1), insert—

"Provided that no case or appeal shall be transferred to a High Court or the Court in another Province without the consent of the Provincial Government of that Province.

Section 528D.—For "the Governor-General in Council or the Indian Legislature" substitute "the Central Legislature".

Section 554.—In sub-section (1) for the words from the beginning to "any other High Court" substitute "with the previous sanction of the Provincial Government, any High Court."

Section 555.—For "section 107 of the Government of India Act, 1915", substitute "section 224 of the Government of India Act, 1935."

Section 558.—For "the High Courts established by Royal Charter" substitute "the Courts which are High Courts for the purposes of the Government of India Act, 1935."

Section 565.—For "the territories of any Prince or State in India acting under the general or special authority of the Governor-General in Council or of any Local Government" substitute "any Indian State acting under the general or special authority of the Central Government or of the Crown Representative."

AMENDMENTS TO CR. PROCEDURE CODE

BY

The Government of Burma (Adaptation of Laws) Order, 1937.

TO BE IN FORCE IN BRITISH BURMA.

The Code of Criminal Procedure, 1898.

(V of 1898.)

Throughout the Act, unless otherwise provided, for "British India" substitute "British Burma", for "India" substitute "Burma" for "a High Court" "any High Court" "the High Courts" and "every High Court" substitute "the High Court" ; and omit "established by Royal Charter" wherever those words are used in relation to any High Court.

Section 1.—In sub-section (2) omit the words from "or shall apply to" to the end of the sub-section.

Section 3.—Omit "the expression" Magistrate of Police, shall be deemed to mean "Presidency Magistrate and".

Section 4.—In sub-section (1) omit clause (a) and renumber existing clause (b) as clause (a).

Insert a clause (b)—

"(b) 'Burman', when used as a noun, means a native of Burma ; and 'Burman British subject' means a subject of His Majesty who is a native of Burma.

In clause (f) omit "within or without the Presidency-towns".

Omit clause (j).

In clause (n) omit "within or without a Presidency-town."

In clause (r) omit "or a mukhtar" and "a vakil and an attorney."

After clause (s) insert—(ss) 'Political Agent' has the same meaning as that assigned to the expression in section 2 (g) of the Burma Extradition Act".

Section 6.—Omit "II—Presidency Magistrates."

Section 7.—In sub-section (1) for "Every Province (excluding the Presidency-towns) shall be a sessions division, or" substitute "British Burma."

Omit sub-section (4).

Section 8.—sub-section 1
Section 9.—In the heading
Section 10—sub-section (1)
Section 12—sub-section (1)
Section 14—sub-section (1)
Section 15.—sub-section (1)

Omit "outside the Presidency-towns."

Omit sections 18, 19, 20 and 21.

Section 22.—For "every Local Government, so far as regards the territories subject to its administration" substitute "the Governor".

For section 25 substitute the following section—

"25. In virtue of their respective offices, the Governor, the Judges of the High Court, Sessions Judges and District Magistrates are justices of the peace within and for the whole of British Burma."

Omit section 26 and 27.

Section 29B.—Omit "or a Chief Presidency Magistrate."

Section 30.—Omit the words from "in the territories" to "Assistant Commissioners".

Section 32.—In clause (a) of sub-section (1) omit "Presidency Magistrates and of."

Section 40.—Omit "under the same Local Government."

Sections 42 and 44.—Omit "whether within or without the Presidency-towns."

Section 45.—In sub-section (1) omit "village-accountant, village-watchman" "or the Court of Words" and "accountant, watchman."

Section 48.—For "notification" substitute "announcement."
Omit sub-section (2) of section 54, sub-section (2) of section 55, sub-section (2) of section 56 and sub-section (3) of section 68.

Section 70.—Omit "or, in a Presidency-town, with his servant residing with him."

Section 77.—In sub-section (1) omit "and when issued by a Presidency Magistrate shall always be so directed", and for "other Court" substitute 'the Court."

Section 83.—In sub-section (1) omit "or the Commissioner of Police in a Presidency-town" and in sub-section (2) omit "or Commissioner."

Section 84.—Omit sub-section (4).

Section 85.—Omit "or the Commissioner of Police in a Presidency-town." and "or Commissioner."

Section 86.—Omit the first "or Commissioner" and for "District Superintendent or Commissioner" substitute "or District Superintendent."

Section 88.—In sub-sections (2), (6 B) and (6 C) omit "or Chief Presidency Magistrate" and in sub-section (6 C) omit "or to any Presidency Magistrate as the case may be."

Section 94.—In sub-section (1) omit "in any place beyond the limits of the town of Calcutta and Bombay."

Section 95.—Omit "Chief Presidency Magistrate."

Section 96.—In sub-section (2) omit "or Chief Presidency Magistrate."

Section 98.—In sub-section (1) omit the first "Presidency Magistrate" and for "Sub-divisional Magistrate or a Presidency Magistrate" substitute "or a Sub-divisional Magistrate."

Section 100.—Omit "Presidency Magistrate."

Section 106.—Omit "or the Court of a Presidency Magistrate."

Section 107.—In sub-section (1) omit "Presidency Magistrate."
In sub-section (2) omit "Chief Presidency or."

Section 108.—Omit "Chief Presidency or" "Presidency Magistrate or" and "or the Local Government."

Sections 109 and 110.—Omit "Presidency Magistrate."

Section 123.—In sub-section (2) omit "or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court ;"
In sub-section (3 A.) omit "or the High Court."

Section 124.—In sub-section (1) omit "or a Chief Presidency Magistrate."
In sub-section (2) omit "Chief Presidency or".
In sub-sections (5) and (6) omit "or Chief Presidency Magistrate."

Section 125.—Omit "Chief Presidency or."

Section 126.—In sub-section (1) omit "Presidency Magistrate."

Section 127.—Omit sub-section (2).

Section 128.—Omit "whether within or without the Presidency-towns."

Section 144.—In sub-section (1) omit "Chief Presidency Magistrate" and "or the Chief Presidency Magistrate."

Section 155.—In sub-section (2) omit "or of a Presidency Magistrate."

Section. 164.—In sub-section (1) omit "Any Presidency Magistrate."

Section 174.—Omit sub-section (4).

Section 178.—After "Act, 1915," insert "or section 85 of the Government of Burma Act, 1935."
Omit section 184.

Section 185.—In sub-section (1) omit "same" and for "that" substitute "the" ; and omit sub-section (2).

Section 186.—In sub-section (1) omit "a Presidency Magistrate."

Section 187.—In sub-section (1) omit a "Presideny Magistrate."

Section 188.—For "Native Indian subject of Her Majesty" substitute "British subject domiciled in Burma" for "the territories of any Native Prince or Chief in India" substitute "Burma outside British Burma."

Section 190.—In sub-section (1) omit "Presidency Magistrate."

Section 192.—In sub-section (1) omit "Chief Presidency Magistrate."

Section 194.—In sub-section (1) for "granted under the Indian High Courts Act, 1861, or the Government of India Act, 1915" substitute "of the High Court."

In sub-section (2) omit "or the Local Government" and for "Government of India" substitute "Crown."

Section 196.—Omit "the Local Government."

Section 196A.—Omit the first "the Local Government" and "Chief Presidency Magistrate or."

Section 196B.—Omit "or Chief Presidency Magistrate."

Section 197.—For "a Local Government" and "such Government" substitute "the Governor."

Section 200.—Omit proviso (b).

Section 202.—Omit sub-section (3).

Section 206.—Omit "Presidency Magistrate."

Section 208.—Omit sub-section (4).

Section 213.—In sub-section (1) omit (unless the Magistrate is a Presidency Magistrate)."

Section 219.—In sub-section (2) omit "Where the Magistrate is not a Presidency Magistrate."

Section 221.—For sub-section (6) substitute—"(6) The charge shall be written either in English or the language of the Court."

Omit section 266.

Section 267.—Omit the words from "under this Code" to "1915."

Section 275.— In sub-section (1) for "European or Indian" substitute "European or Burman or Indian" for "an Indian" substitute "a Burman or Indian"; and for "Indians" substitute "Burmans or Indians."

Section 276.—In the proviso 'thirdly' for "before any High Court in the town which is the usual place of sitting of such High Court" substitute "at Rangoon before the High Court."

Section 284A.—In sub-section (1) for "Indian" substitute "Burman or Indian" and for "Indians" substitute "Burmans or Indians."

Section 285A.—For "an Indian British subject" substitute "a Burman or Indian British subject"; for "being an Indian" substitute "being a Burman or an Indian;" and for "Indian British subject or American" substitute "such Burman or Indian British subject, or such American as the case may be."

Section 312.—For "Indians" substitute "Burmans or of Indians."

Section 313.—For sub-section (4) substitute—

"(4) The Governor may exempt any salaried officer of Government from serving as a juror.

Section 315.—In sub-section (1) for "the town which is the usual place of sitting of each High Court" substitute "Rangoon."

Section 316.—For "the town which is the place of sitting of such High Court" substitute "Rangoon".

Section 320.—For clause (aa) substitute—

"(aa) members of either chamber of the Legislature."

Section 326.—In sub-section (3) for "Indians" substitute "Burmans or Indians."

Section 335.—In sub-section (1) for the words from "Governor-General in Council" to "other High Courts" substitute "Governor."

In sub-section (2) omit the words from "in the case of" to "in all other cases."

Section 337.—In sub-section (1) omit "a Presidency Magistrate."

Section 346.—Omit "outside the Presidency towns."

Sections 354 and 355.—Omit "other than a Presidency Magistrate."

Section 356.—Omit "other than Presidency Magistrates."

Omit section 362.

Section 364.—Omit "or the Chief Court of Oudh" and "or in the course of a trial held by a Presidency Magistrate."

Section 365.—Omit "and the Chief Court of Oudh."

Omit section 370.

Section 377.—For "shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them" substitute "shall be made, passed and signed by at least two of the Judges of the Court."

Section 387.—Omit "or Chief Presidency Magistrate."

Section 401.—In sub-section (3) omit "or the Local Government."

In sub-section (2) omit "or the Local Government" and "or the Local Government as the case may be."

In sub-section (2) omit "or the Local Government as the case may be" and "or the Local Government."

In sub-section (6) omit "or the Local Government."

Section 402.—Omit "and the Local Government."

Section 403.—In sub-section (5) for "section 26 of the General Clauses Act, 1897" substitute "the Burma General Clauses Act."

Section 406.—For paragraphs (a) and (b) substitute : "to the Court of Session," and in the proviso omit "or a Presidency Magistrate."

Section 406A.—Omit "(*a*) if made by a Presidency Magistrate, to the High Court."

Omit section 411.

Section 412.—Omit "Presidency Magistrate or".

Omit sections 432 and 433.

Section 434.—Omit "consisting of more Judges than one and."

Section 439.—In sub-section (3) omit "a Presidency Magistrate or."

Omit section 441.

Chapter XXXIII.—In the heading for "Indian" substitute "Burman or Indian."

Section 443.—In sub-section (1) omit "outside a Presidency town."; in clause (*a*) for "Indian" substitute "Burman or Indian"; in clause (*b*) for "an Indian" substitute "a Burman or Indian."

Section 445.—In sub-section (1) for "an Indian" substitute "a Burman or an Indian."

Section 446.—In sub-section (2) for "Indian" substitute "Burman or Indian" and for "Indians" substitute "Burmans or Indians."

Section 449.—Omit clause (*c*) of sub-section (1).

In sub-section (3) omit "where the High Court consists of more than one Judge."

Section 475.—In sub-section (1) for "such Local Government" substitute "the Governor."

Section 476.—In sub-section (1) omit "For the purposes of this section; a Presidency Magistrate shall be deemed to be a Magistrate of the first class."

Section 479.—Omit "Presidency Magistrate."

Section 486.—In sub-section (4) omit "or, in the Presidency towns, to the High Court."

Section 488.—In sub-section (1) omit "a Presidency Magistrate."

Section 491.—In sub-section (3) omit all after "1818"

Section 491A.—For "Any High Court established by letters patent" substitute "The High Court."

Section 492.—In sub-section (1) omit "or the Local Government."

Section 495.—In sub-section (1) omit "standing Council; Government solicitor."

Section 503.—In sub-section (1) omit "a Presidency Magistrate."

In sub-section (2) for "Prince or Chief in India" substitute "Chief of karenni", and omit "British Indian."

Omit section 504.

In section 506, sub-section (1) of section 514, and sections 514A and 515 omit 'Presidency Magistrate or."

Section 514.—In sub-section (3) omit "or Chief Presidency Magistrate."

Section 524.—In sub-section (1) omit "Presidency Magistrate."

Section 526.—In sub-section (2) omit "other than the Court of a Presidency Magistrate."

Section 528.—In sub-section (2) omit "Chief Presidency Magistrate."

Omit sub-section (6).

Chapter XLIV—A.—In the heading for "Indian" substitute "Burman or Indian."

Sections 528A, 528B and 528C.—For "Indian" substitute "Burman or Indian."

Section 528D.—Omit "made by the Governor-General in Council or the Indian Legislature."

Omit section 542.

Section 552.—Omit "Presidency Magistrate or".

Omit section 553.

Section 554.—For sub-section (1) substitute—

"(1) With the previous sanction of the Governor, the High Court may, make rules for inspection of subordinate Courts."

Omit sub-section (2).

Section 555.—For "section 107 of the Government of India Act, 1915" substitute "section 85 of the Government of Burma Act, 1935."

Section 558.—Substitute the following section—

"558. The Governor may determine what, for the purposes of this Code, shall be deemed to be the language of each Court other than the High Court."

Section 559.—In sub-section (2) omit "the Chief Presidency Magistrate in Presidency town, and" and "outside such towns."

Section 561.—Omit "a Chief Presidency Magistrate or."

Section 564.—Omit sub-section (2).

Section 556.—In sub-section (1) for "Prince or State in India" substitute "Chief of Karenni" and omit "or of any Local Government" and "Presidency Magistrate."

Schedule II.—Omit the references to "Presidency Magistrate" and "Chief Magistrate."

Schedules III and IV.—In the headings omit "Provincial."

Schedule V.—Omit "Empress of India" and "Emperor of India."

In clause (*ii*) of Form XXVIII for "[when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court.]"; substitute [or High Court]".

Omit Clause (2).

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The Indian Evidence Act.

ACT NO. 1 OF 1872.

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THE INDIAN EVIDENCE ACT, 1872.

ACT NO. 1 OF 1872.

[*15th March, 1872.*]

Preamable.

WHEREAS it is expedient to consolidate, define and amend the law of Evidence; It is hereby enacted as follows :—

Scope of the Act.—This Act does not contain the whole law of evidence govering this country. Section 2 of the Act saves rules of evidence contained in any Statute, Act or Regulation in force. *In Re Radolph Stallman,* 15 C. W. N. 1053=39 C. 164=14 C. L. J. 375.

Lex Fori—"The law of evidence is the *lex fori* which govern the Courts. Whether a witness is competent or not: whether certain matter requires to be proved by writing or not: whether a certain evidence proves a certain fact or not: that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced, and where the Court sits to enforce it." *Per Lord Brougham in Bain* v. *Whitehaven and Furness Junction Railway Company.* 3 H. L. C. I.

English decisions.—The English decisions relating to evidence can be relied upon in India. The rules of evidence are subject to the general principles of jurisprudence. *Annavi* v. *Emperor,* 39. M. 449=28 M. L. J. 329. This act has codified the English law of evidence, with few exceptions. *Gujju Lal* v. *Fateh Lal,* 6 C. 171 6 C. L. R. 439; see also 17 B. 129; 4 B. 576. But the Act is not servile copy of the English Law. 10 B. 439.

History of ths Law of Evidence.—"Reasoning, the rational method of settling disputed questions, is the modern substitute for certain formal and mechanical tests which flourished among our ancestors for centuries, and in the midst of which the trial by jury emerged. When two men to-day settle which is the best man by a prize fight we get an accurate notion of the old Germanic trial. Who is it that 'tries' the question? The men themselves. There are referees and rules of the game, but no determination of the dispute on grounds of reason—by the rational method. So it was with 'trial by battle' in our old law; the issue of right, in a writ of right, including all elements of law and fact, was 'tried' by this physical struggle, and the Judges of the Common Pleas act, like the referee at a prize-fight, simply to administer the procedure, the rules of the game. So of the Kin'gs Bench in Criminal Appeals; and so sat Richard II at the trial of the appeal of treason between Bolingbroke and Norfolk, as Shakespeare represents it in the play. So of the various ordeals; the accused party 'tried' his own case by undergoing the given requirement as to hot iron, or water, or the crumb. So of the oath; the question, both law and fact, was 'tried' merely by the oath, with or without fellow swearers. The old 'trial by witness' was a testing of the question in like manner by their mere oath. So a record was said to 'try' itself. And so when out of the midst of these methods first came the trial by jury, it was the jury's oath, or rather their verdict, that tried the case. How this method of trial came to swallow up the others, and then to lose its chief features and become shaped into an instrument of our modern purely rational procedure, is a long story, and is not for this place. But now, when we use the phrase 'trial' and 'trial by jury' we mean a rational ascertainment of facts, and a rational ascertaining and application of rules. What was formerly tried by the method of force or the mechanical following of form is now tried by the method of reason.—*Thayer, Cases on Evidence.* Mr. Wigmore divides the period of development of the law of evidence into marked periods. According to him the first period is from the primitive time upto the 12th centuty, thence to the sixteenth, thence to the seventeenth, thence to 1790 A. D., thence to 1830 and thence to the present time. As regards development during the first period no reliable data are available—though certain rules can be traced up to that earliest time. The next three centuries marked the establishment of the trial by jury and the separation of the process of pleading and procedure form that of proof. Between 1500 A. D., and 1700 A. D., the foundation of the present system was laid. During that period we find the regulation of the competency of witnesses, the rules

of privileges and privileged communication, the rules for attorneys, the compulsory attendance of witnesses, the privilege against self-criminations the parol evidence rule, and the enactment of the Statute of Frauds. The fourth period of ninety years, saw the final establishment of cross-examination by counsel, the rule for the impeachment and corroboration of witness, the "best evidence" doctrine, and publication of the first treatise on the law of evidence, by chief *Baron Gilbert*. The next forty years (1790-1830) saw a tremendous increase of the rulings upon evidence there being more than in the preceding two centuries. The thirty years ending with 1860 will ever be associated with the names of *Bentham, Broughham and Denham—Burr-Jones*, 6. In 1872, the Indian Evidence Act was enacted which is based on English law.

Origin of the Law of Evidence.—In the submission of the facts which constitute the evidence in a, there have been embarrassments, real and imaginary, which have resulted in the development of a set of rules. These rules relate to the use of such facts in Court as evidence, and make up the "law of evidence". The embarrassments referred to above may be attributed, in the early stages of law, mainly to the jury—the one feature of the English judicial system in which it differs from all others. The jury, from the time it began to take on the character of an arbiter of facts, must have been a disturbing element in the work of the Court. It was an uncertain quantity, which int he eyes of the Judge, needed to be guarded against.

When the jury existed merely as body of witnesses, supposed by familiar with the facts, who from their own knowledge stated what the facts were (*Bushell's case*, Vaughan, 135, 142, 147, 149) the Court could in the application of the law to the facts, exercise a control over the result which was impossible when the character of the jury changed. With the development of the jury into a reasoning, inference-drawing body of men, possessing the power to determine the ultimate facts in issue, and by their verdict to judicially settle the controversy, the situation, to the mind of the Judge, was full of embarrassments. To what conclusions might not those men come ; men ignorant of the law and its methods, unfamiliar with the ways of counsel, open to the influence of testimony and arguments presented solely for the purpose of playing upon their sympathy, passion and prejudice. This was a situation to be deplored, and to be relieved of its danger as far as possible.

Accordingly, with the beginning of the use of evidence before juries, we find the beginnings of the law of evidence. Statements to which the Courts might listen with impunity were carefully kept from the jury by excluding rules, established by the Judges.

It must not be supposed that these excluding rules came into existence all at once. The development of the jury into its final shape was a gradual one ; and the growth of rules governing the use of evidence before the jury was equally gradual. It is immaterial to enquire here as to the kind of evidence was excluded ; that is to be found in any English treatise on ths Law of Evidence. It is sufficient to say that, in general, everything except what was actually within the personal knowledge of the witness was considered unsafe to put before the jury. Thus heresay and opinion were both objectionable. In this way the susceptibility of the jury played its parts in mouldlng the law of evidence into its modern form.

The supposed ignorance of the average jury was also an important factor in the evolution of the rules of evidence. Things likely to complicate the case, to confirm the mind, or mislead as to the real facts in issue were accordingly excluded.

With the expansion of the work of the Courts and the ever increasing volume of business brought before them a necessity arose for shortening, of trials and the expediting of the work in every possible way. This influence was a powerful one in its effect upon the admission of evidence. Much that was logically relevant, and indeed worthy of consideration, if minute enquiry was possible, became inadmissible. upon the theory that it was too remote, or of slight importance. Collateral matters these were in the main,—matters likely to lead to prolonged collateral inquiry with a meager result in the way of inference compelling proof when finished.

Other things operated to make it easy and natural for the Courts to establish rules relating to the use of evidence. The policy of the law in respect to persons charged with wrongs which extends to them the extreme limit of fairness, is responsible for the growth of an important class of excluding rules. Such rules

shut out from the consideration of the jury any facts bearing upon character or habit ; and thus, although in many intances previous character would be logically a most important piece of evidence from which to infer the truth as to facts in issue.

We may thus get some idea of the elements which have for centuries been at work moulding forms into which matters of evidence for judicial tribunals must be cast, building barries within which they must be confined, and wearing grooves along which the wheels of judicial enquiry must run. *Mckelveys' Laws and Evidence* pp. 9, 10.

PART 1.

Relevancy of Facts.

CHAPTER 1.

PRELIMINARY.

Short title.

1. This act may be called the Indian Evidence Act, 1872.

Extent.

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-martial, "other than Courts-martial convened under the Army Act" ; ["the Naval discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934"] * [or Air Force Act]† but not to affidavits presented to any Court or officer nor to proceedings before an arbitrator ;

Commencement of Act.

and it shall come into force on the first day of September, 1872.

Legislative Changes.—The words within quotation has been added by Act 18 of 1919.

Application.—It extends to the whole of British India. For definition of the term of British India, vide Act X 1897 s. 7. It has been declared in force in the Santhal Perganas by Reg. 3 of 1873 s. 3 as amended by Reg. 3 of 1899, s 3 ; in the Angul District. by Reg. 3. of 1913, s' 3 ; in the Chittagong Hill tracts by Reg. 1 of 1900 s 4 ; in the Arakan Hill District by Reg. 1 of 1916, s. 2 ; in Kochin Hill tracts, as regards Hill tribes by Reg. 1 of 1895, s. 3 ; in certain tracts in the Chin Hills by Reg. 5 of 1896, s. 3 in Upper Burma, except Shan States (with an addition) by 13 of 1898, s. 4 ; in British Baluchistan (with a modification) by Reg. 2 of 1913. s. 3.

Judicial Proceeding.—An inquiry is judicial if the object of it is to determine a jural relation between one person and another or a group of persons ; or between him and the community generally ; but even a Judge acting without such an object in view is not acting judicially 12 B. 36 ; see also 15 M. 138 ; 10 M. I. A. 340 ;

Court.—For definition of the term, vide s. 3.

Affidavits.—A declaration in the shape of affidavits cannot be received as evidence of the facts stated in it. 14 C. 653. "In England discretionary powers are vested in the Court : (i) to order any particular fact or facts to be proved by affidavit ; (*ii*) to allow the affidavit of any witness to be read at a hearing or trial on such conditions as it may think reasonable, with this proviso, that when the opposite party *bonafide* desire to cross-examine a witness, and the witness can be produced, such witness's evidence shall not be allowed to be given by affidavit" *Powell.* 695.

Courts-Martial.—The rules of evidence as contained in this Act do not apply to Courts-martial held either under 38 vict. c. 7 or under 44 & 45 Vict. 58. Courts-martial must adopt the same rules of evidence as those followed in the Courts of ordinary criminal jurisdiction in England (*Powell* 18).

Arbitrator.—Vide 11 M. 85 ; 1 W. R. 12 ; but see 4 C. 231.

Repeal of enactments.

2. On and from that day the following laws shall be repealed :—

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* Inserted by Act 35 of 1934. † Added by Act X of 1927.

(1) all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India ;

(2) all such rules, laws and regulations as have acquired the force of law under the 25th section of the Indian Councils Act, 1861, in so far as they relate to any matter herein provided for ; and

(3) the enactments mentioned in the schedule hereto to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Scope.—This section repeals all rules of evidence not contained in any Statute or Regulation. Thus the English common law on the subject of evidence is repealed. 7 I. A. 70=5 C. 754. The Hindu and Mahomedan law of evidence is also repealed. 76 P. R. 1891. see also 19 A. L. J. 713 ; 11 P. L. J. 355 ; 1 A 53 ; 10 A. 289. Clause 1 repeals the English common law on the law on the subject of evidence. 5 C. 754. But this Act does not contain the whole law of evidence. 39 C. 164. See also 7 A. 285 ; 1 A. 53 ; 1 A. 297 ; 11 A. 433 ; 10 A. 289. There are various statutes of the British Parliament and Arts of Indian Legislature which contain provisions relating to evidence. Those Statutes and Acts of Indian Legislature which were passed before the Indian Evidence Act (1 of 1872) are unaffected by this Act. 15 C. W. N. 1053 ; 5 C. 754=7 I. A. 70 ; 14 C. 721 (F. B.) ; 49 B. 368=27 Bom. L. R. 251=A. I. R. 1925 Bom. 231.

Interpretation-clause.

3. In this [Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

"Court."

"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

"Fact."

"Fact" means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

Illustrations

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation, is a fact.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows,

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, * any Court records an issue of fact to be asserted or denied in the answer to such issue is a fact in issue.

* *See* now Act V of 1908.

Illustrations.

A is accused of the murder of B.
At his trial the following facts may be in issue:—
that A caused B's death ;
that A intended to cause B's death ;
that A, had received grave and sudden provocation from B ;
that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind. incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter.

'Document"

Illustrations.

A writing is a document ;
Words printed, lithographed or photographed are documents :
A map or plan is a document :
An inscription on a mental plate or stone is document ;
A caricature is a document.

"Evidence" "Evidence," means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ; such statements are called oral evidence ;
(3) all documents produced for the inspection of the Court : such documents are called documentary evidence.

A fact is said to be proved when after, considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Proved".

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Disproved".

"Not proved" A fact is said not to be proved when it is neither proved nor disproved.

Court.—The definition of "Court" is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. 12 B. 36. The word "Court" in the above section means and includes, in a trial by jury, both. Judge and jury. 4C. 483=3 C. L. R. 270 (F. B), A sub-registrar is a Court as defined in this Act. 13 B. L. R. App. 10=22 W. R. Cr. 10. The Court means all persons, except arbitrators, legally authorized to take evidence. 15 M. 138=2 M. L. J. 64 (F. B.) ; see also 16 M. 421 ; 17 Cr. L. J. 491=36 Ind. Cas. 171.

Fact.—"Ordinarily, a fact is something done or which has come to pass ; an act or deed or event, an effect produced or a result achieved ; anything regarded as strictly true or actually existent, whether material or mental ; reality ; actuality. In legal use in includes the fact that any mental condition of which any person is conscious exists. The legal meaning is not limited to what is tangible or visible or in any way the object of sense. Things invisible, mere thoughts, intentions, fancies of the mind, when conceived of as existing or being true, are conceived of as facts. For the student to evolve his own idea of what a legal fact is in its relation to evidence, the first step in process of ratiocination must be the recognition that the signification of the term "evidence" is not self-contained, and that it presents no complete idea to the mind, unless in connection with the object to which it necessarily relates. That object is fact or matter of fact."—*Burr. Jones Ev. 66.* The word "fact" is not restricted to something which can

be exhibited as a material object. It also includes phychological fact or mental condition of which any person is conscious. A. I. R. 1935 Mad. 528 (F. B.)

Relevant.—"The relevant facts are facts other than *facts in issue* which are in the eye of the law so connected with or related to the facts in issue that they render the latter probable or improbable, or roughly throw light upon them. Relevancy may indeed be considered as synonymous with "connection" a word which frequently appears in discussions on the subject. Of course both words must be taken in their legal meaning, which is generally restricted. Common sense or logical relevancy is, as a rule, wider than legal relevancy. A Judge might, in ordinary transactions take one fact as evidence of another, and act upon it himself, when, in Court, he would rule that it was legally irrevalent. And he may exclude facts, although relevant, if they appear to him too remote to be really material to the issue." *Cockle Cas.* 56. The first conditions which a fact, proof of which as an evidentiary fact is offered, must fulfil, is that it must be evidential of the main fact. It must furnish a basis from which the main fact can be inferred. The first duty of the Court is to apply the underlying principle of the law of evidence, namely, logical relevancy for the purpose of determining whether or not the fact offered can be evidence. If the fact meet this test, it may or may not be admitted. For flanked round the general principle on the law of evidence that what is logically relevant is admissible, are numerous excluding rules, which say that this or that fact though logically relevant, is inadmissible. The jury, as a feature of the English judicial system, is responsible for the existence of many of these rules, though each has its own peculiar principle upon which it is founded. These rules, and their application form a large portion of the bar of evidence.—*Mckelvey's Law of Evidence p.* 13. The word "relevant" in this Act means admissible. *Per Lord Hobhouse* in *Lala Lakhmi Chand* v. *Haidar Shah* 3 C. W. N. 268 (notes).

Facts in issue.—Facts in issue are those which are alleged by one party and denied by the other on the pleading in a civil case; or alleged in the indictment and denied by the plea of "not guilty," in a criminal case, so far as they are in either case material. There is, therefore, little difficulty in ascertaining what are the facts in issue. *Cockle Cas.* 56. Facts in issue are those facts which are necessary by law to establish the claim liability, or defence, forming the subject matter of the proceedings; and which, either by the pleadings or by implication, are in dispute between the parties. Facts in issue are determinable primarily by the substantive law, and secondly by the pleadings. *Phip. Ev.* 43.

Documents.—The term "document' is one of difficult definition, many so-called documents being more properly classed under the head of real evidence. Best. defines "document" as including "all material substance, on which the thoughts of men are represented by writing, or any other species of conventional mark or symbol," and expressly includes milkmans' score, exchequer tallies, and the like (*Best.* § 215). Wharton defines documents as an instrument on which are recorded, by means of letters, figures, or marks, matters which may be evidentially used." (1 *Whart. Ev.* § *614*). Stephen's definition is similar, though more restricted. "Any substance having any matter expressed or described upon it by mark capable of being read." (*Dig Law, Ev, art 1*). Within those definitions, a ring or banner with an inscription, a musical composition, and a savage tattooed with words intelligible to himself, would all be documents. Photographs caricatures wooden tallies, and the like, would probably be excluded under Stephen's definition; not apparently under the others. *Best.* 213. The definition given in this Act is wider than the definition mentioned in Stephen's Digest. This definition seems to include all those things mentioned above. Where a draft petition was prepared with the intention of being used as evidence of a matter, it was held that it fell within the terms of the section. 10 W. R. 61 Cr.=2 B. L. R. 12. An agreement in which some of the executant signed is a document. 41 M. 589=43 Ind. Cas. 593=19 Cr. L. J. 177. Letter or marks imprinted on trees and intended to be used as evidence that the trees had been passed for removal by the Ranger are documents. A. I. R. 1925 Bom. 327=27 Bom. L. R. 599=26 Cr. L. J. 1014=87 Ind. Cas. 839. The definition of the word "document" in this section applies to the word as used in s. 2 (6) of the Press (Emergency Powers) Act, 1931 A. I. R. 1934 All 1031.

Evidence.—This definition is open to the criticism that it does not include those facts which in judicial proceedings may be addressed directly to the sense of the

Court or jury. (*Bur. Jones, Ev. S. 3*). Says. *Profess of Greenleaf*: "Evidence in legal acceptation includes all the means by which alleged matter of fact, the truth of which is submitted to investigation, is established or disproved." (*1. Green. Ev. s. 1*). It includes "all the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact the truth of which is submitted to judicial investigation" (*Taylor 1 § 1 ; Powell, 1*). The term "evidence" in its ordinary sense signifies that which makes apparent the truth of a matter in question. It is no doubt more frequently applied to proof before a judical tribunal, but it is not necessarily confined to this sense, it applies with equal correctness to information, intimation acquired by any person, who undertakes an enquiry on any matter in question. 4 M. 393. The demeanour of a witness is evidence. 21 W. R. Cr. 13 F. B. ; 21 C. 279. The best and simplest definition of the word 'evidence' is that it is any matter of fact from which an inference may be drawn as to another matter of fact. *Bentham* in his *Rationale of Judicial Evidence* (vol. I p. 17) states that evidence includes "any matter of fact the effect, tendency, or design of which, when presented to the mind, is to produce a persuasion either affirmative or disaffirmative of its existence" *Prof Thayer* substantially follows Bentham's idea, but narrows the scope of the word to "any matter of fact which is furnished to a legal tribunal otherwise than by reasoning or a reference to which is noticed without proof as the basis of inference in ascertaining some other matter of fact." (3) *Harv Law Rev. 143*.). The word "evidence" in this Act signifies only the instruments by means of which relevant facts are brought before the court, viz, witnesses and documents, and by means of which court is convinced of these facts. 26 N. L. R. 229=125 Ind. Cas. 673=31 Cr. L. J. 881=A. I. R. 1929 Nag. 242 (F. B.), The word "evidence" as defined in this Act does not include the whole material of the judges belief; for instance a Magistrate or a Judge may question the prisoner and the prisoner's answer to the Magistrate may be used against him ; but they are not "evidence" under the definition. L. B. R. (1893—1900), 338. Confession made by one prisoner affecting himself and others jointly under trial for the same offence, is evidence although the Act has not called it so. 4 C. 492 (F. B.) ; see also 10 B. 326 ; but see 15 B. 66 ; Rat. Un. Cr. C. 311 ; 2 L. B. 272. A statement made by an accused person during a police investigation, on soleman affirmation before a Magistrate is evidence. 11 B. 702. This definition must be read with "proved". Vide 9 C. 363 ; 16 C. W. N. 426 ; 1. C. W. N. 682.

Proved.—A fact is said to be proved, when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A much stricter degree of proof is required in criminal proceedings than in civil ones, and in criminal proceedings the persuasion of guilt must amount to such a moral certainty as convinces the mind of the tribunal as reasonable men, beyond all reasonable doubt. It is the business of the prosecution to bring guilt home to the accused, to the satisfaction of the minds of the jury, but the doubt, to the benefit of which the accused is entitled, must be such as a rational, thinking, sensible man may fairly and reasonably entertain, not the doubt of a vacillating mind, that has not the moral courage to decide, "but shelters in a vain and idle scepticism." There must be no doubts which a man may honestly and conscientiously entertain. 3 L. B. R. 216=4 Cr. L. J. 382. A *prima facie* case is not the same thing as proof. A. I. R. 1931 Cal. 607. "There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability, due regard being had to the burden of proof is a sufficient basis of decision ; but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required. The serious consequences of an erroneous condemnation. both to the accused and society, the immeasurably greater evils which flow from it than from an erroneous acquittal have induced the laws of every wise and civilised nation to lay down the principle, though often lost sight of in practice, that the pursuasion of guilt ought to amount to a moral certainty ; or as an eminent judge expressed it, 'such a moral certainty' as convinces the minds of the tribunal, as reasonable men beyoud all reasonable doubt. The expression 'moral certainty' is here used in contra-distinction to physical certainty, or certainty properly so called ; for the physical possibility of the innocence of any accused person can never be excluded, *Best § 95*. See also 5 W. R. Cr. 28 : 21 W. R. Cr. 13 ; 4 W. R. Cr. 19 ; 7 W. R. Cr. 14 ; 11 W. R. Cr. 20 ; 11 C. 642 ; 22 C. 323 ; 8 C. W. N. 828 ; A. I. R. 1931 Mad. 689.

Matters before it.—"It would appear, that the Legislature intentionally refrained from using the word "evidence" in this definition but used instead the words 'matters before it.' For instance a fact may be orally admitted in Court. The admission would not come within the definition of the word evidence as given in this Act but still it is a matter which the Court before whom the admission was made would have to take into consideration in order to determine whether the particular fact was proved or not." *Per Mitter J.* in 9 C. 363=12 Cr. L. R. 490 ; see also 16 C. W. N. 426. Therefore in determining what is *evidence* other than "evidence" in the phraseology of the Act, the definition of "evidence" must be read with that of "proved." Thus though the result of the enquiry instituted by the Munsif is not evidence according to the definition in the Evidence Act, it is a matter before the Court, which the Court can take into consideration *Ibid.* But a judge without giving evidence can not impart his own knowledge into a case. 3 I. A. 287 ; 11 M. I. A 213 ; 22 W. R. 9 ; 24 W. R. 81 ; 24 W. R. Cr. 28.

Distinction between proof and evidence.—The word evidence in legal acceptation, includes all the means by which any alleged matter of fact the truth of which is submitted to investigation is established or disproved. This term, and the word proof are often used indifferently, as synonymous with each other ; but the latter is applied by the most accurate logicians to the effect of evidence, and not to the medium by which truth is established. None but mathematical truth is susceptible of that high degree of evidence called demonstration which excludes all possibility of error, and which, therefore, may reasonably be required in support of every mathematical deduction. Matters of fact are proved by moral evidence alone ; by which is meant not only that kind of evidence which is employed on subjects connected with moral conduct but all the evidence which is not obtained either from intention or from demonstration. In the ordinary affairs of life, we do not require demonstrative evidence, because it is not inconsistent with the nature of the subject and to insist upon it would be unreasonable and absurd. The most that can be affirmed of such things is, that the there is no reasonable doubt concerning them. The true question, therefore, in trials of facts, is not whether it is possible that the testimony may be false, but whether there is sufficient possibility of its truth ; that is whether the facts are shown by competent and satisfactory evidence. Things established by competent and satisfactory evidence are said to to be proved.—*Greanleaf on the Law of Evidence* p. 4.

"May presume."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it ;

"Shall presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

"Conclusive proof."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Presumption.—"A presumption is an inference as to a matter of fact which a Judge draws, or directs a jury to draw, as a matter of law."—*Powell*, 387. "Presumption are aids to reasoning and argumentation, which assume the truth of certain matters for the purpose of some inquiry. They may be grounded on general experience, or probability of any kind ; or merely on policy and convenience. On whatever basis they rest, they operate in advance of argument or evidence or irrespective of it, by taking something for granted ; by assuming it existence : when the term is legitimately applied it designates a rule or a proposition which still lives open to further inquiry the matter thus assumed. The exact scope and operation of those *prima facie* assumptions are to cast upon the party against whom they operate, the duty of going forward, in argument or evidence, on the particular point to which they relate.....Presumptions are not in themselves either argument or evidence, although for the time being they accomplish the result of both...Presumption, assumption, taking for granted, are simply so many names for an act or process which aids or shortens inquiry and argument." *Thayer Cas.* 38.

Division of presumption.—English text writers divides presumptions into three classes ;—(1) Presumption of fact (2) Rebutable presumption of law and (3) Irrebuttable presumption of law ; see also A. I. R. 1932 Mad. 343.

May presume.—The first class of presumption, mentioned by English text writers comes under this definition. It is nothing more than an argument more or less cogent ; it is an inference of one fact drawn from other facts. (*Vide Powell*, 386). The Court where it may presume a fact has the discretion to presume it as proved or to call for proof of it, as it thinks best. 1 A. L. J. 121 ; see also 26 A. 581 (586)=31 I. A. 21=7 O. C. 290. The presumption mentioned in this clause is hard and fast presumption incapable of rebuttal a *presumptio juries it de jure.* 7 Bom. L. R. 969=3 Cr. L J. 32. The word "may presume" in s. 90 ought generally to be construed in more rigorous of the sum allowed by s. 4. 110 P. L. R. 1902 ; 7 O. C. 290 (P. C.) ; 11 M. L. T. 69.

Shall presume.—A presumption of law must be distinguished from *prima facie* evidence of fact. The latter no doubt seems to shift the burden of proof. A presumption of law can also be rebutted. But until it is rebutted, the presumption stands good and the judge must give effect to it, without calling further proof of the same. (*Vide Powell*, 388). This presumption derives, its force from jurisprudence as distinguished from logic. More strictly speaking it is an "assumption" of the law rather than a presumption. Presumptions of fact are obviously of varying weight. The law, for its own purposes segregates certain of the stronger presumptions of fact, and assumes that the inference is the correct one, unless and until evidence is introduced to prove that it is not. Such a presumption may be created either by Statute or by Judicial legislation." *Best 304.* The definition of the word "shall presume" given in the section can not be extended to other statutes except by express legislation to that effect. 33 A. 799 (808) F. B. In the Indian Evidence Act the words "shall presume" indicate that the presumption mentioned therein is rebuttable presumption. *Ibid* ; see also 32 A 427 (F. B.) under s. 90 of the Evidence Act read with s. 4 of the same, the court has a discretion to call for proof of a document although it be more than 30 years old and purports to come from proper custody. 7 O. C. 290 ; 11 M. L. T. 69=(1912) 1 M. W. N. 117.

Conclusive proof.—On the other hand and an irrebuttable presumption of law is not presumption at all ; it is simply an indisputable proposition of law. For example, the rule that a child under seven cannot commit a crime is a rigid rule of law—in fact, part of the definition of crime. (*Powell* 386). As regards "conclusive proof" vide 66 Ind. Cas. 600=48 C. 496. The definition of "conclusive proof" given in this section, though refers only to the Evidence Act yet it may properly be applied to the expression "conclusive proof" in the Oath Act (X of 1873). 8 Bom. L. R. 19(22). In case of conclusive proof evidence in rebuttal is disallowed. 1931 A. L J. 360=A. I. R. 1932 All. 35.

Origin of the rules.—These rules it is likely, all had their beginnings in logical inference, however independent of it they may have become in their final shape. Now, the basis of inference is experience. The judge and the Jury go into Court with the experience of ordinary human beings, and in the process of drawing inferences, constantly call upon such experience. Coupled with the facts introduced as evidence at the trial, it forms the basis of the inferences necessary to arive at a determination of the facts in issue. It happens that in the almost innumerable cases that are tried, certain facts or groups of facts have been repeatedly presented to Courts as foundations for inferences ; and the inferences being reasonable ones, judged by experience of the Court and Jury, have been repeatedly drawn until a rule has crystalized. It is not difficult to see why these rules developed so early, and were so readely adopted by the Courts. Judges have always been suspicious of Juries and have seized every opportunity to establish rules for their guidance, and to control their conclusions from the evidence introduced. The mind of the Judge was supposedly nothing if not logical, while the untrained minds of the Jury were open to inffuences of prejudice, sympathy, and a thousand other things. Logical inference was therefore made a basis of a vast number of such rules which the Judges established and which they called "presumptions"—rules relating to the manner of proving cases, and in the sense having to do with the law of evidence ; fixing for example when sufficient evidence was introduced, or when a party must introduce further evidence if he would win his case.—*Mckelvey'e Law of Evidence p. 80.*

CHAPTER II.

OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue :—
A's beating B with the club ;
A's causing B's death by such beating ;
A's intention to cause B's death.

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsquent stage of the proceedings, otherwise than in accordance with the conditions prescrtbed by the Code of Civil Procedure.

Scope of the Law of Evidence—"The question therefore of what propositions may evidence be offered is not answered by the law of evidence, except in a subordinate way. The answer to it is made in four parts. Evidence may be offered of such propositions of fact as (*a*) are material by the substantive law to any right or duty, claim or defence ; (*b*) are issuable in the case at bar by the terms of the pleadings under the rules of pleading ; (*c*) are effective to relieve a party from the establishment of one of the preceding propositions ; (*d*) Are admissible by the law of evidence as evidentiary facts and thus may become in turn propositions to be proved. The first and the second of these classes clearly do not involve the law of evidence. The third class is concerned with judicial admissions and their congeners ; such are really equivalent to a pleading, because they formally waive proof ; they are therefore no part of the law of evidence except for the necessity of distinguishing them from other things miscalled admission. The forth class alone concerns intrinsically with the law of evidence." *Wigmore Cas.* 3. Thus the law of evidence relates to the use of evidence before judicial tribunals, and, in its proper significance, consists of (a) certain rules as to the exclusion of evidence, and (*b*) the rules which prescribe the manner of presenting evidence in the Courts.—*McKelvey's Law of Evidence.* p. 6.

What facts may be presented as evidence.—Evidence can only be given of facts in issue or relevant facts. What are facts in issue are ascertained by the substantive law and the law of procedure. What facts are relevant or admissible in evidence is answered by the law of evidence. This Chapter contains the law of relevancy. There is still a further restriction. Evidence the production of which is barred by some provisions Civil Procedure is not admitred in evidence even if they be relevant. This restriction is put by the explanation at the end of the section.

Facts in issue—Facts in issue are those facts about which there is a question in issue betewen the parties and although all relevant facts are not necessarily facts in issue, the fact that are in issue cannot be other than relevant to the determinatlon of the suit. Facts must be either relevant or irrelevant and there is no separate third class of facts in issue. 34 Ind. Cas. 875. Evidence may be given of a fact in issue or of a fact which by this Act is declared to be relevant. 9 C. W. N. 402.

And of no others—This section excludes everything which is not covered by the purview of some other section which follows in the statute. 12 A. I. (43) F. B ; see also 12 A. L. J. 285=24 Ind. Cas. 165 ; but see 7 A. 385 (401) ; 24 C. W. N.

50. So one who wants to give evidence on a particular fact must show that it is admissible under some one or other of the following sections. 9 C. W. N. 402 (406) ; 7 I. A. 70. The words "and of no others" impliedly impose a duty on the court to exclude evidence of irrelevant facts, irrespective of objection by the parties. *Whitley stokes.* Vol II, p. 854. Even when there is moral conviction of guilt the rules of evidence cannot be disregared. 37 C. 91 ; 25 W. R. Cr. 43 ; 5 W. R. Cr. 28 ; 5 Con. C. C. 210. But though a document may not be legal evidence of fact within the provisions of the Evidence Act, yet it may be a document which is prove the fact by consent of parties. 20 B. 99 (103).

Legal relevancy.—The testimony offered must be logically probative of the matter to be proved, and if it is legally relevant. While this proposition, of course, includes direct evidence, it does not exclude, as irrelevant, evidence of facts not directly in issue but which create a presumption of the fact in issue. The qualification to the general rule is that it does not always follow merely because a fact is logically relevant that it is always relevant. Certain evidence though not logically incompetent, may be excluded on the ground of its unimportance, when compared with an abundance of better evidence easily available ; on the ground that it has no slight or remote a bearing on the case either in point of time or value, that it would be unjust and unreasonable to prolong and complicate a trial by its investigation ; on the ground of public policy. (*Bur Jones* § 135). In this connection it must be borne in mind that the whole law of evidence has evolved from trial by jury system. "Legal relevancy, which is essential to admissible evidence, requires a higher standard of evidentiary force. It includes logical relevancy and for reasons of practical convenience, demands a close connection between, the facts to be proved and the fact offered to prove it. All evidence must be logically relevant ; that is absolutely essential. The fact, however, that it is logically relevant does not ensure admissibility. It must also be legally relevant. A fact which "in connection with other facts, renders probable the existence of a fact in issue, may still be rejected, if, in the opinion of the Judge, and under the circumstances of the case, it is considered essentially misleading or too remote."—*Best Evidence* (Camp) § 251. Stephen defines the word "relevant" as meaning that any two facts to which it is applied are so related to each other, that, according to the common course of events, one either renders probable the past present or future existence or non-existence of the other. *Stephen's Dig. Ev. art.* This is a definition of logical relevancy. Logical relevancy plays a certain important part in the law of evidence, in that no evidence is admissible unless it is relevant. It does not follow that all evidence which is logically relevant is admissible and in fact much that is logically relevant is excluded. Certain rules are laid down, founded on various considerations, by which many matters which are logically relevant are declared inadmissible. Legal relevancy is not different in its nature from logical relevancy. The only distinction is in its field of application. Legal relevancy is the attribute of all those logically relevant matters which are not declared inadmissible by one or more of an excluding rules. Stephen proceeds upon the theory that logical relevancy is the main condition of admissibility, and that all rules excluding evidence which is logically relevant are, therefore, exceptions to the general rule. Other writers such as Best have distinguished between logical and legal relevancy, finding the latter to apply to all those facts which are not excluded by any of the excluding rules of evidence. But if what is legally relevant can only be determined by this exclusionary method, it is of little use to retain the term. In general, it may be said, that what is logically relevant is admissible, unless it comes within the terms of one or more of the rules of exclusion. *McKelvy's Law of Evidence* p. 166 ; see also 1914 M. W. N. 931.

Exclusion of evidence.—Under the Evidence Act, admissibility is the rule and exclusion is the exception, and circumstances, which under other system, might operate to exclude are under the Act, to be taken into consideration only in judging of the value to be allowed to evidence when admitted. 16 B. 661 ; See also 11 B. H. C. R. 121 ; 8 W. R. 169 ; 15 W. R. 49 ; but see 6 C. 193 ; 22 W. R. 355. 356, 357. Question as to the admissibility of evidence should be decided as they arise and should not be reserved until judgment in the case is given. U. B. R. (1897-1901) Vol. II, 376 ; 13 C. L. J. 18 ; 86 Ind. Cas. 817 ; 50 Ind. Cas. 481 ; 82 Ind. Cas. 974 ; 9 W. R. 587 ; 1 A. L. J. Diary 24 ; 2 C.W.N. 188 (190) ; but see 30 C. W. N. 559. Where a Judge in doubt as to the admissibility of a particular piece of evidence he should declare in favour of admissibility

rather than of non-admissibility. 12 A. 1 ; 21 B. 698. The admission of hearsay evidence is prohibited. 7 W. R. Cr. 2 ; 7 W. R. Cr. 25 ; 13 O. C. 309=8 Ind. Cas. 379 ; 2 W. R. 252 ; 10 W. R. 75 ; 24 W. R. Cr. 77 ; 21 C. W. N. 345, (P. C.).

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction is a relevant fact.

(*b*) A is accused of waging war against the Queen by taking part of an armed insurrection in which property is destroyed, troops are attacked, and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Scope.—All facts which are parts of the same transaction are relevant to each other, so that, when one of such facts is in issue, the others are admissible. Such facts which are thus parts of the transaction in issue are generally known as "*res gestae*" (*R.* v. *Ellis*, 6 B. and. C. 145). This rules as to "*res gestae*" is one of the clearest illustrations of relevancy, the connection between the facts being that they are all parts of the same "transaction". Once established that they are all parts of the same transaction, then each of such facts is relevant to the others, so that if any of them be in issue the others are admissible as relevant facts. The real and very substantial difficulty is to determine the limits of the transaction, and what facts are really part of it. (*Cockle Cas.* 64). Principles of the sections relating to relevancy of facts are mere rules of logic. (1914) M. W. N. 931.

Basis of the theory.—Every act which is done, every event which happens is set in a frame of surrounding circumstances which serve to make it stand out and appear strong and clear. These circumstances may consist of declarations, made at the time by participants in the act, of other acts done, of the position, condition, and appearance of inanimate objects, and of other elements which serve to illustrate the main act or event. Subject to reasonable and proper limitations such surrounding circumstances may be proved in evidence as a part of thing done (*res gestae*). So long as these circumstances do not consist of circumstances and statements, they are introduced as a matter of course, proved by either side without question, unless, indeed, they go too far away from the main-fact, when under rules having no relation to the subject of hearsay they are excluded. It is when they comprise statements, exclamations, answers to questions, and other verbal utterances by the participants in the act or event, that they occupy the attention of the Courts. If it had been possible to treat verbal utterances made under such conditions purely as acts, and not in any sense as evidence of the things stated, the subject of *res gestae* would not have belonged under the head of exceptions to the hearsay. The ground of reliability upon which such declarations are received is their spontaneity. They are the extempore utterances of the mind under circumstances and at times where there has been no sufficient opportunity to plan false or misleading statements ; they exhibit the mind's impressions of immediate events and are not narration of past happenings ; they are uttered while the mind is under the influence of the activity of the surroundings. As a good illustration we have the cases of statements made by persons injured, or others in their presence at the time of the injury. In *Hutchies* v. *Railroad Co.*. 128 Iowa 279=103 N. W. 779, the plaintiff fell from a street car, by reason of negligence in failure to let down a folding step. As she fell she exclaimed, "yes, let down the step after I fall." The declaration was a typical instance of *res gestae*. It was clearly admissible, both as a part of the transactions and, having been received, as evidence also that

the step was not let down until after the plaintiff fell. In this case the statement was spontaneous and coincident with the event. Taken altogether, it is perhaps safe to say that in the case of no exception to the hearsay rule is there as little danger and as much assistance to the cause of justice as in this, taking into consideration the matter in which it has been applied.—*McKelvey's Evidence* pp. 343—345.

Transaction.—A transaction is a group of facts connected together as to be referred to by a single legal name, as a crime, contract a wrong or any other subject of inquiry which may be in issue. Every fact which is part of the same transaction as the facts in issue is deemed to be relevant to the facts in issue, although it may not be actually in issue, and although if it were not part of the same transaction it might be excluded as hearsay. Whether any particular fact is or is not part of the same transaction has the facts in issue is a question of law upon which no principle has been stated by authority and on which single judges have given different decisions. (*Stephen's Digest Art.* 3), See also 11 C. W. N. 266 ; 34 P. R. 1914. Cr.=27. Ind. Cas. 664=16 Cr. L. J. 184. Acts are not parts of the same transaction, unless they were done substantially at the same time; although they are similar in other respects. *R* v. *Birdseye*, 4 C. and P. 386. The word "transaction" is used a in limited sense in illustration (a 1 of this section and in more general sense in the remaining illustrations of the section. 15 B. 491. A transaction may be a continuous one extending over a length of time (*Rawson* v. *Haigh*, 9 Moore, 217). Acts,declarations, and circumstances which constitute, or accompany and explain, the fact or transaction in issue, are admissible, for or against either party, as forming parts of *resgestae* (*Phip. Ev. 46*). A "transaction" consists both of the physical acts and the words accompanying such physical acts, whether spoken by the porton doing such acts, the person to whom they were done or any other persons present. Such words are admissible in evidence as part of the transaction. (*Thompson* v. *Trevanion*, Skinner, 402 cited in Cockle Cas. 65). See also 34 P. R. 1914 Cr,=27 Ind. Cas. 664=16 Cr. L. J. 184.

Verbal Acts or Verbal Parts of an Act.—There are other declarations which are admitted as original evidence, being distinguished from hearsay by their connection with the principal fact under investigation. The affairs of men consist of a complication of circumstances so intimately interwoven as to be hardly separable from each other. Each owes its birth to some preceding circumstances so intimately interwoven as to be hardly separable from each other. Each owes its birth to some preceding circumstances, and, in its turn, become the prolific parents of others ; and each during its existence, has its inseparable attributes, and its kindred facts, materially affecting its character, and essential to be known in order to a right understanding of its nature. These surrounding circumstances, constituting parts of the *res gestae* may always be shown to the Court, along with the principal fact, and their admissibility is determined according to the degree of their relation to that fact, and in the exercise of the Court's sound discretion ; it being extremely difficult, if not impossible, to bring this class of cases within the limits of a more particular description. The principal points for considerations are, whether the circumstances and declarations offered in proof were contemporaneous with the main fact under consideration, and whether they are so connected with it as to illustrate its character. *Greenleaf* § 108. Declarations in order to become part of the *resgestae* "must have been made at the time of the act done, which they are supposed to characterize and have been well calculated to unfold the nature and quality of the facts they were intended to explain, and so to harmonize with them as obviously to constitute one transaction" *Per Hosmer C J.* in *Enos* v. *Tuttle* 3 Conn. 250.

"Many acts are in themselves of an equivocal nature, and the effect of them depends upon the intention or disposition from which they proceed, which is in general best determined by the expressions accompanying them. Whenever, therefore, the demeanour of a person at a given time becomes the object of the enquiry, the expressions, as constituting a part of that demeanour and as indicating his present intent and disposition, cannot properly be rejected in evidence as irrelevant." *Evans, Notes to Pothier*, II. 242. "What a man says, when he does a thing, shows the nature of his act and is a part of the act ; it determines its character and effect ; tenancy is a continuance of acts in a certain relation to another, and declarations during the tenancy by a man that he is a tenant and of a particular person may be put as a part of *res gestae*' *Rankin* v. *Trainbrook*, 6 Watts, 390.

Declarations.—A statemant, in order to be admissible in evidence as part of the transaction or *res gestae*, must strictly accompany, or be made at the same time,

as the physical acts in question. *R.* v. *Bedingfield*, 14 Cox. C. C. 341. But in *R.* v. *Foster*, 6 C and P. 325 a statement which followed the physical act, was admitted in evidence as a part of the transaction, although it was the last item of the transaction. A statement made by a third party may be relevant as part of the transaction, if he be actually present at the time. (*R.* v. *Fowkes*, Stephen 4). "There is a principle in the law of evidence which is known as *res gestae* ; that is, the declarations of an individual made at the moment of a particular occurrence, when the circumstances are such that we may assume that his mind is controlled by the event, may be received in evidence, beacuse they are supposed to be expressions involuntarily forced out of him by the particular event, and thus have an element of truthfulness they might otherwise not have..... But you are not to give any more weight to a declaration thus made, or any weight at all, unless you are satisfied that it was made at a time when it was forced out as the utterance of a truth, forced out against his will or without his will and at a period of time so closely connected with the transaction that there has been no opportunity for subsequent reflection or determination as to what it might or might not be wise for him to say", Per *Lacombe J.* in *U. S.* v. *King* 34 Fed. R. 314. "There must be no fair opportunity for the will of the speaker to mould or modify them. His will must have become and remained dormant, so far as any deliberations in concocting matter for speech or selecting words is concerned. Moreover, his speech besides being in the present time of the transaction, must be in the presence of it in respect to space. He must be on or near the scene of action or of some material part of the action. His declarations must be the utterance of human nature, of the *genus homo* rather than of the individual. Only an oath can guarantee individual veracity. But spontaneous impulse may be sufficient sanction for the speech of man as such—man, distinguished from this or that particular man. True, the verbal deliverance in each instance is that of an individual person. But if the state of his mind be such that his individuality is for the time being suppressed and silenced, so that he utters the voice of humanity rather than of himself, what he says is regarded by the law as in some degree trustworthy" *Per Bleckley, C. J.* in *Traveller's Ind.* Co. v. *Shephard*, 85 Ga. 751, 776. While it is said that the declaration must be contemporaneous with the main fact no rule can be formulated by which to determine how near, in point of time, they must be. No two cases are exactly alike and the determination of this question is separable from the circumstances of the case at bar. The transaction in question may be such that the *res gesta* would extend over a day or a week or a month." *Per Shelby* in *Jack* v. *Mutual R. F. Life Association*, 113 Fed 49. See 10 C. 302 ; 11 C. W. N. 266 ; 9 B. H. C. 358. Statements made by members of unlawful assembly of their determination to force their way through a police cordon is evidence of *res gestae* and is adminisible to prove their intention. 3 Rang. 352=90 Ind. Cas. 918=A. I. R. 1925 Rang. 354 ; see also 34 P. R. 1914 Cr.=27 Ind. Cas. 664=16 Cr. L. J. 184. Evidence of witness that complainant informed them about theft long after the incident is not admissibe. A. I. R. 1934 Cal. 17=57 C. L. J. 447. As regards statement made to police vide 50 Ind. Cas. 487 ; 20 Cr. L. J. 311=17 A. L. J. 760. In a case of rape, the statement of the woman in admissible if made just after the occurrence. 43 Ind Cas. 443=19 Cr. L. J. 155 ; see also 4 Lah. L. J. 491 ; A. I. R. 1931 Mad. 233 ; 1930 M. W. N. 702 ; 7 Lah. L. J. 436 ; 42 C. L. J. 504=53 C. 372 ; 50 C. L. J. 524. but see A. I. R. 1930 Lah. 337.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afford an opportunity for their occurrence or transaction, are relevant.

Facts which are the occasion, cause or effect of facts in issue.

Illustrations.

(*a*) The question is, whether A robbed B.

The fact that shortly before the robbery, B, went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(*b*) The question is whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Scope.—This section admits a very large class of connected facts in addition to those admitted by the last section. Here it should again be observed that the weight to be attached to such facts when admitted must of necessity vary. An effect may be conclusive proof of the primary act having been done, e. g. the birth of a child. On the other hand the existence of an opportunity may go but a very short way towards proving the committal of an act by a specified person since the same opportunity may have laid open to many others. (*Field Ev. 20*) Every fact is connected with numberless other facts by ties more or less close. It may often be difficult for a judge to say whether a fact can or cannot be properly said to "form part of a transaction" within the meaning of section 6. This section meets this difficulty by embracing a larger area of facts, leaving the transaction itself, it provides for the admission of several classes of facts, though not, possibly, forming part of the transaction, are yet connected with it in particular modes, and so are relevant when the transaction itself is under enquiry. These modes of connection are (1), as being the occasion or cause of a fact ; (2) as being its effect ; (3), as giving opportunity for its occurrence ; (4) as constituting the state of things under which it happened. They are in truth different aspects of causation. (*Cun. Ev. 91*).

Principle.—"The competency of a collateral fact to be used as the basis of legitimate argument is not to be determined by the conclusiveness of the inferences, it may afford in reference to the litigated fact. It is enough if these may tend, even in a slight degree to elucidate the enquiry or to assist, though remotely, to a determination probably founded on truth." *Holmes* v. *Goldsmith*, 147 U. S. 150, 164.

Occasion, Cause and effect.—These are different aspects of causation. If they are parts of the same transaction, they are admissible under s. 6. and also under this section. Now the question is what facts not part of the same transaction are admissible in evidence. Such facts are either similar or dissimilar. When the facts are dissimilar they are clearly inadmissible. Facts of this class, though often not destitute of moral weight, are rejected as legal evidence on grounds of convenience, since they tend to embarrass the inquiry with collateral issues, prejudice the parties with the jury, and encourage attacks without notice. The maxim "*Res inter alias actae utteri nocre non deburt* is frequently supposed to express the principle of exclusion in such cases ; but this is incorrect, for similar transaction *inter partes* would be equally inadmissible in this relation. The principle of the maxim appears, indeed, to fail altogether as a test of relevancy since an examination of this chapter will show that most of the transactions here is declared relevant are *res inter alios* while others that are irrelevant are *res inter partes*. The maxim has its principal utility in the domain of substantive law. (*Phip Ev. 125. 126.*). But where there is some logical connection between the fact offered as evidence and the issuable fact, or where proof of the former tends to make the latter more probable or improbable the testimony proposed is relevant, if not too remote (*Bur Jones Ev. S. 138*). So the admissibility of similar facts as direct proof of the fact in issue depends, not on personal, but logical privity ; and is mainly a question of degree, or of our knowledge and understanding of the causes of events, as to which, in many cases the progress of science may change the law. In proportion as the element of personality, the interjection of the free will of the human being diminishes, we become more certain of the effects of a causative force, and more ready to admit such evidence. (*Phip. Ev, 126.*) On this principle this section lays down that those facts which are the occasion, cause and effect of relevant facts or facts in issue are admissible in evidence.

Opportunity.—Opportunity must always be relevant ; for no circumstances can be more affirmative of a charge than that the accused had an opportunity of committing the crime. On the strength of this rests the force of a defence founded on *alibi*. But the Judge must be on his guard against jumping hastily from opportunity for, to commission of a crime. There can be no crime without an opportunity ; but there is a wide gulf to be bridged over by evidence between opportunity and commission. This is well illustrated by a case cited by *Best* from *Starkie* in which a female servant was charged with having murdered her mistress. No persons were in the house but the deceased and the prisoner, and the doors

and windows were closed and secure as usual. The prisoner was condemned and executed, chiefly on the presumption that no one else could have had access to the house ; but it afterwards appeared, by the confession of one of the real murderers, that they had gained admittance into the house, which was situated in a narrow street, by means of board accross the street from an upper window of an opposite house, to an upper window of that in which the deceased lived : and that having committed the murder they retreated the same way, leaving no traces behind them. (*Norton 104*). Facts showing the circumstances and position of the parties whose conduct is in question are generally relevant to such conduct. So, evidence of opportunity is relevant to the question whether a certain act was done. Circumstantial evidence is admissible not only in the absence of direct evidence, but also in aid of direct evidence. *Dowling* v. *Dowling* 10 Irish C. L. R. 236.

Alibi.—The theory of an *alibi* is that the fact of presence elsewhere is essentially inconsistent with the presence at the place and time alleged, and therefore with personal participation in the act. *Wigmore Ev* § 136. Where an accused takes the defence founded on an *alibi*, reasoning from probabilities cannot take the place of evidence. 128 Ind. Cas. 862=32 Cr. L. J. 63=31 P. L. R. 612=A. I. R. 1930 Lah. 337.

Illustrations.—Illustration (a) is an instance of facts relevant as giving occasion or opportunity ; (b) of facts constituting an effect (c) of facts constituting the state of things under which an alleged fact happened. *Cunningham 91*).

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceedings, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in the section does not include statements, unless those statements accompany and explain acts other than statements ; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct, is relevent.

Illustrations.

(*a*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C and that B had tried to extort money from A by threatening to make his knowledge public are relevant.

(*b*) A sues B upon a bond for the payment of money, B denies the making of the bond.

The fact that at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B, by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B is relevant.

(*d*) The question is whether a certain document is the will of A. The facts that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate ; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve are relevant.

(*e*) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence or prevented the presence or procured the absence of persons who might have been witnesses or suborned persons to give false evidence respecting it are relevant.

(*f*) The question, is whether A robbed B.

The facts that after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(*g*) The question is, whether A owes B rupees 10, 000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A for he owes B 10, 000 rupees," said that A went away without making any answer, are relevant facts.

(*h*) The question is, whether A committed a crime.

The facts that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime or attempted to conceal things which were or might have been used in committing it. are relevant.

(*j*) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as corroborative evidence under section 157.

(*k*) The question is, whether A was robbed.

The fact that soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or

as a corroborative evidence under section 157.

Scope.—This section further illustrates the principle laid down in the preceding section. Under certain circumstances collateral facts are admissible when they fall within the definition of this section. The same principle underlies in the admission of these facts. So familiar is the practice of proving, as parts of the chain of evidence the preparation, motive, desire or intention of the party to do the act in question. On the same principle it is relevant to prove misconduct of the party in respect to the pending case, such as attempting to suppress or to fabricate testimony or bribe witness or jurors ; and so it is relevant to prove the demeanour of a party accused of a crime or tort, his flight or concealment and his falsehoods, his attempt to fasten the crime on others, his possession of property connecting him with the offence, or statements made in his presence likely to affect his conduct. So whenever any act may be proved, statements accompanying and explaining that act made by or to the person doing it may be proved, if they are necessary to understand it. In criminal cases (of rape) the conduct of the person against whom the offence is said to have been committed, and in particular the fact that (she) made a complaint soon after the offence to persons to whom they would naturally complain, are deemed to be relevant ; but the terms of the complaint itself seems to be deemed to be irrelevant ; When a person's conduct is in issue or is, deemed to be, relevant to the issue, statements made in his presence and hearing by which his conduct is likely to have been affected are deemed to be relevant. (*Burr jones Ev.* § 138).

Motive, Preparation and conduct.—Evidence is admissible not only of the facts in issue, but also of other facts which render the facts in issue probable or improbable by reason of their connection with or relation to them. Facts so connected with the facts in issue are said to be "relevant facts," and they constitute what is known as "circumstantial evidence," Thus facts which supply a motive for an act, or constitute preparation for it, or conduct apparently influenced by the act, are relevant to the question whether such an act was done by the person concerning whom such motive, preparation or conduct is proved. (*R.* v. *Palmer, Cockle Cas.* 38,), *Lord Campbell* in that case observed ; "With respect to the alleged motive it is of great importance to see whether there was a motive for committing such a crime, or

whether there was not, or whether there was an improbability of its having been committed so strong as not to be overpowered by positive evidence. But gentlemen, if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know from experience of Criminal Courts that atrocious crimes of this sort have been committed from very slight motives ; not merely from malice or revenge, but to gain a small pecuniary advantage, or to drive off for a time passing difficulties."

Case.—The first information report against the accused is admissible under this section. 44 C. L. J. 253.

Motive.—A motive is that which moves a man to do a particular act. It is that which in his mind and which moves him to act and whether the belief which produces that state of mind is true or false the motive remains the same and the truth or falsity of the belief is not really in question. 62 Ind. Cas. 545. Intention must not be confounded with motive. Intention shows the nature of the act which the man believes he is doing. Motive is the reason which induces him to do the act which he intends to do and does. Motive is sometimes very important as evidencing a state of mind, which is a material element in the offence charged (*Mayne's Cr. Law, § 9 A.*) See also 40 P. R. 1905 Cr.=148 P. L. R. 1905 ; 7 Ind. Cas. 38 ; 91 P. R. 1866 Cr. ; 7 W. R. 60 ; 15 W. R. 46 : 5 W. R. 28 ; 1 W. R. 19. In the proof of certain crimes, where motive is an important element, evidence of motive will involve the placing before the jury of a plan or scheme carried out or attempted by the accused, which may include the commission of other crimes. *Mckelvey's Evidence* p. 190. In *Com.* v. *Robinson.* (1888) 146 Mass 571=16 N. E. 452, X was tried for murder of M. Evidence was offered of a scheme by X to kill Y, then to induce M to make X beneficiary under a policy under which Y had been beneficiary, and then to kill M. Is the evidence admissible" *Allen J.* observed : "In such cases there is a distinct and significant probative effect, resulting from the continuance of the same plan or scheme, and from the doing or other acts in pursuance thereof. It is somewhat of the nature of threats, or declarations of intention, but more sepecially of the preparations for the commission of the crime which is subject of the indictments." Motive for a crime, while it is always a satisfactory circumstance of corroboration when here is convincing evidence to prove the guilt of an accused person, can never supply the want of reliable evidence, direct or circumstantial of the commission of the crime with which he is charged. 94 Ind. Cas. 901=A.I.R. 1926 Lah. 88. Absence of proof of motive becomes also essential while the passive evidence fails to prove the prisoner's guilt. 5 W.R. Cr. 28 ; 9 A. 528 ; 15 W. R. Cr. 47 ; 25 Ind. Cas. 525 ; 25 Ind. Cas. 634 ; 1913 M. W. N. 145 ; 34 C. 686. When there is clear evidence that a person has committed an offence it is unnecessary to prove motive. 86 Ind. Cas. 406 ; 32 C. W. N. 345 ; see also 7 W. R. Cr. 60. The mere circumstances of an act being apparently motiveless is not a ground from which the existence of a powerful and irresistible influence of homicidal tendency can be safely inferred. 40 P. R. 1905 Cr.=148 P. L. R. 1905=2 Cr. L. J. 714. It is not always possible or necessary for the prosecution to prove the motive of the accused in committing the crime, and the absence of any proof of motives is not in it self sufficient to justify the rejection of evidence which is otherwise reliable. 4 S.L. R. 38=7 Ind. Cas. 38= 11 Cr. L. J. 498 ; see also 91 P.R. 1866 Cr. 9 N. L.R. 184=22 Ind. Cas 177=15 Cr. L. J. 83 ; 49 C. 558. Motive alone cannot supply the want of evidence. 99 Ind. Cas. 904. It is not competent to the prosecution to adduce evidence tending to show the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried on the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue. 97 Ind. Cas. 1041=27 Cr. L. J. 1217=A. I. R. 1927 Sind. 28 ; *Makin* v. *Attorney General,* (1894) A. C. 57.

Motive how proved.—It must be proved by direct evidence and not by hearsay. A. I. R. 1931 Mad. 689=61 M. L. J. 608 ; see also 3 Rang. 11=85 Ind. Cas. 236=25 Cr. L. J. 492. In cases where guilty knowledge or intention or design is of the essence of the offence, proof may be given that the defendant did other acts similar to those which form the basis of the charge. *Halsbury* Vol Ix p. 380 ; see also R. v. *Huson.* 14 Con. C. 40 ; 36 C. 573 ; but see 47 C. 671=24 C. W. N. 501. Where direct evidence as to commission of offence is not available, evidence as to motive need not be considered. A. I. R. 1933 Oudh. 265=145 Ind.

Cas. 470=1933 Cr. C. 592=34 Cr. L. J. 1009=10 O. W. N. 1108. Surrounding circumstances can be referred to judge mental state on previous occasion. 130 Ind. Cas. 269=32 Cr. L. J. 478=A. I. R. 1931 Pat. 52.

Preparation.—Previous attempts to commit an offence are closely allied to preparation for the commission of it, and only differs in being carried one step further and maker to the criminal act of which however, like the former, they fall short. *Best's Evidence* p. 404.

Conduct, meaning of—Conduct is the expression in outward behaviour of the quality or condition operating to produce those effects. These results are the traces by which we may infer the moving cause. In point of time, conduct is clearly associated with the internal condition giving rise to it ; nevertheless the indication is strictly not a concommittant, but a retrospectant one because the argument is backward, from effect (conduct) to cause (internal condition). Wigmore § 190.

Conduct of any party—The conduct of a party interested in any proceeding at the time when the facts occurred out of which the proceeding arises, is extremely relevant. 7 A. 385 (F. B.) at p. 394 ; see also 22 C. 391, 404 406 ; 29 A. 46 ; 5 W. R. Cr. 5 ; 37 A. 395 ; 30 A. 258 (P. C.) ; 90 Ind. Cas. 433=42 C. L. J. 111. The word "party" includes not only the plaintiff and the defendant in a civil suit, but parties in a criminal prosecution, as for instance a prisoner charged with murder. 7 A. 385 ; but see 53 C. 372. A person's conduct consists not only in what he does but also what he refrains from doing and the latter is often more significant. 43 C. 322 ; 24 W. R. 176. Conduct need not be contemporaneous. *Whitely Stocks* Vol. II, p. 856 ; 1 Q. B. 60 ; but see 14 Case. 341. A fact can be proved by conduct of a party, and by surrounding circumstances. 30 A. 251 (266) P. C. ; 5 W. R. Cr. 5. The acts of the accused are not dealt with by s. 27 and are relevant under s. 8. 6 A. L. J. 839 (F. B.)=31 A. 592=3 Ind. Cas. 20 ; see also A. I. R. 1934 Lah. 695=35 P. L. R. 738=1934 Cr. C. 1009 ; 39 C. W. N. 368. The gesticulation of a deaf mutes at the place where a dead body was found during the police enquiry, and subsequently in Court are not admissionable against the accused as conduct under s. 8 of the Evidence Act. 5 O. C. 246. But the signs made by the deceased, being the conduct of a person an offence against whom is the subject of a proceeding are relevant under s. 8 of the Evidence Act. 7 A. 385=A. W. N. 1885, 78 (F. B.). A letter written by the deceased some months before his death to the Commissioner of Police requesting police protection against apprehended assults by the second accused is admissible in evidence under this section as containing statements which accompany and explain the conduct of the deceased. 34 Bom. L. R. 1087. Letter written by person immediately after date of retirement intimating bank his securance from firm and his consequent inability to gurantee its account is admissible. A. I. R. 1932 Cal. 236=54 C. L. J. 516=59 C. 40=35 C. W. N. 705. Statements of persons writing alleged forged deed and one presenting same for registration are admissible under s. 8 as accompanying and explaining conduct. 1933 M. W. N. 96. Though the statement made by the accused to the police may be inadmissible under s. 162 Cr. Pro. Code, evidence of their conduct is certainly admissible under s. 8. A. I. R. 1932 Mad. 391. Fact of production of share of property by accused is admissible as conduct under s. 8. A. I. R. 1932. Bom. 286=56 B. 172. Where a particular act is accomplished upon a statement, the statement and act so blended together as to form part of the thing observed are admissible. 143 Ind. Cas. 17=34 Cr. L. J. 505=A. I. R. 1933 Nag. 136. In case of complaint by a ravished woman, terms in which complaint is made are relevant as conduct, but not relevant as direct proof of the act. A. I. R. 1931 Mad. 233=32 Cr. L. J. 751=1930 M. W. N. 702 ; see also 17 N. L. J. 189 ; A. I. R. 1926 Pat. 58 ; 82 Ind. Cas. 142 ; 4 Lah. 491 ; 31 P. L. R. 391. The conduct of a person who is not a party is not relevant. 17 N. L. J. 274. As regards conduct of accused in pointing out the place where the crime was committed or articles are found vide. 86 Ind. Cas. 664=26 Cr. L. J. 840 ; 35 Ind. Cas 962=17 Cr. L. J. 402 ; 1929 Cr. C. 426=A. I. R. 1929 Lah. 794 ; 92 Ind. Cas. 939 ; 21 Bom. L. R. 724=52 Ind. Cas. 601=20 Cr. L. J. 681 ; 152 Ind. Cas. 473=11 O. W. N. 1383. Where the evidence against a person charged with an offence under s. 147 I. P. Code is open to doubt his conduct sometime after the occurrence cannot be taken to be such evidence of conduct under s. 8 as can be urged against him in the case. 54 Ind. Cas. 775=21 Cr. L. J. 167. Where a person had no part in crime and is not called as a witness, his conduct is not relevant. A. I. R. 1935 Nag. 81. Statement of accused after arrest in course of investigation giving false name is not admissibte. A. I. R. 1935 Mad. 479.

Flight.—Flight from justice and its analogous conduct, have always been deemed indicative of a consciousness of guilt. 5 W. R. Cr. 28 ; see also 9A. 528 (568) ; 62 Ind. Cas. 545 ; 35 P. L. R. 740. In a case where the only evidence against the accused was that he absconded after the murder of a person, it was held that the fact of an accused's absconding was not inconsistent with his innocence knowing that an incorrect accusation has been brought against him. 4 P. L. R. 1915=16 Cr. L. J. 156=27 Ind. Cas. 219 ; see also 22 Bom. L. R. 1274.

Explanation I.—Explanation I points out that mere statements as distinguished from acts do not constitute conduct. Conduct may be equivocal or insensible without statements explanatory or elucidatory of it. Statements accompanying act are in fact part of the *res gestae* just as much as the acts themselves. They are often absolutely necessary to show the animus of the actor. *Bate man* v. *Bailey*, 5 Term R. 512 ; *Hyde* v. *Palmer*, 3 B & C. 657 ; *Benison* v. *Cortwright*, 5 B & C. 1. "This explanation points to a case in which a person whose conduct is in dispute mixes up together actions and statements ; and in such a case those actions and statements may be proved as a whole. For instance a person is seen running down a street in a wounded condition, and calling out the name of his assailant, and the circumstances under which the injuries were inflicted. Here what the injured person says and what he does may be taken together and proved as a whole. But the case would be very different if some passers-by stopped him and suggested some name or asked some questions regarding the transaction. If a person were found making such statements without any questions first being asked ; then his statements might be regarded as a part of his conduct. But where the statement is made merely in response to some question or suggestion, it shows a state of things introduced, not by the fact in issue, but by interposition of something else." *Per Petresam C. J.* in *Empress* v. *Abdulla*, 7 A. 385, 395, 396 ; see also 3 B. 12 (17) ; 11 B. H. C. 242 ; 45 Ind. Cas. 904 ; A. I. R. 1928 Pat. 162=106 Ind. Cas. 698=6 Pat. 747. This section so far as it admits a statement as included in the word "conduct" must be read in connection with sections 25 and 26, and cannot admit as statement as evidence which would be shut out by those section. 14 B. 260 (F. B.).

Explanation II.—Under this explanation another class of statements *i. e.* statements which affect the conduct of a person, whose conduct is relevant under this section, is admissible. The conduct of A in illustrations (*f*), (*g*) and (*h*) shows nothing unless the statements are put before the tribunal. Here the statements made in the presence of the party are admissible as the ground work of their conduct. Here the conduct of A is equivocal and statements are admissible to explain that conduct as part of the *res gestae* under the rule of Verbal Act doctrine explained in s. 6. In this explanation statements includes document addressed to a party. Vide illustration (*b*) *Reg* v. *Thompson*, (1910) 1 K. B. 640. "But before a bare statement made by another person in an accused's presence and prejudicial to him is allowed to be used as evidence against him, there must be something in the shape of action, conduct or words, which in the opinion of the Judge, would justify the Jury in drawing an inference that the accused substantially admitted the story told against him" *Per Hawkins J.* in *R* v. *Smith*, 18 Con. 72 ; see also 10 C. 302 ; 12 Ind. Cas. 87=12 Cr. L. J. 479.

Subsequent conduct of the accused.—Where once the crown has established the guilt of the accused by the evidence of prosecution witnesses then the subsequent conduct of the accused may be utilised as furnishing further proof of the correctness of the conclusion as to the guilt of the accused drawn from the evidence of the prosecution witnesses. By itself however it can furnish no legitimate proof of the guilt of the accused. 126 Ind. Cas. 684=31 Cr. L. J. 1081=A. I. R. 1930 Oudh. 324=7 O. W. N. 564.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fast in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant or fix the time or place at which any fact issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*) A sues B for libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relation of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home, he had sudden and urgent business, at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) A sues B for inducing C to break a contract of service made by him with A. C. on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant, as explanatory of the nature of the transaction.

Principle.—It would be practically impossible, in the conduct of an action, to plunge direct in *medias res*, and Judge and jury alike seek for some introductory evidence, just as one hearing only the main incident of a story desires to know the circumstances leading up to it and the results that flow from it. Those circumstances in relation to an action or suit may not *per se* be relevant, but in connection with the main issues to be put before the tribunal, they are treated as the introduction to main matters or by way of inducement to it. They take the place of the preamble to a statute, which, while it has no power in itself, combined with the enacting clauses becomes the statute. The variety of this introductory or preliminary proofs, as great in number as the variety of the causes of action, prevents any attempt at classification, but the rule as to their relevancy is abundantly established. In view of these facts the preliminary questions leading to the introduction of relevant fact was held entirely proper. It follows that if introductory testimony; not inherently relevant, is admissible *a fortiori* that should be relevant, which will explain, illustrate, elucidate evidence already given. Indeed, it is now an every-day occurrence for such evidence to be received as relevant—evidence which, if considered abstractly and apart from other evidence, would amount to nothing, but taken in connection with other facts proved in the case, tends to explain and illustrate them, either by way of reinforcing the evidence of the one side or breaking the force of that given by the other by showing its misapplication, exaggeration or other reason for depreciation of its force or value. Thus an explanation of words used in a conversation, the demonstration of the use of a scientific instrument, testimony showing the conduct of a party bears a different construction from that he would have put upon it, a conversation which would otherwise be hearsay, are examples of the class of evidence referred to. *Burr Jones Ev.* § *137* (*a*) *and* § *137* (*b*). So facts which are introductory and explanatory are always relevant. 9 B. L. R. 36 (50, 51)=17 W. R. Cr. 15; see also illustrations (a) and (b) and illustration (c) to s. 6.

Explanation of facts.—If after the commission of a crime a person, whose name is mentioned as a participator in the crime, absconds, his conduct shows that he is indeed concerned in the crime. Therefore, anything which tends to explain his conduct and furnishes a motive other than a guilty conscience is relevant under this section. *Gangaram* v. *Imperator*, 62 Ind. Cas. 545=22 Bom. L. R. 1274. Oral evidence is admissible to prove that the recital of consideration in a document is inno-

cent. 4 Mys. L. J. 104. The Bombay police received a telegram purporting to emanate from the Chief Commissioner of Police, Naya Salad, informing him that book drafts in duplicate had been stolen and it was feared that signatures would be forged and negotiation attempted in Bombay. A second telegram was received from Naya Salad in reply to inquiries made by Bombay Police. The accused cashed a draft at the French Bank, Bombay and presented another at the Eastern Bank, Bombay. The clerk informed his superiors and as a result the accused was arrested. It was held that the telegrams purporting to be sent by the *Naya Salad* Police were relevant to explain the conduct of the clerk of the Eastern Bank and the Bombay Police and were therefore admissible in evidence under this section. 91 Ind. Cas. 690=27 Bom. L. R. 1373=49 B. 879=A. I. R. 1926 Bom. 71. A recital in a sale deed between strangers to the suit comprising property not in suit, to the effect that it is bounded by the suit property belonging to one of the parties to the suit is not admissible in the suit. 30 C. W. N. 761=97 Ind. Cas. 265=A. I. R. 1926 Cal. 948.

Facts which support or rebut an inference.—The absence of entry in a book of account has no doubt been regarded as a relevant fact not under s. 34, but under ss. 9 and 11 to prove that an alleged payment was not made. 19 C. W. N. 612=28 Ind. Cas. 705 ; 74 Ind. Cas. 383=36 C. L. J. 389 ; 15 C. L. J.=17 C. W. N. 108 ; 4. C. W. N. C. C. VII ; 25 A. 90 ; A. I. R. 1928 Nag. 153.

Indentity.—It remains to observe on identity in the section. that sometimes evidence, which would be otherwise inadmissible becomes so, either as serving to identify the prisoner, or some article in his possession, as connected with the commission of the crime. Thus, in an indicment for Arson, evidence has been admitted to show that property, which had been taken out of the house at the time of the fire was afterwards discovered in the prisoner's possession. *R.* v. *Richman*, 2 East P. C. 1035 (*Norton* Ev. 119) ; see also 18 A 78 ; 1 C. W. N. 33 ; 9 C. W. N. 520.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two more persons have conspired together to commit a offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bomby, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H, giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may has taken place before he joined the conspiracy or after he left it.

Principle.—A rule is well established that, in cases where conspiracy is charged, the admission of one of the accused may become, by reason of the other proof in the case, admissibe against the other. By themselves, and without other proof, they are not admissible ; but, if proof shows the existence of the conspiracy, statement as to details of the crime charged, made by one party, become admissible against the other. The effect of this rule may be illustrated by supposing that the fact of the commission of the act which is charged as a crime is difficult of proof, but the fact of the conspiracy to commit such an act has been sufficiently proved. To procure a conviction, it is necessary that proof shall reach to both facts. Suppose now, that the only proof of the former fact consisted of statements in respect to it made by one of the parties. It is clear that since both are shown to have been interested together, and to have set out to commit the act, statements made by one

as to what was done should be received against the other. It must be borne in mind, however, that the fact of the conspiracy is to be proved by evidence entirely outside of the admissions. It is probable that, in all cases of conspiracy where admissions are received, their reception could be explained on the ground that they are part of the *resgestae.—Mackelvey's Law of Evidence* p. 144.

Scope.—The operation of this section is strictly conditional upon there being a reasonable ground to believe that two or more persons have conspired to commit an offence. 37 C. 467=14 C. W. N. 1114 ; seë also 1930 M. W. N. 1264 ; 81 Ind. Cas. 817=25 Cr. L. J. 1041=20 L. W. 202 ; 28 C. 797 ; 18 C. L. J. 590. Section 10 is based on principle of agency. A. I. R 1932 Bom. 56=33 Cr. L. J. 1159=55 B. 839. This section is intended to make evidence communications between different conspirators, while the conspiracy is going on, with reference to the carrying out of the conspiracy. 38 C. 169=15 C. W. N. 25 ; 28 C. 797. A conspiracy within the terms of this section contemplates something more than the joint act of two or more persons to commit an offence, 4 C. W. N. 528. This section says that reasonable ground for belief in the existence of a conspiracy should be shown before evidence is given of the facts of persons, who but for such conspiracy, would be strangers to one another. The existence of fact of a conspiracy must be proved before evidence can be given of the acts of any person not done in the presence of the prisoner. 5 O. C. 321. See also 11 P. W. R. 1915. What has to be established under this section to make documents found in the possession of one of several persons accused of conspiracy admissible against the other accused, is, that there is reasonable ground to believe in the existence of a conspiracy amongst such persons. It is not necessary for this purpose to establish by independent evidence that they were conspirators. 16 C. W. N. 1105 ; 30 C. 983. See also 25 B. 230 ; 9 B. L. R. App. 36 ; 7 B. L. R. 63 ; 46 C. 700 ; 25 Bom. L. R. 248 ; 46 C. 215=23 C. W. N. 193=46 Ind. Cas. 152 ; 42 C. 957=19 C. W. N. 676=21 C. L. J. 331. But the statement of an accused after arrest is not admissible under this section. 46 C. 700. This section is wider than the English law on this subject, which requires that acts and declarations of other conspirators must be in furtherance of the common purpose. Nor a conspirator who has severed his connection with the conspiracy is liable for the acts or declaration of the conspirators after severence. (*Phipson, 74*).

Conspiracy.—"The crime of conspiracy is complete, if two or more than two should agree to do an illegal thing, that is, to effect something in itself unlawful or to effect by unlawful means something which in itself may be indifferent or even lawful. It has accordingly been always held to be the law that the gist of the offence of conspiracy is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not." *Per Tindal* C. J. in *O' Connell* v. *R.* 11 C. E. & F. 155 ; see also 42 C. 957=19 C. W. N. 676. It is undobtedly true the law does not take notice of the intention or the state of the mind of the offender and there must be some overt act to give expression to that intention. 31 C. W. N. 239.

Proof of conspiracy.—Direct evidence is not essential to prove the conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter in and pursue a common design. Underhill Cr. Ev. § 491. In many cases the existence of conspiracy is a matter of inference deduced from criminal or unlawful acts done in pursuance of a common criminal purpose. *Rv. Biscoe*, 4 East 165 (171), *Mulcahy* v. *R.* L. R. 3 H. L. 306 (317) ; see also 9 Bom. L. R. 347 ; 92 Ind. Cas. 419. Possession of seditious literature by one member is evidence against the others as to the object of the association and even where such possession was obtained before the association was formed. 46 C. 215=28 C. L. J. 25=23 C. W. N. 193. The mere association of an accused with any of the conspirators is not enough by itself to convict him of being a member of the conspiracy. 39 C. L. J. 151=83 Ind. Cas. 513. Criminal conspiracy may be proved by direct or circumstantial evidence. 92 Ind. Cas. 419=27 Cr. L. J. 243=20 S. L. R. 18= A. I. R. 1626 Sind. 171 ; see also 5 Cr. L. J. 323 ; 32 M. 3 ; 35 C. L. J. 279.

Actionable wrong.—The acts and declarations of co-trespassers in civil actions and indeed of all persons combined for a common object whether civil or criminal are governed by the same rule. The acts and declarations of joint tort-feasors are not however reciprocally admissible unless combination for a common object be proved. (*Phipson 74*). In civil actions the declarations of

co-trespassers are subject to the same rule. If they are mere narratives, they are evidence only against the makers ; if they form part of the *res gestae* they are evidence against all. This section applies to an "actionable wrong" as well as a criminal offence. (*Norton 123.*)

Difference between English and Indian Law.—The provisions of this section are wider than those of the English law, according to which the act or declarations must have been done or said, not only with reference to the common intention but also in pursuance of the same. So this section renders admissible in cases of conspiracy much evidence which is not ordinarily admissible under the English Law. 5 Oudh Cas. 321 ; A. I. R. 1927 Oudh. 369=1 Luck. C. 339. This section makes evidence communicatious between different conspirators while conspiracy is going on, with reference to the carrying out of a conspiracy. But it is not intended to make evidence the confession of a co-accused and put it on the same footing as a communication passing between conspirators, or between conspirators and other persons. with reference to the conspiracy. 15 C. W. N. 25=38 C. W. N. 169. Letters written by one conspirator may be evidence against others even when they are not written in furtherance of the conspiracy. 17 W. R. Cr. 15 ; 7 B. L. R. 63=15 W. R. Cr. 25. The illustrations to the section is inconsistent with the section, 28 Ind. Cas. 738=11 P. W. R. 1915=17 P. R. 1915 Cr.

Conspiracy must be proved.—This existence of the conspiracy must be proved before giving evidence of the acts of the alleged conspirators, and isolated acts may be proved as steps by which the conspiracy itself may be established. *Fort* v. *Elliot*, 4 Ex. 78 ; 31 Bom. L. R. 515 ; 116 Ind. Cas. 756=30 Cr. L. J. 646=A. I. R. 1929 Pat. 145 (F. B.) ; A. I. R. 1933 All. 690=34 Cr. L. J. 690= 1933 A. L. J. 799.

Anything said or done.—A letter written by a person who is a stranger to the transaction is not admissible. 25 Bom. L. R. 248. In s. 10 "anything said" would include the statement made, speeches delivered, or declarations made. "Anything done" must be some act done and not merely the intention or knowledge of the person. "Anything written", would include (1) a manuscript whether signed or unsigned written by the person, and (2) matters trascribed by him on a type writer. A. I. R. 1933 All. 690=145 Ind. Cas. 481=1933 A. L. J. 799=1933 Cr. C. 1202 ; 34 Cr. L. J. 967=A. I. R. 1933 All. 690. Statement during trial is not as conspirator in furtherance of common intention of conspiracy. A. I. R 1933 Oudh. 86=34 Cr. L. J. 124=141 Ind. Cas. 192. The question whether a post card written by the accused after his arrest to another accused person is admissible in evidence depends on whether the provisions of section 10 have beed complied with. A. I. R. 1932 Cal. 557=33Cr. L. J. 450=137 Ind. Cas. 317. A document written by a woman since deceased in which she described her conversations with a third person in which she said that he told her that among his revolutionary friends was the accused, to whom he was accustomed to turn for guidance, is admissible under s. 10 as the statement if proved is itself a relevant fact by virtue of s. 10. A. I. R. 1934 Cal. 221 (F. B.) =35 Cr. L. J. 334. Confession of a co-conspirator is also admissible. 38 C. W. N. 1015.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact.

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*) The question is, whether A committed a crime at Calcutta, on a certain day. The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

Scope.—The words of this section are very wide, and under it, all evidence which would be held admissible under English law would be properly admitted under the Evidence Act. The Courts are justified in looking to English decisions to elucidate the meaning of the Evidence Act, and the evidence which Judges in England have admitted and Juries have acted upon, must be held to be clearly within the terms of ss, 11, 14, and 15, 16 B. 414. "This section is, not doubt expressed in terms so extensive that any fact which can, by a chain of ratiocination, be brought into connection with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connections of human affairs are so infinitely various and so far-reaching, that thus to take the section in its widest admissible sense would be to complicate every trial with a mass of collateral inquires limited only by the patience and the means of the parties. One of the objects of the law of evidence is to restrict the investigations made by Court within the bounds prescribed by general convenience, and the object would be completely frustrated by the admission on all occasions of every circumstance on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and a determination of fresh collateral issues, growing up in endless succession, as the enquiry proceeded. That such an extensive meaning was not in the mind of the legislature, seems to be shown by several indications in the Act itself. The illustrations to this section do not go beyond familiar cases in the English Law of Evidence." *Per West J.* in *Reg.* v. *Parbhu Das*, 11 B. H. C. R. 90 ; see also A. I. R. 1928 Cal. 893 ; 16 B. 414 (430) ; 47 C. 671. The framer of the Act, also observed : "The meaning of the section would have been more fully expressed if the words to the following effect had been added to it :—'No statement shall be regarded as rendering the matter stated highly probable within the meaning of this section unless it is declared to be a relevant fact under some other section of this Act.' (*Stephen's introduction p. 161*). In order that a collateral fact may be admissible as relevant under this section, the requirements of the law are.—(1) that the collateral fact must itself be established by reasonably conclusive evidence, and (2) that it must, when established, afford a reasonable presumption or inference as to the matter in dispute. 6 Bom. L. R. 983. The terms of this section are no doubt wide but they must be read subject to other sections of the Act, and therefore the fact relied on must be proved in accordance with the provisions of the Act. If that fact is a statement made by a person who is not called or cannot be called, the statement cannot be admitted, unless it comes within the purview of subsequent sections of the Act, for example ss. 32 and 33. 9 A. L. J. 351, see also 9 Bom. L. R. 1047 ; A. I.R. 1928 Cal. 893=110 Ind. Cas. 521.

Highly probable.—The words 'highly probable' point out that the connection between the facts in issue and the collateral facts sought to be proved must be so mediate as to render the co-existence of the two highly probable." *Per Mitter J.* in *Empress* v. *M. J. Vyapoory*, 6 C. 655. See also 16 B. 125 ; 30 C. 883 ; 18 Ind. Cas. 997=13 M. L. J. 282.

Cases.—The fact that no entry of the alleged payment was to be found in the defendant's book is relevant under this section. 76 Ind. Cas. 327=A. I. R. 1924 Nag. 22 ; 4 C. W. N. ccvii ; 15 C. L. J. 7=17 C. W. N. 108 ; 25 A. 90 ; but see 10 C. 1024 ; 7 C. L. R. 356 ; 30 C. 231 (247). The point may now to be taken to have been set at rest by the judgment of the Judicial Committee in *Imambandi* v. *Mutsaddi*, 23 C. W. N. 50 (P. C.)=28 C. L. J. 409=45 C. 878. Where the fact of absence of entry was held relevant, its effect to be determined in the light of the general evidence in the case. Where the question is whether a man is a habitual cheat, the fact that he belonged to an organisation formed for the purpose of habitually cheating in concert is relevant under s. 11 of the Evidence Act. 37 C. 91=14 C. W. N. 49=5 Ind. Cas. 29. In a charge of forgery of evidence of possession by the accused of other documents suspected or even proved to be forged is admissible under this section. 11 B. H. C. 90. In a charge under s. 401. I. P. Code, a former judgment 25 years old convicting accused of dacoity was held admissible to show criminal tendency and not habit A. I. R. 1925 Bom. 195=26 Bom. L. R. 1223=26 Cr. L. J. 1391=89 Ind. Cas. 527. In a trial for an offence under s. 4 (a) of the Prevention of Gambling Act, 1887, the

evidence that he was previously convicted of similar offence cannot be let in either under s. 54 or s. 11 of the Evidence Act. 28 B. 129. A cablegram purporting to be from one, in Calcutta was sent to P. in London. On the receipt of the cablegram and expressly referring to it P posted a reply to B. in Calcutta. *Held*, that P's reply to B would be a relevant fact under section 11 and cogent evidence to show that B. was the sender of the cablegram. 22 Ind. Cas. 179=18 C. L. J. 567=18 C. W. N. 386=15 Cr. L. J. 33. Where accused was charged for conspiracy to commit dacoity and under Arms Act, the fact that the accused was seen displaying revolver to companion is relevant under s. 11 A. I. R. 1932 Cal. 474=33 Cr. L. J. 854=59 C. 1361=55 C. L. J. 439. Where printed newspaper was found with accused, it is no evidence of truth of facts stated therein unless their existence is made by other evidence highly probable. A. I. R. 1933 All. 690=34 Cr. L. J. 967=1933 799=145 Ind. Cas. 481.

Horoscope.—48 Ind. Cas. 400.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Notes.—Damages unless expressly admitted are deemed to be fact in issue. Evidence tending to increase or diminish the damage is of course, admissible, though not expressly involved in the issue. Thus, in an action for breach of promise of marriage, plaintiff may give evidence of the defendant's fortune ; for it obviously tends to prove the loss sustained by the plaintiff ; but not in an action for adultery ; *James* v. *Biddington*, 6 C. and P. 589 ; nor for seduction. *Hodsoll* v. *Taylor*, L. R. 9 Q. B. 79, nor for malicious prosecution ; for it is nothing to the purpose "that damages are taken from a deep pocket *Short* v. *Story*, Winton Sum. As. 1835 per *Alderson*, *B*—Roscoe's N. S. 86. Where the question is as to the amount of compensation for defamation of character, it is plausible argument the that the defendant should be allowed to show how little the plaintiff had to lose, *Scott* v. *Simpson*, 8 Q. B, D, 491 ; *Foot* v. *Tracy*. 1 Johns. 46.

Damages as subject of opinion evidence.—In ordinary cases the Court is to determine the amount of damages. *Llncoln* v. *Railroad Co.* 23 Wend (N. Y.) 425 But there are questions of damages, dependent, by some rule of law, upon subsidiary questions of value of property and upon these latter questions persons specially qualified are often called upon for opinions so that opinions of experts as to values may furnish the basis upon which the jury arrives at a measures of damages, *Mackelvey's Evidence* p. 247. In *Miller* v. *Smith*, 112 Mass. 470, *Gray J.* said ; "Whenever the value of any particular kind of property, which may not be presumed to be within the actual knowledge of all the jurors, is in issue, the testimony of witness acquainted with the value of similar property is admissible, although they have never seen the very article in question,"

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant :—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, ascerted or denied, or which was inconsistent with its existence :

(*b*) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustrations.

The question is whether A has a right to a fishery. A deed confering the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Right.—The right mentioned in the above section is not a public right only. 23 W. R. 311 ; see also 6 C. 171 ; 39 C. L J. 526. In the absence of any qualification

such as is found in s. 48, "right and custom" in the section 13 must be understood as comprehending all rights and customs recognised by law, and therefore including a right of ownership. 10 B. 439; 31 B. 143; 12 M. 9; 15 M. 12; 16 M. 191; 12 A. 1. But the majority of Full Bench in *Gujju Lal* v. *Fateh Lal*, 6 C. 187 (F. B.) held that the word right includes only incorporeal rights. But *Mitter J.* dissented from the views taken by the majority and held that such contention is not warranted by any general principle. See also 2 C. W. N. 501.

Custom.—"Customs" accused in the sense of a rule which in a particular district, class or family has from long usage obtained the force of law must be (*a*) ancient : (*b*) continued, unaltered uninterrupted uniform, constant : (*c*) peaceable and acquiesced in ; (*d*) reasonable (*e*) certain and definite (*f*) compulsory and not optional to every person to follow or not. The acts required for the establishment of customary law must have been performed with the consciousness that they spring from a legal necessity and must not be immoral" (*Woodroffe Ev. 165*).

Transaction.—Where a party sets up a particular right, judgments not *inter partes* in previous cases in which a similar right was asserted are admissible in evidence. 60 Ind. Cas. 142 ; 59 Ind. Cas. 734 ; 40 Ind. Cas. 838 ; 64 Ind. Cas. 465 ; 65 Ind. Cas. 522 ; 65 Ind. Cas. 525 ; 65 Ind. Cas. 699 ; 65 Ind. Cas. 398 ; 1 Pat. L. T. 221 ; 78 Ind. Cas. 895. It is well established that although a judgment not *inter partes* may be used in evidence in certain circumstances, as a fact in issue, or as a relevant fact, or possibly as a transaction, the recitals in the judgment cannot be used as evidence in a litigation between the parties. 20 C. W. N. 643=23 C. L. J. 583=35 Ind. Cas. 298 ; 28 C. W. N. 942 ; 82 Ind. Cas. 99 ; 40 C. L. J. 30=82 Ind. Cas. 392. See also 15 M. 12 ; 22 I. A. 60 ; 24 A. I. 10 ; 12 A. 1 ; 12 C. W. N. 730 ; 22 C. 533 ; *contra* 6 C. 171 (F. B.) ; 13 C. 352 ; 10 B. 439 ; 11 M. 116 ; 12 M. 9. In this connection *Ranade*, J. in *Lakshman* v. *Amrit*, 24 B. 598 observed : "It is not easy to reconcile this conflict of views in particular instances, but apparently the cases which decide that judgments, not *inter partes*, are not admissible in evidence proceed chiefly on the ground that those judgments are sought to be used as having the effect, more or less, of *res judicata* ; For that purpose a judgment *inter partes* alone can be admitted in evidence, but for other purposes, where judgments are sought to be used to show the conduct of the parties or to show particular instances of the exercise of a right or admission made by ancestors, or how the property was dealt with previously, they may be used under secs. 11 and 13 as exceptions recognised under s. 43 as relevant evidence". The words of this section are very wide. There is nothing in the section which requires that the right asserted should further have been successfully asserted, giving a wide interpretation to the section before assertion of the right is sufficient. 92 Ind. Cas. 104=A. I. R. 1929 Cal. 727. Documents not *inter partes* are admissable under this section. 30 C. W. N. 826=95 Ind. Cas. 334=43 C. L. J. 327=A. I. R. 1926 Cal. 822 ; see also A. I. R. 1926 Nag. 129 ; 22 N. L. R. 49=A. I. R. 1926 Nag. 109 ; 97 Ind. Cas. 853=A. I. R. 1926 Oudh. 573 ; 92 Ind. Cas. 126 ; 97 Ind. Cas. 853. A benami transaction is fictitious transaction and is not admissible in evidence as a transaction under this section 31 C. W. N. 32.

Cases.—33 Ind. Cas. 446 ; 36 Ind. Cas. 882 ; 33 Ind. Cas. 142 ; 19 C. W. N. 1038 ; 51 Ind. Cas. 866.

Map.—49 Ind. Cas. 95 ; 5 C. 287.

14. Facts showing the existence of any state of mind, such as intention knowledge, good faith, negligence, rashness, ill-will or good will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Facts showing existence of state of mind, or of body or bodily feeling.

* ***Explanation 1.***—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

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* These *Explanations* were substituted for the original *Explanation* to s. 14. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891) s. 1 (*r*).

* *Explanation 2*—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of the section, the previous conviction of such person shall also be a relevant fact. †

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

‡ (*b*) A is accused of fraudulently delivering to another person a counterfeit coin which at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had beed previously convicted af delivering to another person as as genuiue a counterfeit coin. knowing it to be counterfeit, is relevant.

(*c*) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X. Y and Z, and that they had made complaints to B, are relevant.

(*d*) The question, is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent suffered loss.

The fact that, at time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C. a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not, in good faith, believe that the real owner of the propery could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(*j*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

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* These *Explanations* were substituted for the original *Explanation* to s. 14. by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891, s. 1 (1).

† *See* the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 311.

‡ This *Illustration* was substituted for the original *Illustration* (*b*) to s. 14, by Act 3 of 1891, s. 1 (2).

(*k*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevent facts.

(*l*) The question is whether A's death was caused by poison.

Statements made by A during his illnesss as to his symptoms are relevant facts.

(*m*) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n*) A sues B for negligence in proving him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Principle.—Where the question is as to knowledge, intent motive or any bodily or mental state, evidence of other acts done, showing the existence of such knowledge, intent, motive, or bodily or mental state are admissible, even though it involves the proof of other crimes. *McKelvy's Evidence* p 189. In *Reg.* v. *Francis* (1874) L. R. 2 Crown Cas 128, upon the indictment of X for obtaining money by false pretences, by representing a ring to be a diamond ring, evidence was offered, in order to prove guilty knowledge on X's part that he had, shortly before, offered other false articles to other pawn-brokers. The evidence was held admissible. In delivering the judgment *Lord Coleridge J.* said ; "It tends to show that he was pursuing a course of similar acts, and thereby it raises a presumption, that he was not acting under a mistake. It is not conclusive, for a man may be many times under a similar mistake, or may be many times the dupe of another ; but it is less likely he should be so oftener than once, and every circumstance which shows he was not under a mistake on any one of these occasions, strengthens the presumption that he was not on the last ; and this is amply borne, out by the authorities." In *Com* v. *Russel*, 156 Mass. 196 at p. 197 *Barker J.* observed : "The admission of such evidence is necessary, because guilty knowledge is a fact not susceptible of proof by direct evidence, and can rarely be shown by explicit admissions, but only by acts and conduct." So, also on a question of malice, evidence of other criminal acts leading up to one in question, which show the state of mind of the accused, is admissible. There is a tendency not to extend the doctrine, but to confine it to cases when there is very clear reason for its application on account of the necessity of showing motive, intent or guilty knowledge. *Reg.* v. *Oddy*, 2 Den. Cr. Cas. 264. In that case *Lord Campbell C. J.* said : "I should be very unwilling to apply their principle generally to criminal case." Where, however, the bodily or mental state is not a material fact in issue, evidence as to such state is inadmissible. *McKelvey's Evidence* p. 192.

Scope.—This important section had better be considered by remarks upon the several illustrations seriatim. It consists of a collection of the cases in which the strict rules of evidence are somewhat relaxed by the admission of collateral circumstances, where it is necessary to show a particular state of mind. Where a man is on his trial for a specific crime, such as uttering a forged note or coin, or receiving an article of stolen property, the issue is whether he is guilty of that specific act. To admit therefore as evidence against him other instances of a similar nature clearly is to introduce collateral matter. This cannot be with the object of inducing the jury to infer, that because the accused has committed a crime of a similar description on other occasions, he is guilty on the present : but to anticipate the defence that he acted innocently, and without any guilty knowledge, or that he had no intention or motive to commit the act. The first four illustrations

(*a*) (*b*) (*c*) (*d*) are on the point of knowledge ; the fifth (*e*), as also (*i*) and (*j*) ; of intention ; the sixth (*f*) as also (*g*) and (*h*), of good faith (*k*) of feeling ; (*l*), (*m*) of state of body ; (*n*) of negligence, and also of knowledge ; and (*n*), (*o*) and (*p*) illustrate the explanation (*Norton 131*). So this section is of assistance where the existence of a state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or good will towards a person or the existence of a state of body or bodily feeling was not or could not be in issue in the circumstance of the case. 24 C. W. N. 501=47 C. 671 (F. B.) In *Baharuddin Mandal* v. *Emperor*, 18 C. L. J. 578, it was ruled that proof cannot be offered of an independent offence to show that by reason of such independent offence the accused is more likely to have committed the one for which he is on trial ; in other words, evidence of such collateral offence can not be received as substantive evidence of the offence on trial, though under s. 14 evidence may be given of intention and like matters where the factum of intention or like is relevant. This distinction between cases where intention is and cases where intention is not relevant is illustrated by the decision of *Emperor* v. *Debendra*, 36 C. 573=13 C. W. N. 923 and *Emperor* v. *Abdul Wahed*, 8 A. L. J. 1269=12 Ind. Cas. 987 ; which lie on the opposite sides of the dividing line. See also 11 B. H. C. 90 ; 8 B. 223 ; 15 B. 491 (502). Whenever it is necessary to rebut even by anticipation, the defence of accident, mistake or other innocent condition of mind, evidence that the defendant has been concerned in a systematic course of conduct of the same specific kind at that in question may be given. To admit evidence under this head, however the other acts tendered must be of the same kind as that in question and not of a different character, and the acts tendered must also have been approximate in point of time to that in question. 19 C. W. N. 676 (692) ; 27 C. 139 ; 11 Cr. L. J. 430 ; 36 C. 573. In this connection it is also to be noted that section 15 is an application of the general rule laid down in this section. 36 C. 573 ; 18 C. L. J. 578=27 Ind. Cas. 187=15 Cr. L. J. 43. This section is wholly inapplicable in a case, where the state of mind or feeling of, any of the parties is admittedly not a fact in issue or a relevant fact and the guilt or innocence depends on proof of actual facts. A. I. R. 1928 Lah 382 ; 86 Ind. Cas. 970=29 C. W. N. 483=26 Cr. L. J. 906=A. I. R. 1925 Cal. 674. When the intention of the accused is a relevant fact, evidence of similar transactions both prior and subsequent to the alleged offence is admissible as evidence of intention. 83 Ind. Cas. 811=26 Cr. L. J. 185. When a person is charged with, or alleged to have done, some act involving guilty knowledge or intention, or other state of mind, after proof of the physical act, evidence is admissible of his similar acts on other occasions, but only in order to show such guilty knowledge or intention or state of mind. (*R.* v. *Geering*, 18 L. M. J. M. C. 215=Cockle Cas. 99). See also *R* v. *Rhodes*, L. R. (1899) 1Q. B. 77. Where it was held that such evidence was admissible even when such acts were subsequent to the transaction, in question if they show a connected, or entire, scheme or system of operations. "The matter may be roughly stated thus ; unconnected conduct on other occasions is never admissible to prove the *acts reas* but is admissible to prove the *mens rea* or other state of mind. The rule applies to both civil and criminal cases. With regard to criminal charges, in the case of *R.* v. *Bond*, (1906) 2 K. B. 389, *Bray J.* summarised the law as follows :— (1) Where the prosecution seeks to prove a system or course of conduct ; (2) Where the prosecution seeks to rebut a suggestion on the part of the prisoner of accident or mistake ; (3) Where the prosecution seeks to prove knowledge by the prisoner of some fact." *Cockle Ev. 100.*

Intention —In criminal cases the conduct of the prisoner on other occasions is sometimes relevant, where such conduct has no other connection with the charge under enquiry than that it tends to throw light on what were his *motives and intentions* in doing the act complained of. The intention with which a particular act is done constitutes often the burden of the inquiry, and to prove the intent it becomes necessary, in many instances, to extend the examination beyond the particular transaction concerning which the accused is upon his trial. For the purpose, therefore, of proving the intent, not of proving the act itself, it is often permissible to show other criminal transactions of the same sort springing from the like mental condition. (*Burr Jones* s. 143). "It is, that though the prisoner is not to be prejudiced in the eyes of the jury by the needless admission of testimony tending to prove another crime, yet whenever the evidence which tends to prove the other crime tends also to prove this one, not merely showing the prisoner to be a bad man, but by showing the particular bad intent to have existed in his mind at the time when he did the act complained of, it is admissible ; and it is also admissible, if it really

tends to this, as in the facts of most cases it does not, to prove the act itself." (*1 Bish Cr. Pro. S. 1067*). See also 16 B. 414 ; 11 B. H. C. 90 ; 8 B. 223 ; 6 C. 655 ; U. B. R. (1907-1909) Evi. 1 ; 22 Ind. Cas. 187 ; 22 C. W. N. 494 ; 40 C. 783=20 C. W. N. 262 ; 46 B. 958. See also 34 A. 93=12 Ind. Cas. 987 ; 61 Ind. Cas. 647=22 Cr. L. J. 407 ; 38. Ind. Cas. 971 ; 32 C. W. N. 345 ; 35 M. 186.

Explanation I.—Evidence as to general dishonesty of character is not admissible for the purpose of raising a presumption of dishonesty in the particular case under trial. 8 Cr. L. J. 411 ; see also 13 Ind. Cas. 781.

Explanation II.—As regards an offence under s. 400 I. P. C. previous commission of dacoity by the same accused is relevant under s. 14 of the Evidence Act. Convictions previous to the time specified in the charge, or previous to the framing of the charge are relevant under this explanation. But subsequent convictions are not admissible. 1 C. W. N. 146.

Cases.—In a prosecution under s. 415 of the I. P. Code, evidence would be relevant on the question whether the accused was in embarrassed circumstances at the date when he entered into his contract. A. I. R. 1932 Bom. 273=34 Bom. L. R. 313 Political view of accused are relevant in considering his intention. 1933 Cr. C. 433. =A. I. R. 1933 All. 498. Evidence of previous conviction is admissible not as evidence of character but to form habit and association. A. I. R. 1933 Oudh. 353=1933 Cr. C. 976=10 O. W. N. 688. It would be dangerous to infer that, because a man was generally dishonest, he was dishonest in a particular case. 38 Ind. Cas. 723=13 N. L. R. 35. In a trial for an offence under section 4 (a) of the Bombay Prevention of Gambling Act (Bom. Act IV of 1887) the evidence that the accused was previously convicted of similar offence is admissible to show guilty knowledge or intention. 28 B. 129=5 Bom. L. R. 805 ; but see 4 C. W. N. 97=27 C. 139. In *Banai* v. The *King Emperor*, 15 C. W. N. 461=38 C. 408, the Court observed. "But in cases where the other evidence has established association for purpose of habitually committing theft, evidence of previous conviction whether for offences aganist property or for bad livelihood, has confined, always been admitted, not as evidence of character, but as evidence of habits and it would seem that of such evidence, convictions for bad livelihood would be more cogent than those for isolated thefts. Such evidence must of course be weighed. A single instance of theft for instance would comment for little or nothing. There must be at least two or more cases against the same, individual to show habit, but that the evidence of such convictions is admissible is clearly against the weight of authority in this case. See also 15 Ind. Cas. 811=14 Bom. L. R. 373 ; 45 B. 958=75 Ind. Cas. 67=25 Bom. L. R. 214 ; 2 Ind. Cas. 307=32 M. 179=9 Cr. L. J. 567 ; 36 C. 573=13 C. W. N. 973 ; 47 C. 671=24 C. W. N. 501 ; 89 Ind. Cas. 527=A. I. R. 1925 Bom. 195. In a prosecution for theft, it cannot be assumed, as a matter of course that a previous conviction for the same offence is relevant in establishing the guilt of the accused. U. B. R. (1897—1901) Vol. I, p. 44. But such previous conviction may be admissible after conviction for the purpose of affecting the punishment imposed. U. B. R. (1892—1896) Vol. I, 82. Where certain speeches form the subject-matter of a charge for sedition and when speeches form part of a series of speeches or lectures on one topic, delivered within a short period of time, any of such speeches or lectures will be admissible under this section as evidence to prove the intention of the speaker in respect of the speech which forms the subject matter of the charge. 32 M. 3 ; see also 19 C. 35 ; 35 C. 945 ; 22 B. 112 ; 8 Mys. L. J. 49 ; 127 Ind. Cas. 209=31 Cr. L. J. 1182= A. I. R. 1930 Lah. 867 : 20 A. 55 (F. B.). So also circumstantial evidence can be resorted to in cases of fraud. 11 W. R. 482 (483)=3 B. L. R. A. C. 108 ; see also 9 C. P. L. R. 142. Mere speculation and probability is not sufficient in law to support a finding of fraud. 22 W. R. 124 ; 6 W. R. (P. C.) 24=3 M. I. A. 1. Fraud may be presumed on good grounds. 6 W. R. 235. Fraudulent intention can be inferred from secrecy. 22 C. 185. A writing made some time after the committing of an offence under s. 24 I. P. Code is admissible in Evidence under s. 14 of the Evidence Act. 30 Bom. L. R. 315=108 Ind. Cas. 30=29 Cr. L. J. 320=A. I. R. 1928 Bom. 78. Former judgment more than 25 years old and convicting accused of dacoity is admissible in a case under s. 401 I. P. Code for showing criminal tendency to commit theft and not habit of committing theft. 89 Ind. Cas. 529=A. I. R. 1925 Bom. 195 ; see also 38 C. 408=15 C. W. N. 461 ; 1 C. W. N. 146 ; 25 Bom. L. R. 215=75 Ind. Cas. 67. In a trial for an offence under ss. 235 and 243 I. P. Code of being in possession of counterfeit coins and instruments and materials for counterfeiting coin, evidence of the possession by the accused of counterfeit coins and instruments for their making at his

house in another district is admissible. 61 Ind. Cas. 647=22 Cr. L. J. 407. On a charge against the accused of cheating by falsely representing that they were the servants of a wealthy lady and were entrusted to act on her behalf in the arrangements for loans, to be made to the complainants out of the money she possessed, and thereby obtaining money from them on one pretext or another in connection with the affair held that evidence of instances similar but unconnected transactions with other persons, during the period covered by the evidence of the complainants is admissible under section 14 of the Evidence Act in order to prove intention of the accused. 15 A. L. J. 241= 39 A. 273. In a case of cheating, it is open to the prosecution to show that the acts charged against the accused were parts of a series of similar acts committed by him, or in which he was concerned, at or about the time in question. Evidence of such other acts, whether previous or subsequent to the frauds charged against the accused is relevant for the purpose of showing whether or not the intention of the accused was honest or fraudulent. 269 P. L. R. 1914. In cases where the other evidence has established association for purposes of habitually committing theft, evidence of previous convictions whether for offences, against property or for bad livelihood is admissible, not as evidence of character, but as evidence of habit. 9 Ind. Cas. 455=15 C. W. N. 461=38 C. 408.

Where the accused is charged under s 409, Penal Code for embezzling three specific sums. Held that evidence of collateral offences in respect of other sums was not admissible. A. I. R. 1928, 382. Where in a particular trial under section 420 I. P. Code, evidence was let in with regard to previous act of fraud which was alleged to have been committed by the accused person on the witness who spoke to the fact that on a particular occasion he was cheated by the accused in respect of certain sum. *Held* that the evidence is clearly inadmissible in law and it cannot be brought in with the aid of s. 14 or. 15 of the Evidence Act. 29 C. W. N. 483=86 Ind. Cas. 970=26 Cr. L. J. 906 ; see also 34 A. 94. In a case of murder by administering sweetmeats the facts that the accused offered sweetmeats to boys and poisoned one of them is not evidence under section 14 of the Evidence Act. 73 Ind. Cas. 262=6 N. L. J. 144. In a prosecution under s. 209 of the Penal Code for having knowingly made a false claim in a suit against certain persons, evidence relating to other suits brought by the accused against other persons may be admissible against the accused under ss. 14 and 15 of the Evidence Act for the purpose of showing ill-will or animus of the accused and as systematic cause of fraud or by systematic series of fraudulent claims and for the purpose of rebuting the defence that the particular suit was brought in good faith or any suggestion that it was brought under some mistake or misapprehension. 46 Ind. Cas. 696=22 C. W. N. 492=19 Cr. L. J. 776. The accused a license-clerk in a Municipal office, was charged with having cheated three persons of demanding from each two annas in excess of what was legitimate license-fee. On behalf of the prosecution evidence was produced to prove that he has also cheated other persons. *Held* that the evidence was inadmissible. 8 A. L. J. 1269=12 Ind. Cas. 987. Evidence of other dacoities by accused is inadmissible either under s. 14 or 15 of the Evidence Act. 13 Ind. Cas. 781=1912 M. W. N. 49=13 Cr. L. J. 125. In a suit on libel, evidence of instances of acts of the plaintiff more or less closely resembling the particular acts of misconduct imputed to him in the libellous statement is inadmissible. 19 Ind. Cas. 98=15 Bom. L. R. 130. Where in a prosecution under s. 304 I. P. Code, it was sought to be proved that the accused had taken part in a similar occurrence just previously by which as a result of the rash driving of his motor car certain persons were injured. *Held* that evidence regarding the previous occurrence was not relevant either under s. 14 or s. 15 of the Act. 1929 M. W. N. 395. The evidence to show the character of the accused would not be relevant under s. 14 of the Evidence Act as showing the existence of any relevant state of mind in as much the tendency to commit theft generally would not fairly be deemed to throw any light on the existence of an intention to commit the offece of dacoity. 54 B. 524=127 Ind. Cas. 189=31 Cr. L. J. 1168=32 Bom. L. R. 324=A. I. R. 1930 Bom. 157.

Facts bearing on question whether act was accidental or intentional.

15. When there is a question whether an act was accidental, or intentional [or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B. A delivered counterfeit rupees to C. D and E are relevant, as showing that the delivery to B was not accidental.

Regislative changes.—The words in the brackets have been inserted by Act 3 of 1891.

Scope.—This section is an application of the general rule laid down in s. 14, and it is not necessary under the section that all the acts should form part of a series of similar occurrences ; such acts may be proved. Where the particular transacton is one of a series of similar frauds, evidence of the other frauds is admissible to prove the intention of the accused in the particular case. 36 C. 573=13 C. W. N. 973=9 C. L. J. 610 ; see also 24 C. W. N. 501 (F. B.). Section 15 must be read as subject to section 14, so far as evidence of knowledge and intention is concerned. 38 Ind. Cas. 723=13 N. L. R. 35. So under this section the prosecution cannot use the evidence as to the commission of the other acts of a similar nature in proof of the existence of the specific acts which form the subject matter of the charge. But when the existence of these acts has been established by evidence *aliunde* and the only question which remains to be decided is whether they were done accidentally or intentionally or with a particular knowledge or intention, then and there only could the evidence of other similar acts be let in. A. I. R. 1928 Lah. 382 ; see also 12 P. R. 1913 Cr.=269 P. L. R. 1914=6 Ind. Cas. 964 ; 42 C. 957=21 C. L. J. 331=19 C. W. N. 676 ; A. I. R. 1926 Bom. 231=50 B. 174=28 Bom. L. R. 115 ; 39 Ind. Cas. 673=15 A. L. J. 241=39 A. 273=18 Cr. L. J. 529. In a case of cheating it is open to the prosecution to show that the acts charged against the accused were parts of a series of similar acts committed by him or in which he was concerned, at or about the time in question. 26 P. W. R. 1910 Cr. ; see also 36 C. 573=13 C. W. N. 973=9 C L. J. 610 ; 29 C. W. N. 483=29 Cr. L. J. 906=86 Ind. Cas. 970. So to come under this section it must be established that the act forms part of a series of similar occurrences. It is well established that the gist of the section is that unless there is a sufficient and reasonable connection between the fact to be proved and the evidentiary fact, that is, unless that is in substance some common link, they cannot form a series. So where each of the occurrences had its own special features they could properly be deemed similar occurrences. 24 C. W. N. 501 (517) F. B ; see also 19 C. W. N. 676 (692). Section 15 of the Evidence Act covers both previous and subsequent similar occurrences. 22 C. W. N. 494=46 Ind. Cas. 696=19 Cr. L. J. 776. In a prosecution for theft it cannot be assumed, as a matter of course that a previous conviction for the same offence is relevant in establishing the guilt of the accused. In order that it may be relevant under this section it must be strictly shown that that section applies. U. B. R. (1897-1901) Vol. 1, 144. See also 13 Cr. L. J. 125 ; 12 Cr. L. J. 611 ; 269 P. L. R. 1914 ; 25 P. W. R. 1910 Cr. ; 47 C. 671 ; 60 Ind. Cas. 331.

Principle.—"In criminal cases the leading principle is that evidence of all matters which are irrelevant to the issue will be excluded. But to this there is exception that evidence will be admitted of any facts which tend to explain or throw light on the transaction in issue, as for instance, to establish a systematic course of conduct, or to show criminal intention or guilty knowledge in the mind of the accused, or to rebut the defence that the criminal act was done accidentally or undesignedly"—*Powell* 128. This section is applicable where the only

question is whether an untruthful statement is accidental or intentional or with particular knowledge or intention. 15 A. L. J. 241.

Cases.—Accused were prosecuted for misappropriation by defalcation of accounts made in 1925 and 1926, evidence was adduced by prosecution of similar acts done by the accused before 1925 : *Held* that the evidence was admissible under section 15 to rebut the probable plea of mistake or innocent condition of the mind of the accused, the evidence being that of a system in which there was a common link between acts of 1924 and those of 1925. 111 Ind. Cas. 387=29 Cr. L. J. 135=A. I. R. 1928 Lah. 880 ; see also *R.* v. *Bond*, (1906) 2 K. B. 413-416 ; *R.* v. *Francis*, 43 L. J. M. C. 97 ; *R.* v. *Stephens* 16 Cox. 387 ; *R.* v. *Richardson*, 2 F. & F. 343. The accused, a grocer at *Bhiwandi*, ordered goods for Bombay and the goods were put into a hired motor lorry. To reach *Bhiwandi*, the lorry passed through the limits of the *Kalyan* Municipality ; but the lorry driver instead of paying octroi on the goods at *Kalyan* rapidly passed the ingoing *Naka* and similarly passed out at the other end of the limits. The *Nakedar* in charge of the ingoing *Naka* reported this matter to the municipality. The accused was charged under s. 77. (2) of the Bombay District Municipal Act for introducing the said goods within the Octroi limits without paying dues. *Held* that the evidence that the accused had been connected with similar cases as the one under charge was admissible to show his knowledge and intention. A. I. R. 1926 Bom. 231=50 B. 174=28 Bom. L. R. 115. The accused on the 7th June 1909 administered *dhutura* poison to A and B both of whom died from the effects thereof, and on the following day administered the same poison to C and D. The former got ill and recovered but the latter died. *Held* that the events which occurred or were said to have occurred, on the 7th and 8th of June were relevant to the case of charge of murder of D as forming incidents in series of similar transactions occurring about the same time and tending to show system and intention and to negative the idea of accident. 9 Ind. Cas. 731=32 P. L. R. 1911 ; see also 73 Ind. Cas. 262=6 N. L. J. 144. Where in a trial upon a charge under section 399 of the Penal Code the accused pleaded their presence at a particular spot, armed and in company was accidental and innocent it is open to the prosecution to rebut the plea, and section 15 of the Evidence Acts admits the production of any evidence which would determine the construction to be placed upon the acts of the accused which in themselves might or migh not be preparation for dacoity, and evidence that one or more members of the gang had been concerned in previous and similar offences committed at the same place is admissible for the purpose. 71 Ind. Cas. 361=24 Cr. L. J. 136. In a case of cheating, it is open to the prosecution to show that the acts charged against the accused were parts of a series of similar acts committed by him, or in which he was concerned, at or about the time in question. Evidence of such other acts, whether previous or subsequent to the frauds charged against the accused. is relevant for the purpose of showing whether or not the intention of the accused was honest or fraudulent. Evidence merely to prove that the accused person's character is such that he is likely to commit the act with which he is charged, is not admissible. 26 P. W. R. 1910 Cr.=6 Ind. Cas. 964. In a charge against the accused of cheating by falsely representing that he was the Dewan of an estate and could procure employment for the complainant and thereby obtaining a sum of money as a pretended security deposit, evidence of instances of similar but unconnected, transactions with other persons before or after the date of the offence charged, is admissible, not to establish the factum of the offence but to prove that the transaction in issue was one of a systematic series of fraud, and that the intention of the accused on the particular occasion in question was dishonest and fraudulent. 36 C. 573=13 C. W. N. 973=9 C. L. J. 610 ; see also *Reg* v. *Rhodes*, 1 Q. B. D. 77 ; *Rex* v. *Wyatt*, 20 Cox. Cr. C. 462.

Where the accused was charged under s. 409 Penal Code, for embezzling three specific sums : *Held* that evidence of collateral offence in respect of other sums was not admissible.

In a suit on libel evidence of instances of acts of the plaintiff more or less closely resembling the particular act of misconduct imputed to him in the libellous statement is inadmissible. The defendants can justify the libel as true in substance and in fact by proving its truth not the truth of other acts and occasions having nothing to do with the act in question ; unless it is intended to show that those acts were parts of the habitual and intentional. not accidental, conduct of the plaintff. *Nadirsha* v. *Piroj Sha*, 19 Ind. Cas. 98=15 Bom. L. R. 130. It is not open to the prosecution to adduce evidence to show that on two previous occasions the accused under trial had committed murders themselves but had falsely

charged and got convicted some other person as murderers. 62 Ind. Cas. 545=22 Bom. L. R. 1274=22 Cr. L. J. 529. 'Two persons A and B were tried on the 21st July 1919 for the offence of murdering D a woman of the town, on the 10th December 1914, of conspiring to rob her, of theft of property from her house and for abetment of murder and theft. At the trial the prosecution wanted to adduce evidence (1) of the association of the two accused, (2) of their association in cases spoken of by other women of the town in connection with the charges of theft which they made against them and generally of a series of incidents from 1914 to 1918 that they used to go about together under different names, A taking B with him as his *Durwan* and introducing himself as a Babu to rich prostitutes of the town, and this being followed by their subsequent disappearance and discovery of loss of money and ornaments. *Held* that the evidence was not admissible. 24 C. W. N. 501 (F. B). In a case under s. 420, I. P. Code the question of guilt or innocence of the accused defends upon proof of actual facts and not upon the state of the accused's mind. Therefore evidence as to any previous act of fraud (committed by the accused) is not admissible under any provision of the law. 29 C. W. N. 483=26 Cr. L. J. 906=86 Ind. Cas. 970 ; but see 36 C. 573=13 C. W. N. 923=9 C. L. J. 61. Where conduct alleged and proved against accused is susceptible of more than one interpretation. evidence of similar acts is admissible to show systematic conduct. A. I. R. 1933 Cal. 136=34 Cr. L. J. 294=1934 Cr. C. 197=142 Ind. Cas. 274.

Passing bad coins.—In cases of passing bad coins previous offence is relevant. *R.* v. *Jarves*, 7 Con. 53.

Arson.—In cases of arson, evidence may be given of previous fires that the prisoner had experienced in his premises. *R* v. *Gray*, 4 F & F. 1102.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Scope.—There is no presumption that the course of business in a private office has the regularity of that in a public department. But the existence of any course of business, according to which an act in question would have been done, is relevant to the question whether such act was in fact done. *Hetherington* v. *Kemp* 16 R. R. 773. Illustrations (*a*) is based on this case. The question in that case was as regards the posting of a particular letter. In this connection *Lord Ellenborough C.* J. observed : "You must go further. Some evidence must be given that the letter was taken from the table in the counting house, and put into the post office. Had you called the porter, and he had said that although he had no recollection of the letter in question, he invariably carried to the post office all the letters found upon the table, this might have done, but I cannot hold this general evidence of the course of business in the plaintiff's counting house to be sufficient." In a private office the course of business is only a relevant fact. In a public office the Court will presume that the act was properly done. So if a letter be properly addressed to A, and posted and if it does not come back through the Dead Letter Office the Court will presume that A has received it. *Warren* v. *Warren* 1 C. M. and R. 250 ; *Jones* v. *Great Central Railway*, *Powell*, 144. The jury will also infer that A had received it in the ordinary course of postal business. *Stocken* v. *Collin*, 7 M. and W. 515 : *Ward* v. *Lord Londesborough*, 12 C. B. 252. There is a presumption that public and official acts and duties have been regularly and properly performed. *Berryman* v. *Wise*, 4 T. R. 366.

Course of business.—It means the ordinary course of a professional avocation or mercantile transaction or trade or business. 23 C. 63.

Registered letter.—Where a registered letter is posted to a firm's correct adress but is returned with the word 'refused' endorsed upon it, the presumption

under this section in favour of the existence of common course of business is that the letter reached the place of firm's business and it may also be presumed that it was refused by an agent or partner of the firm. 50 Ind. Cas. 149 ; see also 15 C. 681 ; 9 A. 366 ; 13 Bom. L. R. 328 ; 20 C. L. J. 455=19 C. W. N. 489.

ADMISSIONS.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission.—An admission is "a statement oral or written, suggesting any inference as to any fact in issue or relevant or deemed to be relevant to any such fact, made by or on behalf of any party to any proceedings" (Reyonld's Step. Ev. art. 15.) Admissions have been subdivided into direct and indirect, express, implied, incidental judicial and extrajudicial, and the names of some of them sufficiently indicate the description of any particular admission to obviate special definition. Direct and express admissions are practically the same. Implied admissions are made by having done or omitted to do some act. The term "incidental" carries with it that the admission was not made in connection with the matter under judicial inquiry. So judicial admissions are such as may be made in pleadings or in the progress of a trial or generally in the course of judicial proceeding, and all admissions not so made may be grouped as extra-judicial admissions. (*Burr Jones* § *235*). Silence or conduct may amount to an admission, when it is natural to expect a reply or statement. (*Bessela* v. *Stern*, L. R. 2 C. P. D. 265). A vague admission is no admission. 21 A. L. J. 869.

Admission and confession.—In English law admission is confined in civil cases and confessions in criminal cases. But in the Evidence Act such distinction has not been observed. Sections 17-22 are applicable both to civil and criminal cases. But confession is used only in relation to criminal cases and herein the Act followed the English law. Admission in a civil suit that a document is genuine cannot in a forgery case be regarded as confession at all. A. I. R. 1929 Cal. 539. "Confessions" are a sub-species of statements and a species of admissions. Per *Rankin J.* in 44 C. L. J. 253 (259)=A. I. R. 1927 Cal. 17. The expression "confession" occurs under the category of admissions ; it has not been defined in the Evidence Act. Per *Mahmood J.* in 6 A. 509 (539). But there is a distinction between "an admission and "a confession" in the Evidence Act. 10 B. L. R. App. 2 ; 7 A. 646 ; 6 B. 34 ; 15 C. 589 ; 6 C. 530 ; 15 C. 595. A confession only an admission of guilt. 4 A. L. J. 174 (Journal) ; see also 7 A. 646=A. W. N. (1885) 131 ; 16 P. R. 1886 Cr. An incriminating statement which falls short of an absolute confession, but from which the inference of guilt follows is a confession. 51 P. L. R. 1905=2 Cr. L. J. 239=20 P. R. 1905 Cr.

Admissions by party to proceeding or his agent :

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character ;

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

by party interested in subject-matter ;

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding and who make the statement in their character of persons so interested ; or

by person from whom interest derived.

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit.

are admissions, if they are made during th continuance of the interest of the persons making the statements.

Scope.—Let us confine ourselves to civil admissions for the present. The persons by whom admissions may be made are the parties to the suit or their agents, or those identified in interest with them ; or the persons *sub modo* in (1) and (2). If they proceed from a stranger they are generally inadmissible ; unless he be dead, as to which see section 32 *post*. An admission made by an infant after he arrives at age will bind him. No distinction should be drawn between the *nominal* and *real* parties to a suit. The Courts of India being Courts of Enquiry should deal directly with admissions made by nominal parties as for instance consignees suing in the name of consignors. When the Court considers the admission of such a party fraudulent it should be at once rejected. (*Norton Ev.* 143.). An admission on a point of law is not binding. A. I. R. 1929 Pat. 879 ; A. I. R. 1929 Nag. 343.

Cases.—A statement made by a defendant in another suit may be used as an admission within the meaning of this section. 22 W. R. 303. An admission against her own interest by the predecessor-in-title of the defendant is relevant under ss. 18 and 21, though not conclusive, and is sufficient by itself to shift the burden of proof. 7 N. L. R. 23. See also 69 Ind. Cas. 35 ; 66 Ind. Cas. 15 ; 9 O. L. J. 262 ; 46 Ind. Cas. 709.

Parties.—An admission once made is binding against the party making it for all purposes of the suit, unless it be shown that such admission was recorded erroneously. 2 W. R. Act X. R. 1. An admission made by parties to a previous suit or an arbitration proceedings may be used as evidence against them in subsequent suit. 7 W. R, 249 ; 9 W. R. 162 ; 5 B. L. R. 529 ; 14 W. R. 28 ; 13 M. I. A. 438 17 W. R. 372 ; 23 W. R. 27 ; 15 W. R. 437 ; 27 W. R. 303. Where a person; uses the admission of another as evidence the whole admission must be put in. 7 W. R. 29. The admission by defendants in a former suit of a map as correct was held to be legal, though not conclusive evidence against them in a boundary suit. 8 W. R. 291.

Pleader.—A pleader's statement on behalf of his client after full consideration and consultation is relevant evidence against that client in another case to which he is a party. 15 W. R. 35. A barrister (or other advocate) may make any admission on behalf of his client which, in the honest exercise of his judgment, he thinks proper ; but he has no authority on matters collateral to the suit (*Swinfen* v. *Lord Chelmsford*, 29 L. J. Ex. 382). It is not open to a party in appeal to try to go behind an admission made by his pleader who represented him is trial court by engaging a fresh counsel in the appellate court. 102 Ind. Cas. 283 ; 9 W. R. 465 ; 11 M. I. A. 253 ; 6 C. W. N. 52 ; 21 M. 279 ; 22 M. 538.

Agents.—Admission may be made by agents. (*Williams* v. *Innes*, 10 R. R. 702). Whatever an agent or servant does or says, within the scope of his authority, express or implied, in carrying out the business in which he is employed binds his principal. An agent or servant may therefore bind his principal by admissions made within the scope of his authority or duty. *Kirkstall Brewery Co* v. *Furness Ry Co.* L. R. 9 Q. B. 468 ; *G. W. Ry Co.* v. *Willis*, 34 L. J. C. P. 195 ; *Govindji* v. *Chhota Lal*, 2 Bom. L. R. 651. Statements made by an agent about past transactions will not bind the principal as admissions. When the agent's authority to act in the particular matter has ceased, the principal cannot be affected by his subsequent statements. (*Peto v. Hague* 5 *Esp.* 134.). See also 3 B. L. R. 273 ; 46 Ind. Cas. 709. A statement made by an agent to the effect that his principal was a bastard was admissible. 109 Ind. Cas. 310=A. I. R. 1928 Oudh. 233.

Admission by one of several persons.—Where several persons are interested in the subject-matter of a suit the general rule is that the admissions of any one of those persons are receivable against himself and his fellows whether they be all jointly suing or sued provided the admissions relate to the subject-matter in dispute and were made by the defendant in his character of a person jointly interested with the party against whom the evidence is tendered. 48 Ind. Cas. 193.

Admission of agent in criminal cases.—According to the Indian Evidence Act admission of an agent is admissible againt the principal if made within his authority but confession of an agent are not so admissible. 46 Ind. Cas. 709=4 P. L. W. 120=19 Cr. L. J. 789.

Cases.—69 Ind. Cas. 35 ; 66 Ind. Cas. 15.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admissions by persons whose position must be proved as against party to suit.

Illustrations.

A undertakes to collect rents for B.
B sues A for not collecting rent due from C to B.
A denies that rent was due from C to B.
A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Cases.—The question at issue was whether a party was the legitimate issue of a person with whom her mother was living after having been previously married to another who, it was alleged, had divorced her. A deposition given by the mother was tendered in evidence, in which she was described at the heading as the wife of her previous husband, but in the body of which she stated she had been living with the alleged father for 10 or 12 years past. Held, that the deposition, even if admissible, was of no weight for the reason that her statement did not amount to an admission that she was living in adultery. 26 A. 108 P. C.=8 C. W. N. 241. Guardians of infants are not competent to bind the infants by their admissions. 29 C. L. J. 577. An admission made by a landlord is not binding on the tenant. 52 Ind. Cas. 739.

Case.—64 Ind. Cas. 334.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Admission by persons expressly referred to by party to suit.

Illustration.

The question is whether a horse sold by A to B is sound. A says to B—"Go and ask C ; C knows all about it." C's statement is an admission.

Scope.—Admissions may be made by agents. If one party directs or requests another party to apply to any other persons for information on a certain matter, such reference constitute such other person as agents in such matters for such purpose. *Williams* v. *Innes* 10 R. R. 702. Whenever a party refers to the evidence of another, as is bound by it—and this is constantly good evidence. *Daniel* v. *Pitt*, 1 Camp 366. It matters not whether the question was one of law or fact. *Price* v. *Hollis*, 1 M. and S. 105 ; *Downe* v. *Cooper*. 2 Q. B. 256. The reference need not be by express words. If the fair consequence of a party's conduct is to refer to another, it will suffice. (*Norton, 149*). A party to a litigation is not bound by the statements of the Muktear of the opposite party who was cross-examined by the parties. 4 U. P. L. R. 9 (Rev). See also 80 Ind. Cas. 16=46A. 710. But there must be an express reference. L. R. 3 All. 204. Where parties to a proceeding agrees to abide by the statement of a third person to statement made by such person is admission within the meaning of this section. 103 Ind. Cas. 34=A. I. R. 1927 All. 659.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest ; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases :—

Proof of admissions against persons making them, and by or on their behalf.

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it, were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, where it consists of a statement of the existence of any state of mind or body, relevant

or in issue, made, at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged ; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b*) A, the captain of a ship is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mak of that day.

The statement in the date of the latter is admissible, because if A were dead, it would be admissible under section 32, clause (2).

(*d*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by fact in issue.

(*e*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reason stated in the last preceding *illustration*.

Why admissions competent.—Whatever a party voluntarily admits to be true, though the admission be contrary to his interest may reasonably be taken for the truth. The same rule, it will be seen, applies to admissions by those who are so identified in situation and interest with a party that their declaration may be considered to have been made by himself. As to such evidence the ordinary test of truth are properly dispensed with ; they are inapplicable. An oath is administered to a witness in order to impose an additional obligation on his conscience and so to add weight to his testimony, and he is cross-examined to ascertain his means of knowledge, as well as his intention to speak the truth. But where a man voluntarily admits a debt or confesses a crime, there is title occasion for confirmation ; the ordinary motives of human conduct are sufficient warrants for belief." *Southern Ins Co* v. *White*. 58. Ark 277. In English law such admissions are admissible as one of the exceptions to the hearsay evidence. Strictly speaking they are open to but few of the objections which may be urged against hearsay testimony. Admission made by a party is of considerable weight as evidence against him, and may, if unexplained be even decisive. 51 Ind. Cas. 876 ; 13 C. W. N. 409 ; 7 Ind. Cas. 505. Under this section a Court is bound to receive in evidence admissions of a party but no such rule applies to denials. *Janki* v. *Emperor*. 49 A. 482=A. I. R. 1927 All. 383. The statement that a document is a copy of the original is admissible when made by a deceased person in a document relating to relevant fact and also as an admission under s. 21. 56 I. A. 143=33 C. W. N. 378 P. C.

Cases.—68 Ind. Cas. 566 ; 4 Lah. L. J. 437 ; 45 Ind. Cas. 843 ; 22 C. 909; 1924 Nag. 281 ; 17 Ind. Cas. 961 ; 54 Ind. Cas. 478 ; 47 C. L. J. 222 P. C.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Note.—According to Engiish law a party's own statements as to any matter of fact are always evidence against himself, even where they relate to the contents of a deed, or other written instrument. *Slatterie* v. *Pooley*, 6 M. and W. 664). The Indian law on the subject departs from the English law as laid down in the above case. The above decision has been severely attacked in *Sanders* v. *Karnell* 1 F. and F. 356 and in *Lawless* v. *Queale* 8 Ir. L. R. 382 but in England it has survived those attacks, (*Powell* Ev. 444). But their Lordships of the Judicial Committee of the Privy Council in 10 I. A. 79 observed : "They consider that it is a very dangerous thing to rest a judgment upon verbal admission of a sum due, without very clear evidence especially, when there are other means of proving the case, if a true one."

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Statements without prejudice.—"Communications admissions or statements, written or verbal, made by a party to an action, pending, the dispute or action, and made expressly or impliedly 'without prejudice' with the object of compromise or settlement, cannot be given in evidence against the person making them. A letter written without prejudice protects from disclosure the whole of the correspondence of which it forms part." (*Paddock* v. *Forrester*, 67 R. R. 634 cited in Cockle Cas. 54. It is applicable only in civil cases. By this section the Court is precluded from making use of the admission in a deed of compromise which was entered into and subsequently set aside on the ground that the agent of one of the parties was not empowered to enter into it. 83 P. R. 1877.

Cases.—Vide 20 C. W. N. 1217 ; 52 Ind. Cas. 348 ; 52 Ind. Cas. 443 ; 11 Lah. L. J. 446 ; 6 O. W. N. 1088.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession—meaning of. It has already been stated that confessions are merely one species of admissions, namely, that species which consists in a direct acknowledgment of guilt in a criminal charge. The acknowledgment must be in express words, by the accused in a criminal case, of the truth of the guilty fact charged or some essential part of it. *Wigmore* § 821. So the question is what admissions do amount to confessions ? The word confession "has not been defined in the Indian Evidence Act." says *Mahmood J.* in *Queen Empress* v. *Babu Lal*, 6 A. 509 (F. B.) at p. 539. "it, however, occurs under the category of admissions, and to make my meaning clear, I adopt the definition given by *Mr. Justice Stephen* in Art. 21 of his *Digest of the Law of Evidence*. by saying that a 'confession is an admission made *at any time* by a person charged with a crime. stating or suggesting the inference that he committed that crime. In *Queen Empress* v. *Jagrup*, 7 A 646 (647, 648) *Straight J.* although he refused to follow the definition given in *Stephen*'s Digest on the ground that the Digest "was written in view of a proposal for preparing a Code of Evidence for England, and it can scarcely be regarded therefore as an authority to guide me in construing an Act passed by the Legistature of this country in 1872" yet adds "though I may add that I do not find anything in *Mr Justice Stephen's* definition at variance with the view I take," According to him also the word 'confession' must be construed as meaning the same in s. 30 as in ss. 24, 25 and 26. In *Imperatriz* v. *Jandharinath*. 6 B. 34, the definition of *Mr. Stephen* was prac-

tically adopted and in *Queen Empress* v. *Nana*, 14 B. 260 (F. B.) that definition was quoted with approval. In the last case the accused was charged, under s. 411 of the Indian Penal Code, with dishonestly receiving stolen property. In the course of police investigation, the accused was asked by the police where the property was. He replied that he had kept it, and would show. He said he had buried the property in the fields. He then took the police to the spot where the property was concealed, and with his own hands disinterred the earthen pot in which the property was kept. He made a second statement when pointing out the spot to the effect that he buried the property there. The question was whether those statements amounted to confessions and as such excluded under s. 25. *Held* that the above statements were clearly in the nature of a confession as they suggested the inference that the prisoner committed the crime, and even if not intended by the accused, as a confession of guilt they were an admission of a criminating circumstance and would form a very important part of the evidence against the accused as showing that he had not come by the property honestly, and, therefore, properly within the rule of exclusion in regard to confessions made by a person in custody of the police. But *Straight J.* in *Queen Empress* v. *Jagrup*, 7 A. 646, was of opinion that only statements which are direct acknowledgment of guilt should be called confessions. This view of *Straight J.* was followed in *Emperor* v. *Saniya Bandu*, 11 Bom. L. R. 633 where at page 636, *Chandravarkar J*, said ; "The Indian Evidence Act makes a clear distinction between an admission and a confession. It is only under s. 30 of the Act that the confession of one of two or more accused persons jointly tried for the same offence, can be taken into consideration as against the rest. It must be a confession to be so admissible that is, it must affect both the person confessing and the other accused. Here the statements of *Yeswada* taken by themselves do not fall within that category. As *held* by the Allahabad High Court in *Emperor* v. *Jagrup*, 7 A. 646, the word 'confession' must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt. Section 30 must be strictly construed. The learned Sessions Judge has construed the statement into a confession by a process of inferential reasoning which is not what the terms of section 30 countenance." See also *Emperor* v. *Nani Gopal*, 15 C. W. N. 593 (612)= 38 C. 569.

In *Queen* v. *Mac Donald*, 10 B. L. R. App. 2, *Phear J.* observed that there is a distinction in the Evidence Act between admissions and confessions, but the judgment contains no definition of the term. This case was followed by *Prinsep J. in Empress* v. *Davee Pershad*, 6 C. 530, which also throws no light on the subject. So the question afterwards raised by *West J.* in *Queen Empress* v. *Tribhovan Manek Chana*, 9 B. 131, 134, namely what are the particular kinds of statements which it is proposed to prove against an accused person to establish an offence or in other words what admissions do amount to confession, remained unanswered in both the Calcutta cases. Neither in *Queen Empress* v. *Meher Ali Mullick*, 15 C. 589, a subsequent Calcutta case, *Wilson J.* explained the exact meaning of the word confession, although he admitted this that there is a difference between admission and confession. In *Queen Empress* v. *Nilmadhub*, 15 C. 595, *Petharam C. J.* also said at p. 607 : "If the contents of the document did not amount to a confession the document itself would be relevant as an admission under s. 21 of the Evidence Act." So there also the learned *Chief Justice* admitted the existence difference between admission and confession but did not give any definition of the word 'confession'. The High Court of Madras is silent on this point. So neither the early reported Calcutta cases nor the reported Madras cases throw any light whether in interpreting the term "confession" one should accept the strict definition given by *Straight J.* in *Queen Empress* v. *Jagrup*, or follow the definition given by *Stephen J.* in his Digest of the Law of Evidence, namely that a 'confession' is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime." In *Emperor* v. *Kangal Miali*, 41 C. 601=15 Cr. L. J. 713= 26 Ind. Cas. 161 it was held that confessions are statements either directly admitting the guilt of the accused or statements suggesting the inference that he committed the crime with which he is charged. So the majority of Indian cases followed the definition of the term 'confession' given by *Stephen J.* in his Digest of the Law of Evidence. "The confession is not defined in the Evidence Act, but it has been many times interpreted by judicial decisions. It has been defined as an admission made at any time by a person charged with a crime stating or suggesting the inference, that he committed that crime. Therefore, not only statements which amount to a direct acknowledgment of guilt are confessions, but also

inculpatory statements which although they fall short of being actual admissions of guilt, yet suggest an inference of guilt or from which an inference of guilt follows. The factor determining whether a statement amounts to a confession or not is not the motive of the party making it but the fact that it leads to an inference of guilt." *Per Purlet J* in *Mi Ein Jha* v. *Emperor*. 5 L. B. R. 131=4 Ind. Cas. 1028=11 Cr. L. J. 153 ; *Ilahi Baksh* v. *Emperor*, 16 P. R. 1886 Cr ; see also *Emperor* v. *Haji Sher Mahomed*, 75 Ind. Cas. 70=46 B. 961=24 Cr. L. J. 870 ; *Imperatrix* v. *Pandharinath*, 6 B. 34 ; *Empress* v. *Dabee Pershed*, 6. C. 530. A confession is also an admission of fact as well as an admission of guilt. *Abbas Ali* v. *Emperor* 4 Cr. L. J. 471=3 L. B. R. 208 (F. B). A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. *Hakiman* v. *King Emperor*, 51 P. L. R. 1905=20 P. R. 1905 Cr ; *Queen Empress* v. *Bhairab*, 2 C. W. N. 702 (707) ; *Superintendent* v. *Lalit Mohan Singa* 25 Ind. Cas. 788=62 Ind. Cas. 578. In *Queen Empress* v. *Jave Charan*, 19 B. 363, it was held that confession includes "an admission of a criminating circumstance on which the prosecution evidently relies and which has weighed with the Magistrate in his judgment on the fact. See also *Hakiman* v. *Emperor*. 6 P. L. R, 196=2 Cr. L. J. 230.

In *Emperor* v. *Mahamed*, 5 Bom. L. R. 312, the accused was tried for the theft of a box, and a policeman gave evidence to the effect that he had seen him carrying the box at night, and that when challenged he had stated that the box was his own. The statement was found to be false, but it was nevertheless held by *Crowe* and *Chandravarkar*, JJ,, to have been rightly admitted. "In order to determine" said the learned Judges, "whether the statement is a confession of guilt or an admission of a criminating circumstance, we must look to the statement itself. Here the statement of the accused was merely that the box belonged to him ; it was no admission whatever of criminating circumstances. It was therefore, admissible. The statement held to be inadmissible in *Imperatrix* v. *Pandharinath*, 6 B. 34 was of different character. There the accused's statement admitted possession of a cheque alleged to be forged. It was an admission of one of the criminating circumstances which went to make up the offence chaged against the accused. In the present case the statement does not amount directly or indirectly to an admission of any criminating circumstance, and is therefore, outside the principle of the ruling cited." "In the result," says *Carnduff* J. in *Barindra Kumar Ghose* v. *Emperor*, 14 C. W. N. 1114 at p. 1197=37 C. 467 "it seems to me that each case must be decided as it arises with reference to the question whether the particular statement concerned, whether it be positive or negative, verbal or expressed by conduct, is or is not a confession". See also *Muthu Kumar Swami* v. *King Emperor*, 35 M. 397 ; *Emperor* v. *Cuna*, 22 Bom. L. R. 1247 ; *Ganapati* v. *Emperor*, 6 N. L. R. 180=12 Cr. L. J. 60=8 Ind. Cas. 1181. "By confession I understood not necessarily a full confession of guilt, but any statement made which, being relevant to the issue, may be put in evidence against the person making it." *R.* v. *Wong Chin Kwai*, *Roscoe*, *Cr. Ev.* 37. Confessions of other crimes not relating to the charge *e. g.*, showing or admitting a general tendency even to the crime charged, are inadmissible. *R.* v. *Cole*, 1810 ; *Roscoe*, *Cr. Ev.* 37.

In *Smith* v. *Emperor*, 43 Ind. Cas. 605, at p. 611, *Philips J.* said : "There is no definition of confession in the Evidence Act, but I take it that it must be something more that a mere admission. In *Emperor* v. *Kangal Mali*, 26 Ind. Cas. 161=15 Cr. L. J. 713=41 C. 601, when dealing with the admissibility of statements, it was said that a useful test was to ascertain the purpose to which they were put by the prosecution. If the prosecution relies on the statements of the accused as being true then they may and probably in many cases would be found to amount to confessions. Accepting both these propositions I would add that in order to make a statement a confession, it appears to me to be necessary that the inference as to the criminality of the person making the statement should be gathered from the statement itself, for I think it is quite possible that in many cases a statement which by itself does not contain any inference of criminality may in the light of subsequent events or of subsequent evidence strongly support such an inference. If the statement in itself is not incriminating, I am doubtful whether the fact that it does become incriminating owing to subsequent events would make it a confession." See also 19 Cr. L. J. 42 ; 53 Ind. Cas. 691.

An admission of all the ingredients required to constitute an offence is a confession. A confession is an admission made at anytime by a person charged with a crime stating or suggesting the inference that he committed the crime. 120 Ind.

Cas. 257 (2)=31 Cr. L. J. 26=A. I R. 1930 All. 29 ; see also A. I. R. 1929 All. 299. Where a person confessed he had taken part in a dacoity and named his associates and the police recovered stolen articles from the house of the person making the confession and from the persons named by him *held*, that the confession was not rendered untrue merely because the person making the statement minimised his share in the dacoity. 126 Ind. Cas. 498=31 Cr. L. J. 1017=A. I. R. 1931 Oudh. 74. A statement of the following kind cannot be regarded as a confession of complicity in an offence. "I told the other accused that, if they wanted to kill my husband, they were at liberty to do so, and I would bring no case against them. But when they arrived at my husband's house on the fateful night, I endeavoured to restrain them and was only prevented from doing so by their threats to kill me and my son if I interfered. I did neither take any part in the murder, nor did in any way assist the murderers after my husband was put to death." 4 Ind. Cas. 429=24 P. W. R. 1909 Cr.=153 P. L. R. 1909. A statement of an accused to the effect that under threats of death, he was forced to sit outside the door of the house where a murder was being committed, to warn the murderers of the approach of any body, and not to divulge the secret and to remain an impassive agent in the crime, and that he took no part in it, on the other hand he vainly tried to dissuade the co-accused from committing the crime, does not amount to a confession of either murder or its abetment, and consequently is also inadmissible in evidence under s. 30 of Act I of 1872, against the accused. 38 P. W. R. Cr. 1910=24 P. R. 1910=193 P. L. R. 1910. A confession must be a confession of guilt or a confession of facts which constitute in law the offence charged. Mere admissions of incriminating facts will not amount to a confession, unless those facts and the necessary inferences from them amount to an offence. 1. L. B. R. 133. Where the accused expresses his willingness to tender an apology to the complainant, it is unfair for the Magistrate to treat the circumstance as an indication of the accused's guilt. 4 L. W. 556=17 Cr. L. J. 462=36 Ind. Cas. 142. To constitute a 'confession' under the Evidence Act, it is not necessary that the person confessing should make a full and explict admission of his guilt so clean as to leave no other hypothesis tenable. 43 Ind. Cas. 605=19 Cr. L. J. 189. The fact that the accused did not claim a piece of cloth as his own before the Police but admitted at that time that it belonged to the deceased might have been due to this that the defence is not always stated during the Police enquiry and any statement made to the Police to the effect that an article produced by suspected men really belonged to the deceased could amount not to a confession but to an admission. 5 Lah. L. J. 128. Admission is usually applied to a civil transaction, and to those matters in criminal cases which do not involve a criminal intent. The term confession is usually used in criminal Courts as denoting an acknowledgment of guilt. Admission in a civil suit that a document is genuine cannot in a forgery case be regarded as confession at all. A. I. R. 1929 Cal. 539.

Motive for true confession.—Various reasons are found for making a true confession. These reasons for making voluntary confessions may be classified under the following heads :—(1) repentence ; (2) panic created in the view of the accused when he finds no reasonable hope of escaping discovery 15 B. 452 (479) ; 6 A. 509 (550) ; (3) he is, for the moment in despair, and glad to purchase immediate case by making a confession or resignation to fate. 6 A. 509 (550, 551) ; (4) due to simplicity and half savage nature of the accused (*Tay Cors Trial Cases*, para 135 cited in Chaudhury's confession p. 139) ; (5) expectation of mitigation of punishment.

What are not confessions.—A confession is an acknowledgment in express words, by the accused in a criminal case of the truth of the guilty fact charged or of some essential part of it. Step. Dig. Ev. 21 ; 6 A. 509 (539) ; 14 B. 260 (263) ; 41 C. 601 ; 20 A. L. J. 128 ; 6 B. 34 (37) ; 9 B. 131 (134). Therefore the term "confession" does not include either (1) guilty conduct (2) exculpatory statements and (3) acknowledgments of subordinate facts colourless with reference to actual guilt. *Wigmore Ev.* § 821 ; see also 6 B. 34 (37) ; 22 C. W. N. 834=28 Cr. L. J. 105 ; 6 B. 288 ; 10 B. H. C. R. 497 ; 2 A. L. J. 52=2 Cr. L. J 22 ; 21 C. W. N. 369 ; 6 C. 279 ; 21 C. 955 ; 25 W. R. Cr. 15 ; 7 W. R. Cr. 8 ; 29 C. 782 ; (1911) 2 M. W. N. 375 ; 18 C. L. J. 590 ; 1 B. L. R. O. C. Cr. 15.

Confessions, Division of.—Confessions may be divided into two classes : *Judicial and extrajudicial.* Roscoe Ev. 37. *Judicial confessions* are those which are made before the Magistrates ; or in Court, in the due course of legal proceedings ; and it is essential that they be made out of the free will of the party and with full knowledge of the nature and consequences of the confession, of this kind are

the preliminary examinations, taken in writing by the Magistrate, persuant to statutes ; and the plea of guilty made in open court to an inducement. Greel Ev. § 216 ; see also ss. 164 and 364 of the Cr. Pro. Code. *Extra judicial* confessions are those which are made by the party elsewhere than before a Magistrate, or in Cout ; this term embracing not only explicit and express confession of crime, but all those admissions of the accused from which guilt may be implied. *Greenl Ev.* § 216. An extra-judicial confession is an admission of guilt to a private person. 8 W. R. Cr. 29 (30) ; 13 W. R. Cr. 69. It may be in the form of a letter. 15 Cr. L. J. 55=18 C. W. N. 386. An extra-judicial confession can be made to any person, or collection or body of person. 8 O. C. 395 ; 21 Ind. Cas. 468=14 Cr. L. J. 596 ; 15 Cr. L. J. 502=24 Ind. Cas. 590. The court is to decide whether the person before whom the admission is said to have been made are trustworthy witnesses. 134 Ind. Cas. 1018=A. I. R. 1931 Oudh. 415. When the making of a confession is completely proved, its authenticity is beyond dispute. In such a case a voluntary and genuine confession is legal and sufficient proof of guilt. 7 W. R. Cr. 41 ; 6 W. R. Cr. 73 ; 6 W. R. Cr. 83 ; 52 Ind. Cas. 520 ; 15 B. 480 ; 51 Ind. Cas. 876 ; see also 48 Ind. Cas. 981=35 M. L. J. 518 ; 9 C. W. N. 974.

Conclusions from witnesses are not to be accepted. In *Queen* v. *Soobjan*, 10 B. L. R. 332, (335) *Phear J.* said : "Now, it is to be observed that these statements are in general terms, and so are merely statements of a conclusion at which the witnesses themselves arrived from the answers given by the prisoners to the questions... ...but it is all important in matters of this kind to know what were the words which the person who is said to have confessed actually used : nothing in short of the actual words given in detail in the first person, so far as it is possible to obtain them, ought ever to be relied upon as a foundation for the opinion formed by the Court ; because, it may turn out that the words taken together with the questions and the circumstances under which the questions were put, do not in truth amount to a confession of guilt such as the witness chose to represent it." See also *R.* v. *Ali Husain.* 23 A. 306, 308 ; *Kha Hlaw* v. *Emperor*, 4 L. B. R. 116=7 Cr. L. J. 82 *Nawab Bibi* v. *R.* 22 P. R. 1883 ; *Queen* v. *Babu Lal*, 6 A 509 (549) ; *R.* v. *Mohan Lal*, 4 A. 46 ; *Nur Ali* v. *Emperor*, 81 Ind. Cas. 530=5 L. 140. But where the actual words used in the confession are not given it does not affect the admissibility but the weight to be given to such evidence. *Ibid* ; see also *Desraj* v. *Emperor.* 1928 Lah. 58=29 P. L. R. 486. There is no rule of law which requires an extrajudicial confession to be recorded. 11 P. R. (1918) Cr. ; 21 P. R. 1881 Cr., 21 Bom. L. R. 1065 ; 141 P. R. 1887 Cr.

Confession made by signs or gestures. Vide 31 P. L. R. 391=120 Ind. Cas. 539=31 Cr. L. J. 141=A. I. R. 1930 Lah. 84.

Confession—Test of truth.— A true confession made by a person who takes part in a murder invariably adds something to the knowledge already possessed by the investigating officer and that is the quoted test of its truth. 132 Ind. Cas. 228=32 Cr. L J. 854=A. I. R. 1931 Oudh. 166.

Confession must be taken as a whole.—When a confession is used against an accused person, the whole confession must be introduced. So where an accused person makes a confession, the confession is evidence in his favour as well as against him and must be taken as a whole. 15 A. 452 ; 88 Ind. Cas. 455=26 Cr. L. J. 1142 ; 52 A. 1011=A. I. R. 1931 All. 1 (F. B.) ; 7 W. R. Cr. 39 ; 1 Bur. 327 ; 1 Bur. 324 ; 21 C. 955 ; 29 C. 782 ; Rat. Un. Cr. C. 771 ; 1 Bom. L. R. 428 ; 22 C. W. N. 834 ; 1928 M. W. N. 161 ; L. B. R. (1872—1892), 324 ; L. B. R. (1872—1892), 327 ; 8 W. R. Cr. 38 ; 5 W. R. 70 ; 25 W. R. Cr. 26 ; 25 W. R. Cr. 15 ; 1 W. R. 16 (17) ; 18 W. R. Cr. 29 ; 16 C. W. N. 1055 ; 40 C. 873 ; 10 B. L. R. 332 ; A. W. N. 1883, 148 ; A. I. R. 1926 Lah 554 ; 40 C. 873 ; 98 Ind. Cas. 178=A. I. R. 1926 Oudh. 618, 52 A. 1011=A. I. R. 1931 All. 1 (F. B.) A. I. R. 1933 Lah. 665 ; A. I. R. 1933 Mad. 882 ; A. I. R. 1933 All. 401 ; A. I. R. 1933 Lah. 252 ; A. I. R. 1933 Rang. 326 ; A. I. R. 1933 Rang. 204 ; A. I. R. 1934 Lah. 673 ; A. I. R. 1934 Lah. 620.

"As in other cases the meaning and intention of the parties are collected from the whole writing taken together, and all the instruments, executed at one time by the parties, and relating to the same matter, are equally resorted to for that purpose, so here. This principle, in its application, has several detailed consequences. (1) The prosecution must put in the whole of the accused's statement, including the portions favourable to himself as well as those unfavourable. But this does not prevent the use of statements which are separate in themselves though not forming all the accused's utterances nor of such fragments of a connected statement as were

alone heard or remembered by the witness. Moreover the witness need not be able to give the exact words, provided he can give the substance (but see, 38 Ind. Cas. 740=15 A. L. J. 15 ; 38 Ind. Cas. 767 ; 53 Ind. Cas. 145) (2). If one part of a conversation is relied on, as proof of a confession of a crime, the prisoner has a right to lay before the Court the whole of what was said in that conversation ; not being confined to so much only as is explanatory of the part already proved against him, but being permitted to give evidence of all that was said upon that occasion, relative to the subject matter of the issue (*Per Lord C.* J. *Abbott* in the *Queen's Case*, 2 B. & B. 297, 298 ; *R.* v. *Paine*, 5 Mod. 165 ; Howk. P. C. *b.* 2, C. 46 § 5 ; *R.* v. *Higgins*, 3 C. & P. 603 ; *R.* v. *Hearne*, 4 C. & P. 215 ; *Brown's Case*, 9 Leigh 633, for as has been already observed respecting admission, unless the whole is received and considered, the true meaning and import of the part which is good evidence against him cannot be ascertained. (3) But if, after the whole statement of the prisoner is given in evidence, the prosecutor can contradict any part of it, he is at liberty to do so ; and then the whole testimony is left to the jury for their consideration,, precisely as in other cases, where one part of the evidence is contradictory to another ; for it is not to be supposed that all the parts of a confession are entitled to equal credit. The jury may believe that part which charges the prisoner, and reject that which is in his favour, if they see sufficient grounds for so doing. Rat. Un. Cr. C. 436 ; 10 B. H. C. R. 500 ; 19 Cr. L. 785 (Nag) ; Rat. Un. Cr. C. 370. 1930 Oudh. 113 ; 1930 M. W. N. 785. If what he said in his own favour is not contradicted by evidence offered by the prosecutor, nor improbable in itself, it will generally be believed by the jury ; but they are not bound to give weight to it on that account, but are at liberty to judge of it like other evidence , by all the circumstances of the case. (4) And if the confession implicates other persons by name, yet it must be proved as it was made ; not omitting the names ; but the Judge will instruct the jury, that it is not evidence against any but the prisoner who made it." *Greenl. Ev.* § 218.

A Judge ought to decide the question of the admissibility of a confession first and if it is inadmissible it should be excluded from the record and its terms should be kept from the assessors. And inadmissible confession is inadmissible in its entirety. 18 Cr. L. J. 383=38 Ind. Cas. 767. The ordinary rule is that a confession is evidence for the prisoner as well as against him and must be taken together. But it is only where no other evidence is forthcoming that this can be pressed to the extent of requiring that no part be accepted as true without accepting the whole. 53 Ind. Cas. 145=20 Cr. L. J. 737 ; see also 46 Ind. Cas. 705=19 Cr. L. J. 785 ; 15 A. L. J. 15 ; Rat. Un. Cr. C. 371.

After the entire statement of a prisoner has been given in evidence, any part of it may be contradicted by the prosecution if they choose to do so, and then the whole testimony is left open for consideration precisely as in other cases where one part of the evidence contradicts another. Even without such contradiction it is not supposed that all the parts of a confession are entitled to equal credit ; if sufficient grounds exist, that part which charges the prisoner may be believed, while that which is in his favour may be rejected. 3 O. W. N. 800=98 Ind. Cas. 178=A. I. R. 1926 Oudh. 618. Even when a part of the confession is found to be false the entire confession should be rejected simply for that reason. If sufficient grounds exist that part that charges the prisoner may be believed that which is in his favour may be rejected. 132 Ind. Cas. 70=32 Cr. L. J. 830=14 O. L. J. 303 ; see also A. I. R. 1934 Oudh. 222=35 Cr. L. J. 894=149 Ind. Cas. 69 ; A. I. R. 1933 Rang. 204=1933 Cr. C. 919. Where the confession is any thing but a full confession the Court is at liberty to use the confession as it stands and derive a deduction of the guilt of the man who made it even while rejecting portions of it which are false. A. I. R. 1930 Oudh. 113.

Uncorrborated confession evidentiary value of.—If there is no reasonable doubt that a confession is voluntary and genuine it is legal and sufficient proof of guilt. 7 W. R. Cr. 41. Under ordinary circumstances, a confession cannot be accepted as sufficient for a conviction, unless it is supported by material facts established independently of the confession itself. Experience shows that unfounded confessions are not infrequently made from one motive or another natural to humanity and that consequently the Courts have to be on their guard against being led astray by such deceptions. It is, therefore, the practice in general to require some support for a confession and reasonable consistency with the surrounding circumstances about which there is no doubt.U. B. R. (1897-1901), Vol. I. 152. Where the accused's confe-

ssion is the only evidence against him, accounting for the commission of the crime with which he is charged, it must be accepted in so far as it is not inconsistent with reason and other surrounding circumstances. 6 Cr. L. J. 260 ; see also 3 P. R. 1888 Cr. ; Rat. Un. Cr. C. 867 ; Rat. Un. Cr. C. 463 ; 11 B. H. C. 137 ; 17 P. W. R. 1907 Cr.=6 Cr. L J. 141 ; 21 P. W. R. 1907 Cr.=6 Cr. L. J. 266 ; 6 Bom. L. R. 773 ; (1911) 2 M. W. N. 197=12 Cr. L. J. 488=12 Ind. Cas. 96. Where a case depends upon circumstantial evidence, it is usual to find a confession to folster up such evidence. Courts should attach little importance to such a confession. 9 C. W. N. 474. Where the circumstances of the case compel a tribunal to reject all the other evidence and act only upon a confession, the confession must be used *literatim el verbatim*, and due effect must be given to every statement contained therein whether in favour of the accused or against him. 15 A. L. J. 15. The law does not require that the confession of an accused person should be corroborated before it can be acted upon. It is for the Court to decide whether it believes a confession or not. 52 Ind. Cas. 881=20 Cr. L. J. 721. The fact that the confession was retracted before the committtng Magistrate would not deprive it of its voluntary character. 52 Ind. Cas. 50=20 Cr. L. J. 562. No doubt the extra-judicial confession is of great importance but it must be a true extra-judicial confession and not one fabricated in order to provide additional evidence for what rightly or wrongly the investigating officer considers to be a weak cause. A. I. R. 1929 Oudh 272 ; see also A. I. R. 1932 Oudh. 324=7 Luck 623=9C. W. N. 170. Apart from the question whether or not extra-judicial confessions are inadmissible in evidence, they are not of such a nature as entitles them to any weight, because it is impossible to ascertain the exact words used by the person. To base a conviction on such a confession is not safe. A. I. R. 1928 Lah. 858=29 P. L. R. 486. The evidence of an admission of guilt to villagers may be as strong evidence against an accused person as a confession before a Magistrate. It requires no corroboration. The Court has to decide whether the persons before whom the admission is said to have been made are trustworthy witnesses. A. I. R. 1928 O. 393=5 O. W. N. 698. When the accused were unable to explain away their confessions, which clearly indicated the guilt, *held* that the confessions alone were sufficient for the conviction. 5 O. W. N. 968. Extra-judicial confession made before person is taken into police custody has high probative value. It must however be proved strictly. A. I. R. 1932 Sind. 201=26 S. L. R. 302=34 Cr. L. J. 147. Where extra-judicial confession is clear consistent and convincing it should be believed. 12 Mys. L. J. 73. But in such confession exact words should be ascertained. A. I. R. 1934 Sind. 119=151 Ind. Cas. 984.

Confessions of prisoner in another case—how proved. The confession of prisoner in one case in which he was convicted cannot be used against him in another case, unless they are deposed to on oath either by the person who took them down, or by some one else who heard them. 10 W. R. Cr. 56.

Confession how construed.—Where people are so ignorant as the Burmans are, of the most elementary legal principles, it is extremely dangerous to accept an admission as a plea of guilty without the closest scrutiny of the meaning of the acknowledgment. U. B. R. (1897-1901) Vol. I. 72.

Recording of judicial confessions—As regards recording of judicial confessions and the proof thereof vide ss. 164 and 533 of the Criminal Procedure Code and s. 80 the Evidence Act.

Principle underlying section 24.—The value of confessions depends on the supposition that they are deliberate and voluntary, and on the presumption that a rational being will not make admissions prejudicial to his interest and safety, unless when urged by the prompting of truth and conscience. Such confessions, so made by a prisoner, to any person, at any moment of time, and at any place, subsequent to the preparation of the crime, and previous to his examination before the Magistrate, are at common law received in evidence as among proofs of guilt. *Greenl. Ev.* § 215 ; *Taylor* § 865 ; *Best Ev.* § 524 ; *Will's Ev.* § 102. When a confession is made under influence of a promise of benefit, or a threat of harm, it is untrustworthy because it has been associated with an attraction too strong to reject. In general, then, the position of the confessing person which causes our distrust is that of being compelled to choose between two alternatives, one of which involves a confession of guilt irrespective of its truth or falsity.—*Wigmore* § 824. More accurately, the confession so dominated is a pseudo confession. It is not a confession at all. It is not made

animo confitendi. It is merely a self-serving statement masquerading in the garb and under the name of a confession. Accordingly, it has not the relevancy of a true confession, a self-disserving statement, and is, in consequence, rationally to be regarded with suspicion. As a matter of logic, there is the obvious impairment of probative value due to the consideration that a declarant so circumstanced may, like the person offering a confession in a civil case, make his statement, not because it is true, but for the reason that he anticipates that in this way he will gain something desirable which otherwise he would not secure. In addition to this it is not fair to the accused for the law to trap him, to take him when off his guard, to break into his fastness of silence. *Chamberlayne's Ev.* § 1484. "The object of the rule relating to the exclusion of confessions is to exclude all confessions which may have been procured by the prisoner being led to suppose that it will be better for him to admit himself to the guilty of an offence which he really never committed." *Per Littledale* J. in *R.* v. *Court* 7 C. & P. 486 ; *R.* v. *Holmes*, C. & K. 248. "I think in every case it is for the Judge to decide whether the words were used in such a manner and under such circumstances as to induce the prisoner to make a confession of guilt whether such confessions were true or not."

Scope of scope 24.—Section 24 of the Evidence Act provides that a confession of an accused person is irrelevant in a criminal proceeding if the making of the confession appeals to the Court to have been caused by any inducement, having reference to the charge against the accused person, proceeding from a person in authority. *Fatehchand* v. *Emperor*, 86 Ind. Cas. 1001=26 Cr. L. J, 937=L. R. 6 A. 89 Cr. In dealing with the question of the admissibility of a confession the Judge is not concerned with the truth or falsity of the confesston ; that is a matter entirely for the jury. The Judge is only concerned with the question as to whether the confession is admissible in evidence. If the confession is voluntary it is admissible. If *prima facie* it is false, inconsistent, improper or absured that might suggest that it is not voluntary. *Emperor* v. *Panchkari Dutt*, 86 Ind. Cas. 414=29 C. W. N. 300=52 C. 67=26 Cr. L. J. 782=A. I. R. 1925 Cal. 587. Voluntariness, being the warrant for varacity, was then regarded as the *sine qua non* of confessions. This was the condition precedent which had to be complied with before confessions could be admitted in evidence. The meaning of this position apparently is that confessions were presumed to be false till the presumption was rebutted by proof of voluntariness." 2 Bom. L. R. J. 228. The reason for rejection of confessions are thus stated by *Eyre C. B* : "A confession forced from the mind by the flattery of hope or by the torture of fear, comes in so questionable a shape, when it is to be considered as the evidence of guilt that no credit ought to be given to it and therefore it is rejected." *Warrickshall's case*, 1 peach Cr. C. 263 ; see also 2 L. B. R. 168 ; U. B. R. (1909) 1st Qr. Ev. 3=11 Cr. L. J. 41=4 Ind. Cas. 759 ; but see 45 C. 557=22 C. W. N. 213 ; Rat. Un. Cr. C. 552 ; 85 Ind. Cas. 830=26 C. R. L. J. 606.

A confession by an accused person is not made irrelevant, if otherwise relevant, merely because the accused person has been sworn or affirmed. 3 P. R. 1880 Cr. An oral confession by an accused person, not being open to exception under s 24, 25 or 26 of the Evidence Act is, as an admission by an accused person, a relevant fact and may be proved at his trial under section 21 and therefore such a confession made to a Magistrate is relevant and may be proved by the evidence of the Magistrate. 11 P. R. Cr. 1918=45 Ind. Cas. 843=19 Cr. L. J. 651 ; but see *Emperor* v. *Maruti*, 21 Bom. L. R. 1065. Section 27 of the Evidence Act, qualifies not only sections 25 and 26 but also section 24, all three of which lay down general rules excluding confessions and the same broad grounds underlie all the three. 45 C. 557=22 C. W. N. 213=27 C. L. J. 148=44 Ind. Cas. 321=19 Cr. L. J. 305 ; but see 35 Ind. Cas. 962=17 Cr.L.J. 402=U. B.R. (1916) Vol. II, 114 ; 29 Ind. Cas. 817=11 P. R. 1915 Cr. 16=Ct. L. J, 545. If the case against the accused entirely rests on the confession made by the accused and there is a conflict as to the manner in which the confession is obtained, the accused is justified in asking the Court to give him the benefit of doubt. A. I. R. 1930 Lah. 88. Where a person of sound mind and of full age makes a confessional statement in ordinary simple language after he has been warned, he must be bound by the language of the statement and by its ordinary plain meaning and a subsequent retraction of the same is of no effect. 127 Ind. Cas. 247=A. I. R. 1930 Oudh. 353=31 Cr. L. J. 1210. Where the confession made before the police was found by the Court not to have been voluntary, it cannot be corroborated by the confession of the accused as an approver, subsequently retracted. A. I. R. 1930 Nag. 259=124 Ind. Cas. 459=31 Cr. L. J. 661. A confession made by an accused person

is not invalid merely because it was made under the belief that he would gain some benefit by making it. 126 Ind. Cas. 109=A. I. R. 1929 Mad. 92. A confession is an admission by an accused person in a criminal case. The making of a counterfeit coin is not a statement and hence the evidence of persons who say that the accused made counterfeit coins in their presence is not barred by s. 24, 25 or 26. 133 Ind. Cas. 154=A. I. R. 1931 All. 9. A confession alleged to have been made by the accused person in the jail to the warder in the absence of any evidence on the part of the prosecution to prove it was read to the accused and acknowledged by him to be correct is absolutely of no evidentiary value against the accused. 1930 M. W. N. 1249. Evidence is inadmissible to prove a confession made while an accused person is in Police custody, except in so far as any fact is discovered in consequence of the information so received from him. 22 Ind. Cas. 150=8 P. W. R. 1914 Cr.=38 P. L. R. 1914=15 Cr. L. J. 6. A confession made voluntarily in the sense that it was made spontaneously and without any inducement is admissible in evidence under s. 24 of the Evidence Act. 45 A. 300=21 A. L. J. 143=73 Ind. Cas. 62=24 Cr. L. 526. If a man is told by a person in authority that if he gives a true account of the matter he will be pardoned, that is a continuing offer, the thread of which continues unbroken until it is accepted by the confession which completes the bargain, unless there is some circumstance which breaks in so as to show that the inducement no longer operates, and the person confessing has no longer any hope of gaining anything from the authorities by making confession. 26 Cr. L. J. 937=86 Ind. Cas. 1001=A. I. R. 1925 All. 606. Where the Magistrate who recorded the confession took all possible precautions to satisfy himself that the confession was made voluntarily and that the accused was under no inducement or threat at the time he made the confession and he was informed that if he confessed he would not get a pardon : *Held* that the confession was admissible in evidence. 103 Ind. Cas. 900=28 Cr. L. J. 752=8 A. I. C. R. 416. Section 27 controls three earlier sections. A. I. R. 1932 Cal. 297=59 C. 1040=36 C. W. N. 373. Statement of accused that confession was made of free will does not relieve court from considering whether confession should be excluded under s. 26 on other grouuds. A. I. R. 1933 Cal. 747 (S. B.)=57 C. L. J. 213=1933 Cr. C. 1249. In order to base conviction on confession three things are to be proved (1) that it was made ; (2) that evidence of it can be given and (3) that it is true. A. I. R. 1934 Sind. 172=1934 Cr. C. 1274.

The mere fact of a person being in custody cannot be a good basis for a presumption that any confession he may make is caused by an inducement, threat or promise having reference to the charge against him, proceeding from some Police-officer and sufficient to make him believe that he would be benefited in the trial by making it. 95 Ind. Cas. 59=27 Cr. L. J. 731=A. I. R. 1926 Nag. 368. If pressure exercised by a Police officer is sufficient to give the accused grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporary nature, the confession would not only be weak in nature but wholly irrelevant under s. 24. Evidence Act. 27 Cr. L. J. 158=101 Ind. Cas. 891=A. I. R. 1926 All. 246. Confession was made by the accused against himself to a witness. The Judge did not disbelieve it but rejected it because he thought that it was made by the accused under the belief that it would be to his advantage. A. I. R. 1929 Mad. 92. Whether any threat or inducement was offered or not in a particular case is a question of fact and has to be decided with reference to the circumstances of that case and it is not safe to make any generalisations merely on the ground that a certain set of words used in a particular case has been held to be in the nature of an inducement. A. I. R. 1929 Pat. 275. Where there is veiled threat as well as inducement. a confession so obtained is invalid. A. I. R. 1929 Pat. 275.

Made. A confession made to one person by the accused is irrelevant, even where the inducement, threat or promise is held out by a different person if the latter be a person in authority. 9 B. H. C. R. 416.

Accused person. The expression "made by an accused person" in this section means that person must be an accused person at the time of the confession 35 M. 397 (535) ; see also 4 C. W. N. 129. The words "accused person" in sections 24 and 26 include any person who subsequently becomes accused, provided that at the time of making the statement criminal proceedings were in prospect. 43 Ind. Cas. 605=19 Cr. L. J. 189. Section 24 of the Evidence Act would apply even if the person who is said to have made the confession was not an accused person at the time when he made the confession. It is sufficient if the person ultimately comes to be an accused person with reference to the charge in respect of which he is said

to have made the confession. 22 Bom. L. R, 1247=59 Ind. Cas. 324 ; 133 Ind. Cas. 55=32 Cr. L. I. 985=A. I. R. 1931 Lah. 763. Formal accusation or custody is unnecessary. 1 C. L. R. 21. The test which has to be applied in deciding whether this section applies, is the position of the person at the time when it is proposed to prove the admission, not his position at the time when he is alleged to have made it. A confession, therefore, made to a Police officer by a person when he is not accused of any offence is inadmissible in evidence against him when he is accused of an offence. 13 Cr. L. J. 465=15 Ind. Cas. 305=5 Bur. L. T. 92.

If it appears.—"The words lend some colour to the argument that the confession ought to be made to appear to the Judge to have been improperly induced—in other words, that the *onus probandi* is in the first instance on the prisoner. I do not accede to that argument. A confession may appear to the Judge to have been the result of inducement on the face of it, and apart from any proof at all...In every case, I contend, where a prisoner says he has been forced to confess, the Judge is put upon judicial enquiry, and as I ended before, I end now, that enquiry should *precede* the admission of the confession and any examination into its truth." *Lex*, 2 Bom. L. R. (Journal) 163, "A confession to be admitted at all in evidence must be proved to have been made voluntarily, and not to have been caused by any of the means mentioned in section 24 of the Indian Evidence Act, read with sections 28 and 29 of the same Act. When admitted it is to be dealt with like any other piece of evidence, and acted on only if it is believed to be true," *Per Parsons J*, in *Queen Empress* v. *Balya Dajadin.* cited in 2 Bom. L. R. (Journal) 163. But *Fulton J.* in *Queen Empress* v. *Baswanta*, 25 B. 168=2 Bom. L. R. 761 (765) dissenting from the above case said : The use of the word 'appears' indicates, it may be argued, a lesser degree of probability than would be necessary if 'proof' has been required. A Court might perhaps in a particular case fairly hesitate to say that it was proved that the confession had been unlawfully obtained, and yet might be in a position to say that such appeared to it to have been the case ;" see also 38 C. W. N. 659=35 Cr. L. J. 1479=A. I. R. 1934 Cal. 636. It is not possible for a Court to say that the making of a confession appears to have been caused by any inducement, threat or promise except upon evidence before it. The inference may be suggested by the confession itself or by the evidence of the prosecution or by evidence adduced by the accused person or by the surrounding circumstances which the court is always bound to take into consideration but the conclusion cannot be reached on surmise or conjecture. Whether or not a confession is admissible in evidence is a matter which is to be decided after a full consideration of the evidence and the particular circumstances of each case. A. I. R. 1928 Lah. 676=29 Cr. L. J. 385=108 Ind. Cas. 387. If in the circumstances of a case, it appears to the Court that there is reason to suspect that a confession was obtained by inducement so as to bring it under the provisions of section 24 of the Evidence Act, the prosecution to make the confession admissible in evidence against the accused, must show that it was freely made. 68 Ind. Cas. 413=26 C. W. N. 54=23 Cr. L. J. 573. It is not possible for a Court to say that the making of the confession "appears" to it to have been caused by any inducement, threat, or promise, except upon evidence which is before the Court. The inference may be suggested by the confession itself, or by the evidence of the prosecution, or by the evidence adduced by the accused person ; or by surrounding circumstances which the Court is always bound to take into consideration ; but the conclusion cannot be reached on surmise or conjecture. 4 Pat. L. T. 186=72 Ind. Cas. 961=24 Cr. L. J. 497=A. I. R. 1923. P. 13. When the admissibility of a confession depends upon a conclusion as to the truth about conflicting evidence antecedent to the making of the confession and tending to show that it is liable to rejection under section 24. the trial Judge must make up his mind upon this issue, and decide the question of admissibility before relying upon the contents of the confession. L. R. 6 A. 89 Cr.=26 Cr, L. J. 937=85 Ind. Cas. 1001=A. I. R. 1925 All. 606.

In *Emperor* v. *Panchkari Dutt*, 29 C. W. N. 300=52 C. 67=86 Ind. Cas. 414= 26 Cr. L. J. 782=A. I. R. 1925 Cal. 587. *Mr. Justice Mookerjee* said : "There are words and expressions in this section to which one must pointedly direct his attention in order to construe the section. There occurs the word 'appears' ; the 'inducement, threat or promise having reference to the charge against the accused person' must proceed from a person in authority, but nothing is said as to the person to whom it is to be directed ; it is enough if such

inducement, threat or promise would in the opinion of the Court be sufficient to give the accused person grounds which would appear to the accused person (and not the Court) reasonable for supposing that by making the confessions he would gain an advantage or avoid an evil of the nature contemplated in the section. It will be seen therefore that the mentality of the accused has to be judged rather than that of the person in authority. That being so, not merely actual words, but words accompanied by acts or conduct as well on the part of the person in authority, which may be construed by the accused person situated as he then is, as amounting to an inducement, threat or promise, will have to be taken into account. A perfectly innocent expression, coupled with acts and conduct on the part of the person in authority, together with the surrounding circumstances may amount to inducement, threat or promise. In scrutinising a case from the point of view of section 24 of the Evidence Act the Court will have to perform a three-fold function. It will have, as a Court, to determine the sufficiency of the inducement, threat or promise as affording certain grounds; it will have again to clothe itself with the mentality of the accused to see whether the grounds would appear to the accused reasonable for a supposition that is mentioned in the section; lastly it will have to judge as a Court if the confession appears to have been caused in consequence of the inducement, threat or promise. The use of these vague expression has been deliberately made with the object of securing absolute fairness in the matter of admitting confessions in judicial proceedings. It is indeed very difficult to lay down a hard and fast rule as to the sufficiency of the circumstances which would make the confession irrelevant under the provisions of the section. Reported decisions afford us little help in this direction. A study of the cases, bearing upon the question, which are too numerous to mention, would show that anything ranging between the barest suspicion on the one hand and absolute certainty on the other has been held to be sufficient to satisfy the requirements of the section. In this connection reference may be made to 11. B. H. C. R. 137; A. I. R. 1930 Nag. 259; 15 B. 452; 1 C. L. R. 275 (281); 19 B. 721 (731); 8 Bom. L. R. 697; 28 C. 613 at 617. The expression used in this section is not "proved" but "if it appears' which is not as strong an expression as "proved." 33 C. W. N. 1112=A. I. R. 1929 Cal. 226. The true view seems to have been taken in the case of *Queen Empress* v. *Basvanta*, 25 B. 168, where it was said that the section does not require positive proof (as defind in section 3 of the Act) of improper inducement to justify the rejection of the confession, the word 'appears' indicating a lesser decree of probability than would be necessary if 'proof' had been required. There is some diversity of judicial opinion on the question regarding the onus of proof as to the voluntary character of a confession, *viz.*, whether the prosecution will have to prove affirmatively that it was voluntarily made or they should do so only in the event of a doubt arising in the mind of the trial Judge (see for instance the observations of *Parke B.* in *R* v. *Warringham*, 2 Den. C. C. 447 n. and of *Cave J.* in *R.* v. *Thompson*, (1893) 2 Q. B. p. 12 at p. (17). It is unnecessary to go into this matter, with regard to which there was for some time a diversity of judicial opinion in this country as well for having regard to the wording of section 24 of the Indian Evidence Act and also to the presumption attaching to certain recorded confessions and arising under section 80 of the Act, the true and generally recognized view is that a confession duly recorded by a Magistrate with the proper certificate appended to it will be admitted in evidence subject to the provisions and restrictions contained in section 24; that under the latter section a well grounded conjecture, reasonably based upon circumstances disclosed in the evidence, is sufficient to exclude the confession, because it would be idle to expect the accused to prove the inducement, threat or promise, for in most cases such proof cannot be available." To reject a confession it is not necessary that there should be positive proof to establish that the confession had been obtained by use of threat, persuation, etc. Anything from the barest suspicion to positive evidence would be sufficient for a confession being discarded. 23 A. L. J. 821=89 Ind. Cas. 903=L. R. 6 All. Cr. 161=26 Cr. L. J. 1431=A. I. R. 1925 All. 627 P. C.

Burden of proof—English law. The question of voluntariness is for the Judge; and it is now settled that it lies upon the prosecution to establish, and not upon the accused to negative the element, it being the duty of the prosecution to satisfy itself therefore before putting the statement, *R.* v. *Thompson*, (1893) 2 Q. B. 12; *R.* v. *Rose*, 18 Cox. 717; *Ibrahim* v. *R.* (1914) A. C. 599 (610, 611)= 18 C. W. N. 705. (P. C.) where all the English cases have been reviewed; *Phip.*

Ev. 7th Ed. 256 ; *R.* v. *Voisin*, (1918) 1 K. B. 351. But *Prof. Wigmore* interpreted the ruling laid down in *R.* v. *Thompson*, in a different way. He says : "A modern English ruling takes a middle path, and seems to receive the confession unless attacked by evidence of an improper inducement, and then in case of doubt leaves upon the prosecution the burden of convincing the Court of the admissibility. *R.* v. *Thompson*, (1893) 2 Q. B. 12, 18., *Cave J.* (in case of doubt)." See also *Chamberlayne's Ev.* § 1579.

Person in authority.—It is a confession well known to English lawyers on questions of this nature ; and although all rules of evidence which were in force at the passing of the Act are repealed, the English decisions on the subject can scarcely be regarded as authorities they may still serve as valuable guides." 9 B. H. C. R. 358 (368). Though a too restricted meaning should not be given to the expression "person in authority" in this section, the test to be applied is whether the person has authority to interfere in the matter and any concern or interest in it would be sufficient to give him that authority. 57 C. 488=A. I. R. 1930 Cal 633. A travelling auditor is a person in authority in respect to a railway clerk. 9 B. H. C. R. 358. Too restricted a meaning should not be given to the words "persons in authority." 9 C. W. N. 474. The words "person in authority" include the prosecutor. 26 C. W. N. 54 ; see also 53 Ind. Cas. 605=19 Cr. L. J. 189. A village Magistrate is a person in authority. 26 M. 38=2 Weir. 733 ; but the son of a village Magistrate is not a person in authority. 2 Weir. 733. So also is a police patel (3 B. 12 ; 17 Bom. L. R. 898=16 Cr. L. J. 740), a police constable (5 N. W. P. 86) and a police Inspector (15 P. R. 1885). A *panchayat* ordinarily is not a person in authority 4 A 46=A. W. N. 1881, 84 ; 4 Bom. L. R. 785. But when a *panchayat* was assuming an authority as was leading the accused to believe that he had that authority was held to be a person in authority. 9 C. W. N. 474=2 Cr. L. J. 256 ; 11 C. W. N. 904. A *tahasildar* is not a person in authority. 142 Ind. Cas. 474= 14 P. L. T. 82=A. I. R. 1933 Pat. 149 (S. B.). The manager of a company is a person in authority. A. I. R. 1932 Sind. 64=26 S. L. R. 191=138 Ind. Cas. 618. So also a Zamindar connected with investigation. A. I. R. 1932 Sind. 55=138 Ind. Cas. 614=33 Cr. L. J. 641 ; See also 18 Cr. L. J. 107=37 Ind. Cas. 314=10 Bur. L. T. 220. But Zamindars *qua* Zamindars are persons in authority under section 24 of the Evidence Act. *Crown* v. *Long* 10 S. L. R. 140 ; see also 49 A. 57 ; but see 12 Cr. L. J. 119=4 S. L. R. 209 ; 110 I C. 828. A jaildar is a person in authority. 221 P. L. R. 1911=12 Ind. Cas. 642=12 Cr. L. J. 554 ; 34 Ind. Cas. 642. The *Thugyi* or headman of a village is a person in authority. 15 Cr. L. J. 681=26 Ind. Cas. 129 ; 10 Bur. L. T. 270. A president of a *panchayat* is a person in authority. 20 C. W. N. 512=23 C. L. J. 477=17 Cr. L. J.188=33 Ind. Cas. 828. A *lambordar* is a person in authority. 4 Lah. L. J. 235= A. I. R. 1922 Lah. 263 ; 14 P. R. 1911 Cr. *Panchatdars* are not persons in authority. 45 M. L. J. 845. An Honorary Magistrate who is also a jaildar is a person in authority. A. I. R. 1934 Lah. 417=1934 Cr. C. 643. Superior officer is a person in authority. A. I. R. 1933 Cal. 644 ; A. I. R. 1932 Sind. 64.

The expression "person in authority" has a wider meaning than in the actual prosecutor and the test is, 'has the person authority to interfere in the matter' and any concern or interest in it is sufficient to give him authority. *Smith* v. *Emperor*, 43 Ind. Cas. 605=19 Cr. L. J. 189 ; see also A. I. R. 1934 Sind. 172=152 Ind. Cas. 1032=1934 Cr. C. 1274 ; A. I. R. 1933 Pat. 149 ; The mere fact that the accused thought that the persons whom he addressed were persons in authority would not be sufficient to justify the Court in holding that they were persons in authority. *Emperor* v. *Ganesh*, 50 C. 127=74 Ind. Cas. 264. A collecting *panchayat* and an assistant *punchayat* who have taken part in holding the enquiry into the circumstances under which the offence has been committed constitue 'person in authotity'. *Ibid.* A pleader's clerk is not a person in auhority. *Emperor* v. *Ram Audh*; 88 Ind. Cas. 514=2 O. W. N. 398=26 Cr. L. J. 1154. Ziladar serving under a great State in a person in authority. *Taule* v. *Emperor*, A. I. R. 1929 Oudh 272. An *Inamkhar*, who is in a position inferior to that of and *ilaquadar* cannot be treated as a person in authority. *Ghulam Muhammad* v. *Emperor*. A. I. R. 1929 Lah. 588. The *Mukhia* of a village is a person in authoriy. *Emperor* v. *Et. Har Piari* 7 L. R. 156 Cr.=97 Ind. Cas. 44=A. I. R. 1926 All. 737. A co-villager exercising no influence or authority is not a person in authority. *Emperor* v. *Kutub* 57 C. 488=A. I. R. 1930 Cal. 633 ; see also *Kultiappa* v. *Emperor*, 1929 M. W. N. 791. A confession made by the accused after being in police custody is not relevant. *Indra* v. *Emperor* 132 Ind. Cas. 185=A. I. R. 1931 Lah. 408.

Confession made before coroner—There is no provisions of law which renders a statement made voluntarily by an accused, a suspect, in inquest proceedings before a coroner inadmissible against the accused on his trial of the offence. A. I. R. 1928 B. 52=30 Bom. L R. 84. Section 20 of the Corner's Act provides that a coroner shall be deemed to be a Magistrate for the purpose of section 26 of the Evidence Act 28 Bom. L. R. 8. 111=50 B. 111=93 Ind. Cas. 690=A. I. R. 1926 Bom. 151 ; 30 Bom. L. R. 86.

Inducement threat or promise.—The terms of "inducement" constantly involve both threat and promise,—a threat of prosecution if disclosure is not made, a promise of forgiveness if it is. Wills' Ev. 2nd Ed. 302. But it is difficult to lay down any hard and fast rule as to what constitutes inducement. The question is one for the discretion of the judge, and its decision will vary in each particular case. *Nort Ev.* 161. The inducement need not be expressed, but may be implied. *R* v. *Giles*, 11 Con. 69. A confusion induced by a false allegation is irrelevant even if it is true. Rat. Un. Cr. C. 153. Where a confession is not made by promise of reward or by fear, it is not invalid. A. I. R. 1929 Mad. 92. But when it is made on a promise of reward it is not admissible. 221 P. L. R. 1911=12 Ind. Cas. 642=12 Cr. L. J. 554 ; see also 17 Cr. L. J. 402=35 Ind. Cas. 962 ; 18 Cr. L. J. 106=37 Ind. Cas. 314=10 Bur. L. T. 270. Confession under inducement is not admissible. 60 Ind. Cas. 1006=23 Bom. L. R. 338=22 Cr. L. J. 318. In the absence of any threat, inducement or promise, the confession to the superintendent of the Excise is not shut out under s. 24 in a prosecution for illicit possession of opium. 22 C. W. N. 451=45 Ind. Cas. 284=19 Cr. L. J. 524. Where the probability is, that the confession was induced by threat or promise it should be excluded. A. I. R. 1933 All. 31=1933 Cr. C. 42=1932 A. L. J. 1125=1933 Cr. C. 42=55 A. 91=34 Cr. L. J. 489=143 Ind. Cas. 67. The expression "you had better tell the truth" has always been held to impart a threat or promise unless the words are qualified in some manner. A. I. R. 1934 Lah. 417=1934 Cr. C. 643=152 Ind. Cas. 998 ; see also A. I. R. 1933 Sind. 409. Judge has to decide admissibility of confession of accused caused by inducement, threat or promise. If he considers it admissible, he must point out to jury that admissibility of evidence does not mean that it is true and that it is for jury to accept or reject it.1 42 Ind. Cas. 639=1933 Cr. C. 233=34 Cr. L. J. 369=A. I. R. 1933 Cal 187. Where Court entertains a doubt as regards the voluntariness of the confession, it should make a thorough enquiry into the water. A. I. R. 1933 Cal. 835=145 Ind. Cas. 863 (F. B.) Court can under s. 24 form its own opinion as to whether inducemeut, threat or promise was sufficient to lead accused to believe that he would benefit from making confession. A. I. R. 1932 Sind. 64=26 S. L. R. 191=33 Cr. L. J. 650=1932 Cr. C. 284. Where confession has been duly recorded the presumption is that it was freely made. A. I. R. 1932 Sind. 201=26 S. L. R. 302=34 Cr. L. J. 147 ; see also 1933 A. L. J, 1551. But where it was not properly recorded it is not admissible. 1933 M. W. N. 723.

Inducement must be natural.—The word "temporal" is opposed to spiritual or religious. A confession induced by holding out a hope of forgiveness from God would therefore be admissible in evidence. 4 A. 46. Where the threat employed was excommunication from caste for life, this was an evil probably temporal. 5 M. L. J. 28. Admonition to speak out based on moral ground *e. g.* that confession is better than guilty silence, is not, legally speaking, an inducement. 89 Ind. Cas. 961=4 Pat. 646 ; see also 9 P. R. 1894 Cr. ; but see 2 L. B. R. 316.

Threats made but not influencing the accused.—Where threats are made to the accused but the accused made the statement deliberately *i, e.* uninfluenced by the threat this section does not apply. 49 B. 642=27 Bom. L. R. 1034=89 Ind. Cas. 1046=26 Cr. L. J, 1478.

Promise of pardon.—A confession by promising immunity from prosecution of another case is not admissible against the confessor. 12 P. W. R. 1907 Cr.=5 Cr. L. J. 437 ; see also 1 A. L. J. 110=1 Cr. L. J. 211 ; 1 P. R. 1899 Cr. 9 P. R. 1869 Cr. 2 A 260 ; L. B. R. (1872-1892) 396 ; 45 A. 633 ; 32 C. L. J. 204=60 Ind. Cas. 417=22 Cr. L. J. 225 ; 22 C. 50 (73) ; 2 Weir 137 ; 8 W. R. Cr. 53 ; 10 R. 1895 ; 5 N. W. P. 86. But of confession is made merely in the hope of securiug pardon, that fact by itself would not make the confession inadmissible. A. I. R. 1932 Pat. 171 (187) ; but see A. I. R. 1933 Lah. 310. The tender of a pardon by the Local Government though of doubtful validity in law, can in no way be regarded as an inducement or threat legally held out to an accused person to disclose or with-hold any matter within his knowledge. 5 C. L. J. 224. A voluntary statement given by

an accused on conditional pardon is admissible in evidence as against him. 8 B. H. C. Cr. 103. The suggestion that accused persons for the ends of justice be encouraged to confess by the knowledge that if they do so they will receive lenient punishment is one which is likely to convey on an entirely wrong impression and to be extreme mischievous. Cr. B. R. (1916) 2nd r. 113=17 Cr. L. J. 402=35 Ind. Cas. 962 ; confession made under mere hope of pardon cannot be rejected. A. I. R. 1933 Lah. 388=34 Cr. L. J. 598=34 P. L. R. 704 ; A. I. R. 1932 Lah. 73 ; A. I. R. 1931 Oudh. 74 ; A. I. R. 1933 Lah. 987.

Proceedings.—Proceedings mean criminal proceedings. 5 M. L. J. art. 29 ; 1 L. B. R. 133 (135). The phrase "in reference to the proceedings against him" must be read as qualifying the words "advantage" and "evil". *Ibid* ; 9 B. H. C. R. 358. The advantage held out, or the evil threatened, must be with reference to the proceedings against the prisoner, as for instance, that by confessing, he will not be sent to jail. (9 B. H. C. R. 358), that nothing will happen to him. (5 N. W. P. 86), that he will get off (3 B. 12), that he will be pardoned *Empress* v. *Ashgar Ali*, 2 A. 260), that he will receive a more lenient sentence, that he will in consequence of confessing become crown evidence, and the like. 5 M. L. J. Art. p. 29.

Retracted confession—Corroboration of. To use a confession as evidence against the accused, the Court must be satisfied (1) that it is voluntary, and (2) that it is substantially true. Moreover, it is a general rule of practice not to act upon retracted confessions, unless they are corroborated on material points by credible independent evidence. 2 S. L. R. Cr. 34=10 Cr. L. J. 200 ; 5 P. L. R. 1915=3 P. W. R. 1915 Cr.=16 Cr. L. J. 157=17 Ind. Cas. 221. 36 Ind. Cas. 133=17 Cr. L. J. 453 ; 2 P. W. R. 1917 Cr.=75 P. L. R. 1917 Cr. ; Rat. Un. Cr. C. 847 ; A. I. R. 1933 Oudh. 315=8 Luck. 518=10 O. W. N. 466 ; 9 O. W. N. 321 ; 9 O. W. N. 327 ; 9 O. W. N. 96 ; A. I. R. 1934 ; Lah. 715 ; A. I. R. 1934 Lah. 89 ; A. I. R. 1934 ; Sind. 172 ; A. I. R. 1934 Oudh. 388 ; A. I. R. 1933 Oudh. 268. It is a recognised rule of the Law of evidence, that a retracted confession may be used against the person making it, but not against other accused jointly with him. 28 P. W. R. 1907=7 Cr. L. J. 227 ; 28 C. 683. A Judge should in the first instance, see whether a retracted confession is voluntary or has been improperly induced. The mere fact that prisoner puts in a plea of guilty and denies having made the confession or explains having made it by allegation of police torture, is enough in itself to put a Judge upon enquiry. And he, then, has to decide, before admitting the confession at all, or allowing it to be looked at, whether it has been improperly induced. That is a question for the Court, i.e., the Judge to answer *in limine*. If, upon weighing al the circumstances, the prisoner's denial and probabilities, it appears to the Judge that the confession has been improperly induced, no matter how true it may be, he is bound to exclude it, it then becomes evidence and liable to be appreciated and weiged with the rest of the evidence in the usual way. 8 Bom. L. R. 697=4 Cr. L. J. 332 ; 3 Bom. L. R. 441 ; A. I. R. 1927 Lah. 682=104 Ind. Cas. 247 ; 60 Ind. Cas. 789 ; A. W. N. 1898, 69 ; A. W. N. 1885, 59 (F. B.) ; A. W. N. 1885, 221. A confession duly recorded and certified under s. 164 of the Cr. Pro. Code, is admissible in evidence against a person making it unless shut out by the provisions of s. 24 of the Evidence Act. In India the law relating to the admissibility of a confession is contained in section 24 of the Evidence Act. The question which a Court has to decide when determining on the admissibility of a confession is whether it appears to the Court to have been induced by the means mentioned in that section. The mere subsequent retraction of a confession which has been duly recorded and certified by a Magistrate, is not enough in all cases to make it appear to have been unduly induced. *Queen Empress* v. *Baswant*, 25 B. 168=2 Bom. L. R. 761.

In the absence of any corroboration by credible and independent evidence, it is unsafe in the majority of cases to found a conviction on a retracted confession. A retracted deposition does not of itself afford a sufficient corroboration of a retracted confession. 13 C. P. L. R. 107 ; 12 M. 123=2 Weir. 376 ; A. W. N. 1886, 52 ; 10 M. 295=2 Weir 361 ; 19 M. 482=2 Weir 745 ; 124 Ind. Cas. 486=A. I. R. 1930 Cal. 141 ; 124 Ind. Cas. 459=31 Cr. L. J. 661=A. I. R. 1930 Nag. 259 ; 30 Cr. L. J. 340=A. I. R. 1929 Lah. 597 ; 8 Pat. 262=A. I. R. 1929 Pat. 212 ; 8 Pat. 289=A. I. R. 1922 Pat. 275 ; 30 Cr. L. J. 1046 ; A. I. R. 1932 Bom. 553=34 Bom. L. R. 553 ; A. I. R. 1933 Cal. 747=57 C. L. J. 213 ; A. I. R. 1933 Sind. 313 ; 11 O. W. N. 950.

Where the statement of a person in the capacity of an approver had been made under a condition not fulfilled, *viz.*, that he should be examined at the trial, if the prosecution was not prepared to treat him as a witness, preferring to deal with him

as a co-accused, his retracted confession would be irrelevant under s. 24, notwithstanding the special provisions of cl. 2 of s. 339 of the Criminal Procedure Code. 1 P. R. 1899 Cr. ; 9 P. R. 1869 Cr. ; 28 C. 689=5 C. W. N 670. Where a confession was made before a Magistrate under circumstances not liable to suspicion, and, to all appearances, fulfils the requirements of the law, the fact that it is retracted in the Sessions Court does not negative the presumption of the genuineness of the confession. A. W. N. 1890, 173. A confession before the Magistrate, though afterwards retracted in the Sessions Court, is evidence against the party making it. 8 W. R. Cr. 40 ; 1 L. B. R. 238 ; 17 W. R. Cr. 49 ; 19 B. 728 ; 23 B. 316 ; 20 A. 133 ; 29 A. 434 ; 21 M. 83. So it cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt, without independent corroborative evidence. The weight to be given to a retracted confession must depend upon the circumstances under which the confession was originally given, and the circumstances under which it was retracted, including the reason given by the prisoner for his retraction. 16 P. R. 1903 Cr.=153 P. L. R. 1903 ; 26 C. W. N. 1010 ; L. B. R. (1872-1892) 423 ; 134 Ind. Cas. 876=A. I. R. 1931 Oudh. 412.

A confession though made voluntarily by an accused person before a Magistrate, if subsequently retracted, is not sufficient by itself to justify a Sessions Court in acting upon it. Rat. Un. Cr. C. 952 ; Rat. Un. Cr. C. 842 ; L. B. R. (1872-1892), 497 ; 38 P. W. R. Cr. 1910=24 P. R. 1910=8 Ind. Cas. 250. An admission which is explained away is like a retracted confession. A. I. R. 1927 Lah. 549. A retracted confession made voluntarily is sufficient to warrant conviction. A. I. R. 1930 Lah. 88=30 Cr. L. J. 1080 ; 6 O. W. N. 545=118 Ind. Cas. 757=A. I. R. 1929 Oudh. 381 ; A. I. R. 1929 Sind. 253 ; 1929 M. W. N. 791 ; 30 L. W. 642=1929 M. W. N. 901= A. I. R. 1929 Mad. 837=57 M. L. J. 681 ; 31 Cr. L. J. 26=120 Ind. Cas. 257 ; 1930 M. W. N. 785 ; 132 Ind. Cas. 70=32 Cr. L. J. 830 ; A. I. R. 1934 Oudh. 405 ; 35 Cr. L. J. 1180.

The net result of the authorities on the value of confession seems to be this : (i) That it is not illegal to base a conviction upon the uncorroborated confession of an accused person, provided the Court is satisfied that the confession was voluntary and is true in fact ; (ii) that, from the point of view of legality, pure and simple, the fact that a confession has been retracted is immaterial ; (iii) that the use to be made by the Court of a confession, whether retracted or not, is a matter rather of prudence than of law, the business of the Court being to make up its mind, in accordance with the dictates of common sense, whether it is safe to believe the confession or not ; (iv) that experience and common sense show that, in the absence of corroboration in material particulars, it is not safe to convict on a confession, unless from the peculiar circumstances in which it was made and judging from the reasons, alleged or apparent of the retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine ; (v) that, when it is a question of using a confession against a co-accused of the person confessing and the Court would not be prepared to accept the confession *per se* as sufficient, the corroboration ought to be of the kind that not only confirms the general story of the crime, but also, unmistakably, connects the said co-accused with the crime. 264 P. L. R. 1914=15 Cr. L. J. 626=30 P. R. 1914 Cr.=25 Ind. Cas. 634=5 P. W. R. 1914 Cr. see also L. B. R. (1893-1900) 642 ; 1 L. B. R. 238 ; 57 C. 488=A. I. R. 1930 Cal. 633. It can not be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to such a confession must depend upon the circumstances under which the confession was originally given and under which it was retracted, including the reasons given by the prisoner for his retraction. A confession, in itself reasonable and probable must, if repeated more than once and retracted only at a late stage in the proceedings has greater weight attached to it than a confession made only once and retracted after a short interval. The question which should be put to the Jury regarding such confessions is not whether they are corroborated by independant evidence, but whether, having regard to the circumstances connected with them, it was more probable that the original confessions or the statements retracting them were true. An omission on the part of the Judge to place the circumstance before the jury and to put this question to the Jury amounts to a misdirection. 21 M. 83=2 Weir 533 ; Rat. Un. Cr. C. 242 ; 19 B. 728. If a Judge believes that a confession made by a prisoner although subsequently withdrawn,

contains a true account of that prisoner's connection with a crime, the Judge is bound to act, so far as the prisoner is concerned, on that confession, which he believes to be true. When a confession is not supported by the evidence of witnesses, a Judge must examine carefully to see whether it gives details which indicate that it is a natural narrative of what took place in the presence of the man making it, and is not at variance with any evidence in the case which is believed, and is not merely a parrot-like repetition of a story put into the man's mouth. 20 A. 133 (134-135)=A. W. N. 1897, 224 ; 18 A. 78=A. W. N. 1895, 227 ; Supp, 1 O. C. 13 ; 4 C. W. N. 129=27 C. 295.

Where an approver who had accepted a conditional pardon, make a confession implicating the accused, but afterwards retracted it, *held*, that the accused was not liable to be convicted on the confession alone. 5 N. W. P. 217. But confession of a co-accused, though subsequently retracted is admissible in evidence against his co-accused. 125 Ind. Cas. 639=31 Cr. L. J. 877=A. I. R. 1930 Lah. 667. Where the confession made before the police was found by the Court not to have been voluntary, it cannot be corroborated by the confession of the accused as an approver, subsequently retracted. 124 Ind. Cas. 459=31 Cr. L. J. 661=A. I. R. 1930 Nag. 259.

In capital cases, the jury should often refrain from convicting on retracted confessions. Rat. Un. Cr. C. 245=Cr. Reg. 12 of 1886. Where the only evidence in a criminal case was the confession of the accused made before the Magistrate but subsequently retracted, and where it was found that the police misconducted themselves in the search of the houses of the prisoners who confessed, the High Court set aside the conviction. 2 C. L. R. 132. Where a confession was taken by a Magistrate in jail with a police officer in the next room and was subsequently retracted, such a confession could not be acted upon unless supported by very good corroboration. 11 C. L. J. 273.

Where a confession is retracted by the accused on the ground that it was induced by torture and especially when the confession, after admission, is to be taked into consideration against the co-accused under s 30, Evidence Act, and the accused has marks of violence on his body ; it may be the proper course for the Judge to take evidence about the circumstances before admitting the confession in evidence, Rat. Un. Cr. C. 730=Cr. Reg. 58 of 1894. Where a prisioner, a young girl of 15 years of age, who was suddenly charged with a serious offence and was kept in police custody for some time, made a confession to a Magistrate, after being beaten by the police with a view to forcing her to make it, which she subsequently retracted *held*, that it could not be relied upon, especially, when it was inconsistent with the evidence given in the case by the prosecution witnesses. 6 C. W. N. 380. If the accused was examined in a language which the Magistrate understood and was able to write, then the record of the examination, if made in another language, is inadmissible, and no evidence can be admitted to prove what statement was made by the accused. It is not the practise to base a conviction upon a retracted confesssion, unless it is corroborated. That a person, who is being tried,is the same as the person who made the confession must be proved. L. B. R. (1893-1900), 70. Where the accused, who made a detailed confession before the committing Magistrate, retracted it, on his examination being read over to him in conformity with s. 205 Cr. Pro. Code, it was held that it did not amount to a confession. 9 B. H. C. R. 344. The practice of the High Court of Bombay has been to deal with confessions in connection with all the facts of the particular case, and while not ignoring the difficulties that surround retracted confessions, it has not avoided these difficulties by applying any stringent rule. There is no rule of law that requires a duly proved confession to be corroborated. Rat. Un. Cr. C. 719. A confession made before the Magistrate though afterwards retracted, is evidence against the party making it ; and the statement of an accused made after accepting a person, is not inadmissible in evidence by reason of the pardon making it having retracted it before the committing Magistrate. P. L. R. 1900, 19 Cr. There is nothing in section 30 of the Evidence Act which would exclude, as against persons being jointly tried for the same offence, a confession made by one of the accused duly proved, simply because at the trial the confession is withdrawn or denied. 1 L. B. R. 133. Certain accused persons made confessions which led to the arrest of certain other persons. The confessions were subsequently retracted, but were corroborated by the evidence of the approver. *Held* that the retracted confessions taken behind the back of the accused who had no opportunity of cross-examining the persons who made them, were not sufficient corroboration of the approver's

evidence and no conviction should be based on them. 11 A. L. J. 73=18 Ind. Cas. 672=14 Cr. L. J. 112. C was convicted of causing the death of J by fracturing her skull. C made a confession before a Magistrate, which she retracted in the Court of the trying Magistrate. Except the evidence of one witness, who said he saw the two women quarrelling, there was no proof whatever to show that C committed the crime. *Held*, that it was not safe to convict the accused person on his retracted confessions standing by itself uncorroborated. *Held* also, that production by an accused person while in the hands of the Police, of a thing unconnected with the commission of the evidence is not admissible in evidence against him. 3 P. W. R. 1907 Cr. Evidence brought in under s. 288 cannot be accepted as proper corroboration of a confession made to a Magistrate and retracted at the sessions trial, especially when that confession was not fairly obtained and was not voluntary. 27 C, 295=4 C. W. N. 129. But a retracted confession, where a confession was recorded under section 164 Cr. Pro. Code, can be relied on when it was corroborated in material particulars by the evidence of an accomplice. 25 M. 143=2 Weir 800. A confession which was made under the influence of an offer of pardon and was recorded under section 164 of the Criminal Procedure Code cannot be relied on if retracted afterwards. L. B. R. (1893-1900) 8.

A confessing prisoner should not be condemned upon a retracted confession unless it is corroborated in material particulars. 70 P. L. R. 1918=19 P. W. R Cr. 1918=44 Ind. Cas. 179=19 Cr. L. J. 275 ; 36 Ind. Cas. 133=17 Cr. L. J. 453 ; 60 Ind. Cas. 789=22 Cr. L. J. 293.

An accused's confession subsequently retracted and not tallying with the other evidence in the case, cannot be pressed as strong evidence against him. 32 Ind. Cas. 321=2 O. L. J. 468=17 Cr. L. J. 33. In the absence of corroboration in material particulars, it is not safe to convict on a retracted confession, unless from the peculiar circumstances in which it was made and judging from the reasons, alleged or apparent, of the retraction, there remains a high degree of certainty that the confession, notwithstanding its having been retracted from is genuine. 31 Ind. Cas. 831=16 Cr. L. J. 815. But it cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of the plaintiff without independent corroborative evidence, The weight to be given to such a confession must depend on the circumstances under which the confession was originally given and the circumstances under which it was retracted including the reasons given by the prisoner for its retraction. It is unsafe for a Court to rely on an act on a confession which has been retracted unless after a consideration of the whole of the evidence in the case, the Court, is in a position to come to the unhesitating conclusion that the confession is true, that is to say, usually unless the confession is corroborated by credible independent evidence. A retracted confession should carry practically no weight as against a person other than its maker. 71 Ind. Cas. 497=23 C. W. N. 1010=24 Cr. L. J. 145=A. I. R. 1923 Cal. 217 ; 45 M. L. J. 613=18 L. W. 607=33 M. L. T. H. C. 37 ; *Manna Lal* v. *Emperor*, 9 O. & A. I. R. 947 ; 75 Ind. Cas. 152=24 Cr. L. J. 204.

The duty of a Judge presiding over the trial by jury is to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties. In considering whether certain confessions are admissible or not he is not confined to the grounds of confessions as contained in the retraction or to the objections as to the admissibility by the accused, but he should look into all the circumstances in order to judge whether the confession is admissible or not. A judge is not concerned with the truth or falsity of a confession. That is a matter entirely for the jury. He is concerned only with the question of admissibility. They will be admitted only if they are voluntary. If the Judge is satisfied as to the truth of a confession but doubts voluntary character he is bound to exclude it under the law, though such rejection amounts to excluding truth from the Court. 29 C. W. N. 300=52 C. 67=86 Ind. Cas. 414=26 Cr. L. J. 782=A. I. R. 1925 Cal. 587.

It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by an accused cannot be accepted as evidence of guilt without independent corroborative evidence. In every case the credibility of a confession is a matter to be decided by the Court in the circumstances of each particular case. A. I. R. 1925 Oudh. 1. In deciding whether a retracted confession is to be admitted in evidence it is necessary to examine not only the statement of the prisoner as to how he came to make it, but all the circumstances of the case. There is no rule of law which compels a Court to raise an inference of improper inducement from the mere fact that a confession is retracted. 6 Lah. 415=7 Lah. L. J. 482=A. I. R. 1925 Lah.

605 ; 96 Ind. Cas. 747=27 Cr. L. J. 982. Confession made by an adult man who understood what he was doing, though retracted, is sufficient for the conviction of the person making it, even although certain parts of it are not found to be true provided that there was a detailed confession and it was made voluntarily and inspite of the fact that he was explained the consequences of making it. A. I. R. 1929 Oudh. 381. Conviction based on retracted confession which was voluntary and was sufficiently corroborated is legal. 103 Ind. Cas. 112=28 Cr. L. J. 656 ; 11 Mys. L. J. 407, A. I. R. 1934 Oudh. 418 ; A. I. R. 1933 Lah. 388.

Confession to police officer not to be proved.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

Redrafting of ss. 24 to 27.—"It is now clear beyond all dispute that section 27 is one of those sections which controls the three earlier sections, namely section 24, 25 and 26. In the last mentioned sections, the danger of admitting confessions made to police officers or when in police custody is clearly pointed out. But although such confessions are inadmissible under the law, that is under the sections which I have just mentioned, they may in certain circumstances lead to the discovery of facts, etc., in consequence of the information received from persons in custody. Therefore, the first thing that has got to be ascertained before sections 27 of the Evidence Act can be applied, is to find out whether or not the information, such as it was, which led to the discovery of certain other facts came from a person in the custody of a police officer." *Per C. C. Ghosh* in 36 C. W. N. 373 (375)=138 Ind. Cas. 116=33 Cr. L. J. 546=59 C. 1040=A. I. R. 1932 Cal. 297. In the same case *Rankin C. J.* said : "I agree I would only point out that this case is a very good illustration of the necessity of sentions 24 to 27 of the Evidence Act being redrafted. As my learned brother has pointed out it has been decided by the highest authority that section 27 is not a mere proviso to section 26 but cuts down the operation of sections 24 and 25 as well."

Reason of the Rule.—This law is applicable only in India. The following extract from the First Report of the Indian Law Commissioners shows the reasons which prompted the Legistature in enacting ss. 25 and 26. The Police in the province of Bengal are armed with very extensive powers. They are prohibited from enquiring into cases of a petty nature, but complaints in cases of the more serious offences are usually laid before the police *daroga* who is authorized to examine the complainant, to issue process of arrest, to summon witnesses, to examine the accused and forward the case to the Magistrate or to submit a report of his proceedings according as the evidence may, in his judgment, warrant the one or the other course. The evidence taken by the Parliamentary Committee on Indian affairs during the Sessions of 1852 and 1853 and other papers which have been brought to our notice, abundantly shows that the powers of the police are often abused for purposes of extortion and oppression ; and we have considered whether the powers now exercised by the police might not be greatly abridged. We have arrived at the conclusion that, considering the extensive jurisdiction of the Magistrate, the facilities which exists for the escape of parties concerned in serious crime, and the necessity for the immediate adoption in many cases of the most prompt and energetic measures, it is requisite to arm the police with some such powers as they now possess ; and we have accordingly adopted many of the provisions of the Bengal Code on this head. In one material point we propose a change in the duties of the police. By the existing law, the *daroga* or other police officer presiding at an enquiry into a crime committed within his division is required, upon the apprehension of the accused, to question him fully regarding the whole of the circumstances of the case and the persons concerned in the commission of the crime, and, if any property may have been stolen or plundered, the person in possession of such property or the place where it has beon deposited (*vide* s. 19 of Regulation XX, 1817). In the event of the accused making a free and voluntary confession, it is to be immediately written down. Then follow other provisions for preventing any species of compulsion or maltreatment with a view to extort a confession or procure information. But we are informed and this information is corroborated by the evidence we have examined, that inspite of this qualification as to the character of the confession, confessions are frequently extorted or fabricated. A police officer, on receiving intimation of the occurrance of a dacoity or other offence of a serious character, failing to discover the perpetrators of the offence often endeavours to secure himself against any charge of supineness or neglect by getting up a case against parties whose circumstances and

character are such as are likely to obtain credit for an accusation of the kind against them. This is not unfrequently done by extorting or fabricating false confessions, and, when this step is once taken, there is, of course, impunity for the real offenders. and a great encouragement to crime. The *daroga* is henceforth committed to the direction he has given to the case, and it is his object to prevent a discovery of the truth and the apprehension of the guilty parties, who so far as the police is concerned, are now perfectly safe. We are now persuaded that any provisions to correct the exercise of this power by the police will be futile ; and we accordingly propose to remedy the evil, as far as possible by the adoption of a rule prohibiting any examination whatever of any accused party by the police, the result of which is to constitute a written document. This of course, will not prevent a police officer from receiving any information which any one may voluntarily offer to him ; but the police will not be permitted to put upon record any statement made by a party accused of an offence."

As regards sections 25, 26 and 27 *Mahmood J.* observed in *Queen-Empress* v. *Babu Lal*, 6 A. 509 at pp. 521, 522 : "I have stated these facts as introductory of the observations which I am about to make, that the rules contained in ss. 25, 26, and 27 of the Evidence Act were not originally treated in British India as, strictly speaking, rules of evidence, but rather as rules governing the action of police officers, and as matters of criminal procedure. I may take it that no such rules existed either in the Muhammadan Law or in the English rule of evidence, the only two systems to which the Courts resortod for guidance on questions of evidence in criminal matters." Then after making mention of previous legislation on the subject he added at p. 523 : "These legislative provisions leave no doubt in my mind that the Legislature had in view the malpractices of police officers in extorting confessions from accused persons in order to gain credit by securing convictions, and that those malpractices went to the length of positive torture ; nor do I doubt that the Legislature, in laying down such stringent rules, regarded the evidence of police officers as untrustworthy, and the object of the rules was to put a stop to the extortion for confession, by taking away from the police officers the advantage of proving such extorted confessions during the trial of accused persons." Section 25 of the Evidence Act is enacted to guard prisoners accused of offences against unfair practices on the part of the police. *Solam* v. *Emperor*, 43 Ind. Cas. 111=19 Cr. L. J. 79 ; see also per *Garth C. J.* in *Queen* v. *Horribole*, 1 C. 207 ; 1 C. L. R. 21 ; 4 A. 198 (204). The reason why the law in ss. 25 and 26 jealously excludes a confession made by an accused, whilst in the custody of a police officer unless it be made in the immediate presence of a Magistrate, is that there is room for apprehension that a police officer who is armed with large powers over accused persons, may unwillingly excite terror in their minds and extort false and involuntary confessions ; and his duty to investigate criminal cases and to detect offenders and bring them to justice may make him feel tempted to obtain confessions from accused persons by threat, promise, or other improper influence. 2 C. W. N. 71.

Scope of the section.—"In section 25, the criterion for excluding the confession is the answer to the question—To whom was the confession made? If the answer is that it was made to a police officer, the law says that such confessions shall be absolutely excluded from evidence, because the person to whom it was made is not to be relied on for proving such a confession, and he is moreover suspected of employing coercion to obtain confessions." *Per Mahmood J.* in *Queen Empress* v. *Babu Lal*, 6 A. 509 at p. 532 ; 28 Bom. L. R. 1196. In *Queen* v. *Hurribolle Chunder Ghosh*, I. C. 217, the confession, was made, in the first instance, to two policemen, and taken down in writing, and the prisoner was then brought before the Deputy Commissioner of Pollce Mr. *Lambert*, in the Police Office in Calcutta, when he again affirmed the truth of his former statement to Mr. *Lambert*. and Mr. *Lamebert*, in his capacity of a Magistrate received and attested the statement. Mr. *Jackson*, Counsel for the prisoner contended that the reception in evidence of the statement admitted was expressly barred by s. 25 of the Evidence Act, it being a confession made to a police officer. The fact that the police officer was in this case also a Magistrate does not alter the effect of the section ; it does not make him the less a police officer. He cannot separate his functions as police officer and Magistrate and therefore was not such a Magistrate as is contemplated by s. 26. In delivering the judgment *Garth C. J.* said at p. 215 : "It was urged by Mr. *Jackson*, for the prisoner, that the terms of s. 25 are imperative, that a confession made to a Police Officer, under any circumstances, is not admissible in evidence against him, and that the 26th section is not intended to qualify the 25th, but means that no confession made

by a prisoner in custody, to any person other than a Police officer, shall be admissible, unless made in the presence of a Magistrate. I am of opinion that is the true meaning of the 25th section. Its humane object is to prevent confessions obtained from accused persons through any undue influence, being received as evidence against them. It is an enactment to which the Court should give the fullest effect, and I see no sufficient reason for reading the 26th section so as to qualify the plain meaning of the 25th. 11 C. 635 ; but see 6 A. 509 ; 4 A. 198 ; *In re Heran Miya*, 1 C. L. R. 21." The confession made to a police officer by an accused is not admissible against him under s. 25 of the Evidence Act, *a fortiori* it is inadmissible against a co-accused. 12 Bom. L. R. 899=8 Ind. Cas. 622=11 Cr. L. J. 690 ; 36 Ind. Cas. 480=17 Cr. L. J. 512. This section is absolute. A. I. R. 1932 Mad. 24. A confession contained in a statement made by an accused person to a stranger in the presence of a Police officer while he was in the custody of a jailor does not fall within the purview of s. 25 or s. 26 of the Evidence Act and is admissible in evidence. 8 P. R. 1914 Cr.=214 P. L. R. 1914=15 Cr. L. J. 480=24 Ind. Cas. 568 ; A confession made by an accused to a private person in the presence of the Police is inadmissible in evidence against him. 20 Ind. Cas. 468=37 P. W. R. 1913 Cr.=320 P. L. R. 1913=14 Cr. L. J. 596. Section 25 of the Evidence Act lays down that a confession to a Police officer shall not be used as against the person making it, it does not say that such a confession shall be inadmissible for all purposes. Such a confession may be used for the purpose of arriving at a conclusion whether a subsequent judicial confession should be believed or not. 75 Ind. Cas. 693=6 L. L. J. 54=25 Cr. L. J. 5=A. I. R. 1923 Lah. 315. The words "a person" in this section mean any person. But as section 26 of the Act applies only to the proof of a confession as against his maker so it should be held that this section has a similar scope ; and both these sections were intended to prevent the use, as evidence against the maker of confessions made actually or in effect to Police officers. This section is not concerned with the statements of witnesses. 35 M. 397. Section 27 of the Evidence Act qualifies not only, sections 26 and 25 but also section 24. Therefore, when a confession as a whole is excluded, whether by reason of the section 26 or of section 25 or of section 24, so much of the information given by the person making the confession when he was an accused and in custody, as distinctly relates to a relavant fact thereby discovered becomes admissible. 44 Ind. Cas. 321=22 C. W. N. 213=27 C. L. J. 148=19 Cr. L. J. 305 ; see also 1 C. L. R. 21 ; 21 Bom. L. R. 724. A confession made to a Police officer is inadmissible even if the Police officer is invested with the powers of a Magistrate. 8 Rang. 52=A. I. R. 1930 Rang. 227. A confession made to a Police officer is inadmissible in evidence according to sections 25 and 26 of the Evidence Act. 15 Ind. Cas. 800=13 Cr. L. J. 528=11 M. L. T. 407 ; 25 C. 413=2 C. W. N. 257. A was convicted on the evidence of two Excise Sub-Inspectors, who stated that he offered them Rs. 10 per ball of opium as a bribe to let him land unmolested a large quantity of illicit opium from the steamer *Kattoria*. These Excise officers had been also enrolled as Police officers. *Held*, that the alleged offer by the accused amounted to an admission that he had large quantity of contraband opium in his possession, and being an admission of an offence under the Opium Act, amounted to a confession and was thus inadmissible under s. 25 of Evidence Act. The test which has to be applied in deciding whether s. 25 Evidence Act applies, is the position of the person at the time when it is proposed to prove the admission not his position at the time when he is alleged to have made it. A confession, therefore, made to a Police officer by a person when he is not accused of any offence is inadmissible in evidence against him when he is accused of an offence. A confession made by an accused person to a Police officer might be admissible in favour of a co-accused but not against him. 15 Ind. Cas. 305. As section 26 of the Evidence Act applies only to proof of a confession as against the maker ; so it should be held that section 25 has similar scope ; and both these sections were intended to prevent the use, as evidence against the maker, of confessions made actually or in effect to Police officers. Section 25 of the Evidence Act, was not concerned with the statements of witnesses. 1912 M. W. N. 549=12 M. L. T. 1=13 Cr. L. J. 352=14 Ind. Cas. 890=35 M. 397. But when an accused is examined as a witness by a Police officer his statement is inadmissible under this section. 4 C. W. N. 129. In that case the Court observed at page 143 : "It has been already mentioned that the statement obtained by the Police from the mother of Jadab Das is said to have incriminated Rai Charan, the Inspector examined him as a witness reducing his statement to writing and that he then arrested Rai Charan, The impropriety of such proceedings is aggravated

by the course taken by the Sessions Judge. He examined the Sub-Inspector in regard to that statement and he thus admitted it as evidence in the trial. The statement cannot be regarded otherwise than as a confession made by Rai Charan to the Sub-Inspector. If it be regarded it was clearly inadmissible under section 25 of the Evidence Act. If on the other hand it was to be used as evidence against the other prisoners, it was manifestly inadmissible." Section 25 only provides that no confession made to a Police officer shall be proved as against a person accused of any offence. It does not preclude the counsel for one accused person, on his client's behalf, from asking questions to prove a confession made to the police by another accused person, tried jointly with him. Such a confession is not to be treated or received as evidence against the person making it. The Judge should instruct the jury accordingly. 2 B. 61 (64). The confession under this section need not be a confession of the crime which the police is at the moment investigating. 1931 M. W. N. 1138=34 L. W. 858=61=M. L. J 860.

Police officer, meaning of. "In construing the 25th section of the Evidence Act of 1872, I consider that the term 'police officer' should be read not in any strict technical sense, but according to its more comprehensive and popular, meaning." *Per Garth C. J.* in *Queen* v. *Hurribole*, 1 C. 207 (215). "Police officer" means what is popularly and technically known as member of police force. A. I. R. 1932 Pat. 293=13 P. L. T. 627. A Deputy Commissioner of Police in Calcutta is a Police officer. *Ibid.* Primarily the term "Police officer" in this section means the same as it does in the Police Act but it can be extended beyond the definition in section 1 of the Police Act to cover only those persons who like Police officers coming within that definition, are so much more interested in obtaining convictions than any member of the community is, that they might possibly resort to improper means for doing so. That class does not include police patel in Berar. 23 N. L. R. 23=101 Ind. Cas. 599=A. I. R. 1927 Nag. 222 ; 82 Ind. Cas. 32=26 Cr. L. J. 1088=A. I. R. 1925 Nag 340. But in Bombay a police patel is a Police officer within the meaning of sections 25 and 26. 17 B. 485 ; 10 B. 595, There is no qualification of the expression "Police officer" in s. 25 or s. 26 of the Evidence Act and a confession made to a Police officer whoever that officer may be and whether he is a Police officer in British territory or a Police officer in foreign territory, is inadmissible. 22 B. 235 ; 87 Ind. Cas. 520=26 Bom. L. R. 706=26 C. L. J. 984 ; see 43 Ind. Cas. 111 ; 15 Ind. Cas. 800. A village headman in Burma who is authorized to arrest without warrant is not a Police officer so as to make a confession made to him is inadmissible 3 Bur. L. J. 11=81 Ind. Cas. 540=25 Cr. L. J. 924. The widest and most comprehensive extension of the term "Police officer" cannot make it include a Kotwar in the *Central Province*. 25 Cr. L. J. 147=76 Ind. Cas. 291=A. I. R. 1924 Nag. 29 ; see also 59 Ind. Cas. 88=21 Cr. L. J. 568. A member of a frontier constabulary is, for the purposes of sections 25 and 26 of the Evidence Act, a Police officer, and admission made to him, and not in the presence of a Magistrate, by an accused person cannot be proved against the maker. 71 Ind. Cas. 360=24 Cr L. J. 136. In the Punjab a village Chaukidar is not a Police officer within the meaning of section 25 of the Evidence Act. 43 Ind. Cas. 84=19 Cr. L. J. 52=42 P. R. 1917 Cr. See also 17 Cr. L. J. 62=26 Ind. Cas. 654. A *chaukidar*, although he is not a Police officer under Act V. of 1861, is one under Reg. XX of 1817 and Act I of 1872, and a confession made to him is inadmissible. 2 C. W. N. 637 ; 9 C. W. N. 474 ; 26 C. 569. Political Mohair Oghi is Police officer. A. I. R. 1933 Pesh. 38. It includes Police offiers of Indian States. 140 Ind. Cas. 283=13 Pat. L. T. 627=A. I. R. 1932 Pat. 29. Confession made to a chaukidar is admissible. A. I. R. 1934 All. 132. Confession made to a crowd of people is not inadmissible, merely because on police man was one of the crowed. *Ibid* ; see also A. I. R. 1924 Oudh. 722. Sub-Divisional Officer is not a Police officer. A. I. R. 1934 Pat. 256.

A tenhouse *Gaung* appointed under the Lower Burma Village Act, 1889, is a Police officer within the meaning of s. 25 of the Evidence Act ; and an admission to him of the accused's guilt is inadmissible in evidence under the section. 3 L. B. R. 283=5 Cr. L. J. 421. The provisions of this section which declares that no confession made to a Police officer shall be proved as against a person accused of any offence, applies to every Police officer and is not restricted to officers of the regular Police force. 26 C. 519. A Sub-Inspector of a thana (1 C. L. R. 21,) a police Sub-Inspector (11 C. 635 ; 19 W. R. Cr. 51,) a daroga (4 A. 98) a head constable of a police

(5 N. W. P. 86) or even a police constable (10 B. L. R. App. 2 ; 2 B. 61 ; 6 B. 34 ; 6) A. 509, are Police officers within the meaning of this section and confession made to any one of them is inadmissible in evidence. An extra judicial confession made by the accused to a *Lambodar* and a *Subedparts* cannot be admitted. 35 P. L. R. 359.

There was some conflict of opinion between the Bombay High Court and other High Courts as regards whether an excise officer is a police officer or not. An excise peon having the power to detain, search, seize and arrest any person whom he believes to be guilty if any offence under the Opium Act or Bombay Abkari Act has power which are very similar to those exercised by a Police officer. Any admission made to him is therefore admissible under the provisions of s. 25. A. I. R. 1929 Bom. 60=31 Bom. L. R. 49; A. I. R. 1927 Bom. 4 (F. B)=28 Bom. L. R. 1196=51 B. 78=99 Ind. Cas. 330 (overruling 28 Bom. L. R. 674=97 Ind. Cas. 665=27 Cr. L. J. 1145=A. I. R. 1926 Bom. 517). But the Calcutta High Court held that confession made to an excise officer is admissible in evidence as an excise officer is not a Police officer and section 25 of the Evidence Act does not apply to such a confession. 54 C 601=31 C. W. N. 667=102 Ind. Cas. 547=28 Cr. L. J. 579=A. I. R. 1927 Cal. 527. 22 C. W. N. 834=48 Ind. Cas. 504=46 C. 411 : 22 C. W. N. 451 ; 52 C. L. J. 177 ; C. W. N. 163 ; *contra Ibrahim* v. *Emperor*, 35 C. W, N. 601 ; 9 Mys. L. J. 74 following 51 B. 18 ; 7 R. 771=121 Ind. Cas, 715=31 Cr. L. J. 303=A. I. R. 1930 Rang. 49. But this question again cause for decision by a Full Bench of the Calcutta High Court in 38 C. W. N. 930=A, I. R. 1934 Cal. 580 (F. B.) Where it was held that an excise officer in the conduct of investigation of an offence against the Excise is a Police officer see also A. I. R. 1934. Cal. 616=38 C. W. N. 1005=35 Cr. L. J. 1178 ; A. I. R. 1934 Nag. 136 ; 35 C. W. N. 601. So now there is no complicity between Bombay and Calcutta High Courts. See also A. I. R. 1935 Nag. 13. An excise officer is not a Police officer within the meaning of section 25 of the Evidence Act. 99 Ind. Cas. 594=A. I. R. 1927 Sind. 112 ; 83 Ind. Cas. 151=25 Cr. L. J. 1223 ; 88 Ind. Cas. 32=26 Cr. L. J. 1088=A. I. R. 1925 Nag. 340 ; 44 Ind. Cas. 588=3 P. R. 1918 Cr.=19 Cr. L. J. 364 ; 39 Ind. Cas. 977=21 C. W. N. 694=18 Cr. L. J. 609 ; 13 Cr. L J. 465=15 Ind. Cas. 305=5 Bur. L. T. 92 ; A. I. R. 1932 Pat. 293. A village Magistrate is not a Police officer and confession made to him, is therefore, admissible in evidence under s. 25 of the Evidence Act. 7 M. 287=2 Weir. 235. A confession made to *Ywathugyi* should not be admitted in evidence. He is the head of the rural police and has police duties to perform. He is, to all intents and purposes, a Police officer though he may not be so designated. L. B. R. (1833—1900) 22.

Confession made to a police officer whether admissible.—A confession made to a Police officer cannot be used in evidence. A. W. N. 1883, 188 ; A. W. N. 1882, 21=4 A. 198. Confessions recorded in a police diary cannot be used for any thing other than to assist the presiding Judge in the enquiry or the trial or for the purpose of enabling the defence under certain circumstances to contradict the witness for the Crown. It is the duty of the Judge to bring on record by evidence any material fact that may come to his knowledge and it is for that purpose that he should use the confession. A. I. R. 1928 All 25=8 A. I. Cr. R. 24=8 L. R. A. Cr. 153=106 Ind. Cas. 442=26 A. L. J. 92. A confession made to another person in the presence of a Police officer, who has asked or instructed that other person to take the confession in such a way as to be his agent, where the confession takes place under such circumstances that the Police officer is in such proximity as to make his presence likely to affect the mind of the confessing person, is in substance a confession to a Police officer. 97 Ind. Cas. 44=44 A. L. J. 958=A. I. R. 1926 All. 737 ; see also *Channan* v. *Crown*, 21 Ind. Cas. 468. Rule 195 of the Madras Councils Rules of Practice is not a rule of law, but merely a rule for the guidance of village Magistrates and therefore, a confession recorded by a village Magistrate after the police investigation has begun is inadmissible apart from the fact whether the Magistrate knew that the investigation had begun. A. I. R. 1927 Mad. 974.

Where a house was searched and the accused put his signature on the recovery list ; *held* that the fact of the accused putting his signature on the recovery list is not admissible in evidence against him in a case in which the possession of the house is in question because it would be an incriminating statement of the nature of a confession to a Police officer and could not be proved by reason of the prohibition contained in section 25. 8 Lah. 326=28 P. L. R. 119=100 Ind. Cas. 707=28 Cr. L. J. 323 If after committing a murder the murderer proceeds straight to the Police station and there makes a confessional

statement, which is recorded on the First Information Report the statement is inadmissible in evidence as being a confession made to the Police. 90 Ind. Cas. 148=26 Cr. L, J. 1492. An investigating officer cannot be allowed to depose that the accused pointed out the route taken by them in going to comit the offence of dacoity and the place where they divided the booty, as rhey were confessional statements made to a Police officer. 26 Cr. L. J. 606=85 Ind. Cas. 830. A confession not reduced to writing made to an Honorary Magistrate, who was also a zaildar, while he was taking part in an investigation, in the absence of the Police and subsequently repeated before him and a Police officer is admissible in evidence. 76 Ind. Cas. 819=25 Cr. L. J. 259=A.I.R. 1923 Lah. 389. In a case of dacoity a statement made by an accused to a Police officer, at the time of the search of his house, that property would be found in the possession of his co-accused is not admissible in evidence against the accused making the statement nor is it admissible against his co-accused as proving their participation in the dacoity. 65 Ind. Cas. 849=20 A. L. J. 178=23 Cr. L. J. 197. A first information of murder was lodged at the Police station by the accused himself on the morning following the murder and in it, after stating the narrative of events prior to the night of occurrence he confessed that he had committed the offence. *Held* that although by reason of the provisions of section 25 of the Evidence Act the first information was not admissible in its entirety, yet, in so far as it spoke of events prior to the night of occurrence, it was admissible in evidence if and when proved. 62 Ind. Cas. 578=25 C. W. N. 788=22 Cr. L. J. 562. See also 36 Bom. L. R. 1117. A confession made to the Police by an accused person is admissible to prove the ownership of property in respect of which he is accused. 55 Ind. Cas. 62=21 Cr. L. J. 414. Statement made by the accused in the presence of a Police officer is admissible in evidence. 52 Ind. Cas. 601=21 Bom. L. R. 724=20 Cr. L. J. 681. A report made to the Police which amounts to confession is not admissible in evidence against the person who makes it. 48 Ind. Cas. 883=36 P. R. 1918 Cr.=20 Cr. L. J. 83. Any statement made by a complainant in his first report at the Police station is not admissible as proof of the facts therein mentioned, and cannot be used as evidence against the accused in his trial. 16 Cr. L. J. 62=26 Ind. Cas. 654. Accused went to a Police station and made the report "I have killed my wife and her corpse is lying in my house," in consequence of which the Police proceeding to his house, discovered the corpse of his wife in an inner room of the house. *Held*, that the provisions of ss. 25 and 26 of the Evidence Act apply to the circumstances of the case. 16 A. L. J. 478=47 Ind. Cas. 659=19 Cr. L. J. 935. A statement made by a person in an investigation made by a Police officer under s. 162 Criminal Pro. Code, must be taken to be a statement to the Police officer himself, whether the questions were put by the Police officer himself or by somebody else in his presence. But incriminating statements made by accused persons while in Police custody, in answer to questions put by a Police officer in the presence of a Headman, are excluded from evidence under ss. 25 and 26 of the Evidence Act. 18 Cr. L. J. 106=37 Ind. Cas. 314=10 Bur. L. T. 270. Where the accused at the time of making an incriminating statement is enfeebled by illness and is undefended, a withdrawal of the plea can be allowed if the accused wishes to withdraw it. 28 Ind. Cas. 145=44 P. W. R. 1914 Cr.

The only evidence against the first accused was that, in consequence of information given by him, the second accused was questioned and the stolen property was produced. The first accused was also said to have admitted the theft before the police. *Held* that the evidence was too insufficient to justify the conviction of the first accused for theft. The confession was irrelevant, as it did not lead directly to the recovery of the property. 3 M. L. T. 333=7 Cr. L. J. 398. Where a confession was made before an investigating Police officer, who joined the prosecutor in questioning the accused, it should in fact be held to have been made to a Police officer, though actually taken down by the prosecutor, and it is hence inadmissible under s. 25 of the Evidence Act. 10 C. P. L. R. 16. A confession to a village headman or *gaung* appointed under the Burma Police Act, is inadmissible under s. 25 of the Evidence Act. L. B. R. (1872-1892) 479. Section 25 of the Act does not forfeit the proving in evidence of a confession made to *yathugyi* or village headman under the Lower Burma Village Act, 1889. 1 L. B. R. 65. A person who had committed a murder, voluntarily went to a police station, and made a statement to a Police officer that he had done the deed, and that the instrument of murder was in a place named. He was subsequently arrested. *Held*, that the statement was a confession and was not admissible under s. 25 of the Evidence Act. Evidence of the police, however, was admissible to prove the

conduct and condition of the murderer at the time when the statement was made. 10 C. L. J. 13=10 Cr. L. J. 193=2 Ind. Cas. 951.

When a Police officer has evidence before him, sufficient to justify the arrest of a person, he should not, preliminary to the arrest, examine him and record his statement. Such statement cannot be regarded except as confession to a Police officer, and is inadmissible in evidence under s. 25 of the Evidence Act. 27 C. 295=4 C. W. N. 129. Any statement made by an accomplice, while in police custody as suspect, in consequence of a tender of a pardon by an Assistant Commissioner acting in his executive capacity, though professing to act under s. 337, Cr. Pro. Code, was held to be inadmissible against him. 10 P. R. 1895 Cr. Section 25 of the Evidence Act only provides that a confession made to a Police officer shall not be proved as against an accused person. It does preclude an accused person from proving on his own behalf, a confession made to a Police officer by another accused person tried jointly with him. 12 Cr. L. J. 79=9 Ind. Cas. 449. Confession to a Police officer of having given false information cannot be proved against the person making it and charged under s. 182 and s. 211 of the Penal Code. U. B. R. (1897-1901) Vol. I, 156. Three persons were tried jointly for rioting. During the trial an information lodged by one of them with the police was proved, and, in his charge to the jury the Judge said "it (the information) contains an admission that all three accused persons were present at the occurrence." *Held*, the information was not a confession under s. 25 of the Evidence Act, and as against the person other than the informant, it amounted to an admission of evidence against them. 11 C. L. J. 301=5 Ind. Cas. 305=14 C. W. N. 593. Where a Police officer read over to the accused the statement which he (Police officer) had taken from others and then told him 'I know the whole thing now," and the accused, thereupon, made a statement, in consequence of which he was arrested and his confession was duly recorded, *held* that the confession recorded under these circumstances was free and voluntary and was perfectly admissible in evidence 3 Bom. L. R. 404. Where there is no judicial proof of the guilt of the accused person, it is illegal to rely upon an unreliable or suspicious confession or a confession which is open to grave suspicion of having been produced by ill-treatment of the police. 21 P. W. R. 1907 Cr.=6 Cr. L. J. 266. An incriminating statement. made by an accused person to the police, when nothing is discovered in consequence of it cannot be admitted in evidence against him. 111 P. L. R. 1906=16 P. R, 1906=4 Cr. L. J. 177 ; see also 3 P. R. 1868 Cr. Where the confession of an accused person conflicted with the medical evidence in the case and was probably induced by the police, the Chief Court declined to confirm a capital sentence based upon it. 3 P. R. 1867 Cr. A police officer examined for the prosecution stated in the course of cross-examination, that, when he arrested the prisoner, he said to the former that some Chinamen, at the time of the occurrence came out with hatchets. In re-examinatioa, the Policeman substituted the words "at the time of the occurrence." On being asked if the prisoner had explained "what time" the Policeman answered that the prisoner said "at the time I struck the deceased." *Held*, that the statement of the prisoner that the Chinamen came out with hatchets at the time he struck the deceased would not be admissible in evidence, as it was an incriminating statement made to a Police officer by an accused person in custody, 10 C. 1022. An admission to a Police officer made by an accused before arrest is admissible in evidence. 6 C. 530=7 C. L. R. 541. The accused was convicted of an offence under s. 412 I. P. Code. The evidence for the prosecution consisted of certain confessions made to the Police and the circumstance that the accused found some stolen cloth for the Police while in Police custody. *Held* that the confession was inadmissible under s. 25, Evidence Act, and the circumstance mentioned did not justify his conviction under the section. A. W. N. 1883, 126.

Admissions not amounting to confessions. whether admissible when made to a Police officer. Every statement is not a confession. 19 S. L. R. 6=A. I. R. 1925 Sind 257 ; see also A. I. R. 1934 Sind. 100=35 Cr. L. J. 1332 ; 11 Mys. L. J. 438. An incriminating statement to a police officer, though on the face of itself exculpatory is inadmissible. 5 Cr. R. 15=49 B. 642=89 Ind. Cas. 1046. The question whether a particular statement, whether it be positive or negative, verbal or expressed by conduct, is or is not a confession, must be decided on the facts of each case. 86 Ind. Cas. 410=26 Cr. L. J. 778=A. I. R. 1925 Sind. 237. After a fight in which death was caused. several accused drove certain cattle belonging to the deceased to the pound. Two of them made a statement to a Sub-Inspector of Police that they were in the fight and that the deceased had attempted

to interfere with the seizure of the cattle. *Held* that the statement did not amount to a confession, in asmuch as it was only an explanatory statement of the circumstances under which the cattle had been seized and was not an admission of guilt but rather in the nature of a complaint against the deceased and was not therefore inadmissible in evidence. 81 Ind. Cas. 347=25 Cr. L. J. 811=A. I. R. 1923 Lah. 232. A statement by one accused to the police that certain property which he produced had been given to him by two other accused who were charged with him as being members of a gang of dacoits, is inadmissible as being an admission of a criminating circumstance under s. 25 of the Evidence Act. 75 Ind. Cas. 70=46 B. 961=24 Cr. L. J. 870. A statement made by an accused to a Police officer if it does not amount to a confession may nevertheless, be used against him and more particularly if the statement turns out to be false in the light of the other evidence in the case. If it amounts to a confession then it must be excluded from evidence altogether under section 25 but in either event it can only be used against the accused making the statement. 65 Ind. Cas. 349=20 A. L. J. 178=23 Cr. L. J. 197. The word confession in section 25 of the Evidence Act is not confined to actual admissions of guilt, but it includes inculpatory statements from which inferences of guilt can reasonably be drawn or which suggest the guilt of a person making the statement, 42 Ind. Cas. 1002=19 Cr. L. J. 42 ; see also A. I. R, 1935 oudh 1. Section 25 of the Evidence Act does not say that all statements made to the Police are admissible but it excludes only confession made to them ; there being a distinction between mere admissions and confessions which are statements either directly admitting the guilt of the accused or statements which suggest the inference that he committed the crime with which he is charged. Further the general rule is subject to that which admits statements leading to discovery whether such statements amount to confession or not. 26 Ind. Cas. 161=15 Cr. L. J. 713=41 C. 601 ; 3 N. L. R. 51=5 Cr. L. J, 434. A statement made by an accused person to a Police officer by way of an explanation in order to exculpate him is admissible in evidence. 19 Ind. Cas. 508=6 S. L. R. 143=14 Cr. L. J. 252. A statement made by the accused to the police, which does not amount directly or indirectly to an admission of any incriminating circumstance. is admissible in evidence ; hence where the accused was found carrying away a box at night and, when asked by a policeman on duty about the ownership of the box stated that it belonged to him, the statement was held admissible against him at a trial for theft of the box. 5 Bom. L. R. 312. "Confession" in section 25, Evidence Act, as in section 24, means a confession made by an accused person, which it is proposed to prove against him to establish an offence. For such a purpose, confession might be inadmissible which yet for other purposes, would be admissible under s. 18 against the person who made it (s. 21), in his character of one setting up an interest in property, the object in litigation. or judicial enquiry and disposal. 9 B. 131. First information by accused to police officer admitting guilt is inadmissible by confession. A. I. R.1935 Bom 26.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Confession by accused while in custody of police not to be proved against him.

* *Explanation.*—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 †

Reason of the rule. "The object of section 26 of the Evidence Act appears to us to be to prevent the abuse of their powers by the police, and hence confessions made by accused persons while in custody cannot be proved against them unless made in the presence of a Magistrate." *Per Birch J.* in *Queen* v. *Monmohun*, 24 W. R. 33. "Its human object is to prevent confessions obtained from accused

* This *Explanation* was added to s. 26 by the Indian Evidence Act (1872) Amendment Act (111 of 1891) s. 3.

† *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898)

persons through any undue influence, being received as evidence against them," *Per Garth C. J. in Queen* v. *Hurribole Chunder*, I, C. 207 (215). The reason of the rule seems to be that the custody of a police officer provides easy opportunities of coercion for extorting confessions. 6 A. 509 (532).

Scope of the section. This section deals with confessions made in the presence of a police officer who has the custody of an accused person, that is, of a police officer who is concerned more or less in the investigation of the case ; and those confessions are absolutely excluded, whether made to a police officer or to any other person, unless made in the immediate presence of a Magistrate. The proper construction of sections 25 and 26 is one which excludes confessions to a police officer under any circumstances, or to any one else, while the person making it is in a position to be influenced by a police officer, unless the free and voluntary nature of the confession is secured by its being made in the immediate presence of a Magistrate, in which case the confessing person has an opportunity of making a statement uncontrolled by any fear of the police. *Per Ainsle J.* in *In the matter of Hiran Miya*, I. C. L. R. 21. Section 26 is not to be read as qualifying the plain meaning of s. 25. I. C. 207 ; 12 W. R. Cr. 82. Section 26, cannot be treated as an exception or proviso to s. 25, there being no words to justify such an interpretation. The criterion adopted is s. 26 for excluding confession is the answer to the question—under that circumstances was the confession made ? If the answer is that it was made whilst the accused was in the custody of a police officer, the law lays down that such confession shall be excluded from evidence, unless it was "made in the presence of a Magistrate." 6 A. 509. The law is imperative in excluding what comes from an accused person in custody of a police if it incrimanates him. 10 C. 1022 ; 4A. 198 (204). This section as it it stands makes no distinction between oral and written confession but embodies a substantive rule of law. A. I. R. 1930 Lah. 534=32 Cr. L. J. 290. This section does not make admission dependent upon knowledge of accused as to indentity of Magistrate. *Ibid.* A witness ought not to be allowed to describe a 'confession' made by the accused, if the fact was deposed to as discovered in consequence of information received from the accused while in the custody of the police. S. C. 81 (Oudh). Section 26 of the Evidence Act applies only to the proof of a confession as against its maker. 1912 M. W. N. 549=12 M. L. T. 1=13 Cr. L. J. 352=36 M. 397=14 Ind. Cas. 896. But it may be admissible in favour of a co-accused. 2 B. 611. The general rule applicable to confessions made by prisoners whilst in the custody of a police officer is contained in section 26 and the proviso contained in section 27 refers to an exception to that rule. 12 M. 153 ; 11 B. H. C. R. 242. In a case in which three persons B, M and T were charged with the murder of one H the following statement made by T to a Police Superintendent on the day next to the day of the occurrence, while M was arrested, but neither of the other two accused was suspected of having had any hand in the murder, and was not then under arrest, was sought to be given in evidence for the prosecution. The statement was as follows : "The deceased H had called the previous day, was taken with cholera, was purged three times after which the dispute arose regarding the Bengalee bill ; H had abused M's wife, on which M had given H a push in the throat when H fell backwards and became insensible ; they tried to get a box and to put the corpse the box ; as the body was too big, they had to tie the body to make it fit into the box ; they then put the lid after placing a sheet on the body ; they lowerd the box with a gunny and then tied it up with a rope they left the box till evening ; at 6 P. M. M got a cooly and had the box removed." The statement was held inadmissible. 15 C. 589. Incriminating admissions of an accused under admitted circumstances that he took the whole of the investigation staff of the police officers round the scene of offence and admitted before them his own guilt, are inadmissible in evidence under section 26. A. I. R. 1929 Nag. 350. A statement made in the presence of a sub-inspector and a constable who had the accused under arrest at the time and not recorded by Magistrate under s. 164 of the Criminal Procedure Code, is not admissible in evidence. A. I. R. 1929 All. 855. A confession or an incriminating statement made in the presence of a Magistrate by an accused person while in police custody who is not produced before the Magistrate with a view to record his confession can be proved by oral testimony of the Magistrate when it has not been reduced to writing. In the absence of any provision of law making it obligatory on the part of the Magistrate to record a confession it is not a matter required by law to be reduced to the form of a document. A. I. R. 1930 Lah. 534.

Police custody—meaning of. Substantial test of "custody of police officer" is to decide whether accused is or is not at liberty to move from particular place where he was when he made the confession. A. I. R. 1932 Sind. 149=26 S. L. R. 1=34 Cr. L. J. 1129 ; or see also A. I. R. 1932 Sind. 201=26 S. L. R. 302=34 Cr. L. J. 147. When an accused person is brought to a Magistrate for recording a confession, while the police officer, in whose custody he had been, remained outside ready to capture him if he ran away, the accused should be treated as still being under police custody. Rat. Un. Cr. C. 855. Where a woman charged with the murder of her husband was taken into the custody of the police, a friend of hers also accompanying her, and the policeman in charge of the woman left her with her friend for the purpose of procuring fresh horse any confession made to the friend accompanying her, while the policeman was away, would not be admissible in evidence, as the prisoner should be regarded to have been in the custody of the police, notwithstanding the temporary absence of the policeman. 20 B. 155 ; see also 3 M. H. C. 318. Two accused persons admitted the offence imputed to them to the persons who assisted the police in the investigation. The first accused accompanied the police and others to his house, where certain of the stolen property was discovered. The second accused was not taken there till after discovery. *Held* that the conviction of the second accused was not sustainable, as an admission of the accused made while in police custody, was inadmissible under s. 26. 12 P. R. 1900 Cr.=P. L. R. 1900 56 Cr. As soon as an accused or suspected person comes into the hands of a Police officer, he is, in the absence of clear and unmistakeable evidence to the contrary, no longer at liberty and is therefore in custody within the meaning of ss. 26 and 27 of the Evidence Act. 25 Cr. L. J. 381=77 Ind. Cas. 429=A. I. R. 1924. Rang. 173. The meaning of the words "in the custody of a Police officer" in this section, cannot be extended by implication to cases beyond what is absolutely necessary, that is, where the person is really under arrest or in strict supervision and is merely allowed to go for a few moments to converse with the person to whom the confession is made. But where the accused is not arrested or under supervision, and is merely being invited to explain certain circumstances, it would be going further than the section warrants to exclude the statement that he makes, on the ground that he is deemed to be in Police custody. The accused while in Police custody, made a confession on being questioned by the Court Inspector who forthwith produced him before a Magistrate. The latter proceeded to record a confession in the presence of the Court Inspector and after recording it remanded the accused to Police custody. *Held* that it would be most unsafe to hold that the confession was made voluntarily and that, therefore, it could not be taken into consideration as against the accused. 76 Ind. Cas. 180=25 Cr. L. J. 116. When an accused person has been in custody of the Police and has made a confession, it is important that the Magistrate before recording such confession under section 164 of Criminal Procedure Code should ascertain how long the accused has been in custody. If there is no record of that fact, it is the duty of the Sessions Judge, before holding the confession relevant under section 24 of the Evidedce Act (I of 1872) to send for the Magistrate and satisfy himself on the point. 25 B. 543. The custody of the keeper of a jail in a Native State, who is not a Police officer, does not become that of a Police officer, merely because his subordinates, the warders of the jail, are members of the police force of that State. In the absence of any suggestion of a close custody inside the jail, such as may possibly occur when an accused person is watched and guarded by a Police officer investigating an offence, section 26 of the Indian Evidence Act (I of 1872) does not exclude such a jailor from giving evidence of what the accused told him while in jail. 20 B. 795.

Confessions made in police custody, whether admissible. A confession made to a police officer but not in the presence of a Magistrate, is inadmissible. S. C. 98 Oudh ; 26 M. L. J. 352=15 Cr. L. J. 533=24 Ind. Cas. 845. An admission of the accused while in Police custody is inadmissible under this section. 12 P. R. 1900 Cr.=P. L. R. 1900, 56 Cr ; 19 B. 563 ; 3 M. L. T. 270 ; 3 M. L. T. 333=7 Cr. L. J. 398 ; 3 M. L. T. 263. But a former confession which was made by the accused when not in Police custody is admissible in evidence. 8 O. C. 365=2 Cr. L. J. 811 ; see also 9 Pat. L. T. 449=A. I. R. 1928 Pat. 473. Confession made by an accused not to a Magistrate but to the Superintendent of Post Offices, at his house, where he was taken temporarily by the police and was again removed back to police lock-up is inadmissible in evidence. A. I. R. 1928 Lah. 282=10 L. L. J. 174=108 Ind. Cas. 398. Statements of accused while in custody of the Police officer, and of his

having pointed out the places where he committed the offence are not admissible as being of an incriminating nature. A. I. R. 1926 Cal. 320=48 C. L. J. 524=92 Ind. Cas. 439. While accused was in the lock-up and undr trial, he was sent by the Magistrate to a dispensary in order to be treated for a malady which involved an examination of the patient in private. Two police men took the accused from the lock-up to the dispensary. At the dispensary the police men waited outside on the verandah while the accused was inside undergoing examination at the hands of the doctor, and during the few minutes that he was with the latter he made a confession. *Held*, that the confession was inadmissible in evidence under section 26 of the Evidence Act, in as much as the accused remained in the custody of the police men while he was undergoing the examination. 42 Ind. Cas. 597=19 Bom. L. R. 683=42 B. I=18 Cr. L. J. 981. Where the accused has made a statement to a Sub-Magistrate confessing his guilt and there was no irregularity in the manner of taking the confession, the mere fact that the police man in the charge of a sub-jail who was not one of the investigating police was also present at the time of the interview does not make the confession inadmissible. 1931 M. W. N. 723. So also a statement made by the accused at the dock before the Magistrate, if it amounts to a clear confession is certainly admissible in evidence against the accused, and its value is not discounted by the fact that the accused was at that time in the custody of the police. 1930 M. W. N. 1249. Where a person suspected of having committed a murder made a confession to the *Zaildar*, in consequence of the latter dropping a remark to the effect that his own brother had committed a murder but had got off in making a clean breast of the matter. *Held* that in as much as the police were in the vicinity at the time of the confession, and the accused though not handcuffed, was in police detention as a suspect, he was to all intents and purposes in police custody and the confession could not be proved unless made to a Magistrate. 32 P. W. R. 1916 Cr.=153 P. L. R. 1916=26 P. R. 1916. Incriminating statements made by accused persons while in police custody, in answer to questions put by a Police officer in the presence of a headman, are excluded from evidence under ss. 25 and 26 of the Evidence Act. 18 Cr. L. J. 106=37 Ind. Cas. 314=10 Bur. L. T. 270 ; see also 52 Ind. Cas. 601=21 Bom. L. R. 724. Where the accused while in custody of the police, confessed to have committed theft and also stated that the stolen property would be found in a heap of rubbish close to his house and after making the statement he took out the property from the heap in the presence of two police constable. *Held* that the statement as regards the commission of theft was not admissible in evidence, but the statement that stolen property would be found in the heap of rubbish was admissible. 24 Ind. Cas. 845=24 M. L. J. 352=15 Cr. L. J. 533.

Where an accused person promised, while in police custody to restore the stolen property, *held*, that the promise was an incriminating statement suggesting the inference that the accused participated in the commission of the offence, and 'therefore' a confession irrelevant under ss. 25 and 26, Evidence Act. 20 P. R. 1905=51 P. L. R. 1905=2 Cr. L. J. 230.

A statement made by an accnsed person, while in the custody of the police 'if it is an admission of a criminating circumstance. is not admissible in evidence'. 19 B. 363 ; 14 B. 260 F. B.

Confession made in the presence of a Magistrate. A confession to a Magistrate while in Police custody is not inadmissible. 9 Ind. Cas. 806=27 Cr. L.J. 134=A. I. R. 1925. Lah. 557 ; 24 W. R. Cr. 33 ; 13 W. R. Cr. 42 ; 15 C. 595 ; A. I. R. 1933 Lah. 513=1933 Cr. C. 772 ; A. I. R. 1933 Lah. 956 ; A. I. R. 1933 Lah. 998 ; A. I. R. 1933 All. 392 ; A. I. R. 1934 Lah 75 ; A. I. R. 1934 All. 351. A. I. R. 1934 Sind. 103 ; A. I. R. 1934 Lah. 8 ; A. I. R. 1934 Pat. 586 A. I. R. 1933 Lah. 716. A confession made by an accused person before the Administrator in Portuguese territory, who is not a Magistrate is excluded by s. 26 of the Indian Evidence Act. It is immaterial that the police officer in whose presence the confession was made was not himself the person in charge of investigation of the case. 26 Bom. L. R. 706=1924 Bom. 480.

Police officer, meaning of. The word Police-officer in this section means "police-officer" in Native States. Rat. Un. Cr. C. 855=Cr. Reg. 22 of 1896 ; 49 B. 642 ; 22 B. 235 ; 12 A. 595 ; 69 Ind. Cas. 257. It is doubtful whether a Chaukidar is a Police officer under this section. 9 C. W. N. 474=2 Cr. L. J. 255 ; but see A. I. R. 1934 Oudh. 19 ; A. I. R. 1933 Oudh. 1921. The words "police officers" in this section are used in the same sense in which they occur in section 25, and there is no reason for importing into this section the notion that the police officer there described in

general terms must be restricted to investigating "police officers". 42 Ind. Cas. 597=19 Bom. L. R. 683=42 B. 1=18 Cr. L. J. 981. A Deputy Commissioner of Police of Calcutta is a police officer. 1 C. 215. A village Magistrate in the Presidency of Madras is not a police-officer. 7 M. 787 ; 49 B. 492=89 Ind. Cas. 1096 ; 69 Ind. Cas. 257 ; 2 P. R. 1909=7 P. W. R. 1909 ; 49 B. 642. A police officer in a French Territory is a police officer. *R* v. *Viraraghava*, 11 M. L. T. 407. A police patel is a police officer. 3 B. 12.

Magistrate.—The word "Magistrate" in this section includes Magistrate in Native States. Rat. Un. Cr. C. 855 ; 22 B. 235 ; 12 A. 595 ; 69 Ind. Cas. 257 ; 17 B. 485 ; A. I. R. 1934 Sind. 103 ; A Magistrate though on leave and not in the district in which he has been exercising jurisdiction is a Magistrate within the meaning of this section. 8 P. W. R. 1914 Cr.=38 P. L. R. 1914=15 Cr. L. J. 6=22 Ind. Cas. 150 ; see also 7 B. H. C. R. C. C. 56. 'Judged' Instruction of the French Government is a Magistrate and so statements made in his immediate presence are admissible in evidence. The term Magistrate is not restricted to the Magistrate exercising jurisdiction under the Criminal Procedure Code. A. I. R. 1929 Mad. 487. But a Portuguese Administrator is not a Magistrate. 87 Ind. Cas. 20=26 Bom. L. R. 706. In the Punjab Honorary Magistrate exercise their powers under Cr. Pro. Code and an confession made to such a person is trial at by s. 26. A. I. R. 1934 Lah. 417=1934 Cr. C. 643.

Explanation.—Previous to the enactment of this explanation by Act III of 1891, it was held that a village Munsiff falls within the purview of this section and as such he was a Magistrate. 2 M. 5 ; see also 10 M. 295.

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Principle.—Sections 25 and 26 exclude confession to a police-officer under any circumstances, or to any one else, while the person making it is in a position to be influenced by a police officer. 1 C. L. R. 21. The broad ground for not admitting confessions made to a police officer is to avoid the danger of admitting false confessions, but the necessity for the exclusion disappears in a case provided for by s. 27, when the truth of the confession is guaranteed by the discovery of facts in consequence of the information given. *Per Oldfield J. in R.* v. *Babu Lal*, 6 A. 509 (F. B.) This section was intended not to let in confession generally, but only such particular part of it as set the person no whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence. *Per Straight C. J. in Queen Empress* v. *Babu Lal* 6 A. 509 (F. B.) at p. 546. Certain statements, made under certain circumstances, are rendered inadmissible, because the Legislature has, in such cases, considered them unworthy of credit ; but the taint is removed by the finding upon search, of articles connected with the crime or other facts. *5 Mad. L. Jour. Article at p.* 80. "The prisoner's statement as to his knowledge of the place where the property or other articles were to be found, being thus confirmed by the fact, is shown to be true, and not to have been fabricated in consequences of any inducement. It is this guarantee afforded by the discovery of the property for the correctness of the accused's statement, which is the ground for the admission of the exception to the general rule. The fact dicovered shows that so much of the confession as immediately relates to it is true." 6 A. 509 (513, 517).

Scope of the section.—Section 27 is a proviso to set only to section 26 but also to section 25 ; and therefore so much of the information given by the accused to the police officer, whether amounting to a confession or not, as related distinctly to the fact thereby discovered might be proved. 6 A. 509 (F. B.) by majority (*Mahmood J.* dissenting) ; see also 19 W. R. 51 ; 11 B. H. C. R. 242 ; 3 B. 12 ; 4 A. 198 ; 11 C. 635 ; 10 B. 595 ; 14 B. 260 ; 16 A. L. J, 478 ; 22 C. W. N. 213 ; 34 C. W. N. 106 ; 36 C. W. N. 373 (375). Section 27 controls three earlier sections. A. I. R. 1932 Cal. 297=59 C. 1040=36 C. W. N. 373=138 Ind. Cas. 116=33 Cr. L. J, 546 ; 22 C. W, N. 213 (223, 224)=45 C. 457=44 Ind. Cas. 321 ; 2 L. B. R. 168 ; 31 A. 392. The test of admissibility under s. 27 of the Evidence Act of information received from an accused person in the custody of a police officer,

whether amounting to a confession or not, is :—"was the fact discovered by reason of the information and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact ?" 12 M. 153. Under s. 27 of the Indian Evidence Act not every statement made by a person accused of any offence which in custody of a police officer, connected with the production or finding of property is admissible. Those statements only which lead immediately to the discovery of property and, in so far as they do lead to such discovery are properly admissible. 11 B. H. C. R. 242 ; 36 C. W. N. 373 (375) ; 44 P. W. R. 1914 Cr. (F. B) ; A. I. R. 1931 Oudh. 119=14 O. L. J. 210 ; 13 O. C. 309=8 Ind. Cas. 379=11 Cr L. J. 631 ; 2 L. B R. 168 ; 15 P. R. 1885 Cr ; 4 S. L. R. 202 ; U. B. R. 1909 1 st Qr. Ev. 3=11 Cr. L. J. 41=4 Ind Cas. 759 ; A. W. N, 1882; 225 ; P. L. R. 1900 Cr. 56=12 P. R. 1900 Cr ; 30 P. R. 1885 Cr ; A. I. R. 1928 Lah 476 ; L. R. 4 A. 210 Cr ; 23 Cr. L. J. 481=68 Ind. Cas. 17=9 O. L. J. 190 ; 22 C. W. N. 213=45 C. 657=27 L. L. J, 148 ; 31 A. 592=10 Cr. L. J. 212 (F. B.) ; 25 C. 413=2 C. W. N. 267 ; 34 Cr L. J. 675= A. I R. 1933 Cal. 148 ; A. I. R. 1933 Lah. 516=34 Cr. L. J. 683=34 P. L. R. 637 ; A. I. R. 1933 Mad. 233=56 M. 231=64 M. L. J. 88=34 Cr. L. J. 481 ; A. I. R. 1931 Pat=145=32 Cr. L. J. 792 ; A. I. R. 1934 Sind. 159=28 S. L. R. 41 ; A. I. R. 1934 Lah. 786=36 P. L. R. 40 ; A. I. R. 1934 Bom. 233=36 Bom. L. R. 384=35 Cr L. J. 1444, 135 Ind. Cas. 267=33 Cr. L. J. 106=A. I. R. 1931 Sind. 154 ; A. I. R. 1935 Mad. 528.

But statements not directly bearing upon discovery are not admissible. A. I. R. 1933 Nag. 252=1933 Cr. C. 936 ; see also A. I. R. 1933 Cal. 146=1933 Cr. C. 223= 34 Cr. L. J. 638 ; A. I. R. 1934 Lah. 313=35 P. L. R. 203=152 Ind. Cas. 565= A. L. R. 1934 Lah. 423 ; A. I. R. 1934 Nag. 71=1934 Cr. C. 276=35 Cr. L. J. 1097. Section 28 does not operate to make admissible in evidence a confession which would be otherwise irrelevant under s. 24. 152 Ind. Cas. 998=A. I. R. 1934 Lah. 417= 1934 Cr. C. 643. There is no conflict between sections 27 of the Evidence Act and s. 162 of the Criminal Procedure as amended by Act 18 of 1923. A. I. R. 1933 All. 440=34 Cr. L. J. 875=1933 A. L. J. 1518 ; see also A. I. R. 1932 Mad. 391 (F. B.)= 62 M. L. J. 742. Confession of accused made to Magistrate not deputed by police is admissible. A. I. R. 1931 Lah. 278=32 Cr. L. J. 650. Statement by person not accused nor in police custody is not admissible under s. 27. A. I. R. 1931 Lah. 278=32 Cr. L. J. 365 ; but see A. I. R. 1934 Lah 150=152 Ind. Cas. 206=1934 Cr. C. 330. Section 162 of the Criminal Procedure Code applies to the statements of persons examined as witnesses by the police in the course of an investigation and not to the statement of an accused person. 35 P. L. R. 738=A. I. R. 1934 Lah. 695=1934 Cr. C. 1009.

Any fact.—The fact discovered by a statement must be a material thing and not a state of mind induced in another person by that statement. 16 C. P. L. R. 122 ; A. I. R 1929 Lah. 344 (F. B.) ; 6 A. 509 ; 11 C. 635 ; but see A. I. R. 1935 mad. 528 (F. B.). The words "any fact" are qualified by the word "discovered". 11 B. H. C. R. 242.

Discovered.—The word "discovery" is in ordinary prevalence of two meanings, firstly purely mental act of learning something which was not known before to a person, and secondly the physical act of binding upon search something, the existence or the exact locality of which was unknown till then. It is in the latter, and not in the former sense that the word is employed in s. 27 of the Evidence Act, and this will be made evident upon considering the principle underlying the section. 5 Mad. L. J. pp. 80, 81 ; see also 11 B. H. C. R. 242 ; 3B. 12 ; 14B. 260 ; A. I. R. 1929 Nag. 350 ; 11 C. 635 ; 11 P. R. 1900 Cr ; A. I. R. 1929 Lah. 338. But this section applies when the discovery is made by police officer even when the facts are already known to the person other than the police officers. 49C. 167=25 C. W. N. 788.

Information whether includes mere statement.—"Throughout all the authorities dealing with section 27 the word statement is used interchangeably with the word information. A. I. R. 1929 Lah. 344 ; but see A. I. R. 1929 Lah. 338.

In consequence of information.—"Whatever be the nature of the fact discovered, that fact must in all cases, be itself relevant to the case, and the connection between it and statement made must have been such that the statement constituted the information through which the discovery was made, in order to render the statement admissible". 11 B. H. C. R. 242 ; see also 14 B. 260 ; 10 B. 595 ; 4 A. 198 ; 6 A. 509 (546) ; 19 W. R. 51 ; 25 C. 413 ; 105 Ind. Cas. 683=28 Cr. L. J. 791 ; 1923 Lah. 434.

From a person.—When a fact is discovered in consequence of information received from one of several persons charged with an offence, and when others give like information, the fact should not be treated as discovered from the information of all. 24 W. R. Cr. 36 ; see also 6 A. 509 (549, 550) ; 50 P. R. 1915=7 Cr. L. J. 12 ; A. I. R. 1929 Lah. 665 ; 101 Ind. Cas. 488=28 P. L. R 187=28 Cr. L. J. 456 ; A. I. R. 1931 Sind. 154 ; A. I. R. 1930 Bom. 244=32 Bom. L. R. 574 ; 21 N. L. R. 86= A. I. R. 1925 Nag, 407 ; 9 P. L. R. 1922=64 Ind. Cas. 502=23 Cr. L. J. 22 ; 7 P. R. 1916 Cr.=35 P. W. R. 1916 Cr.=34 Ind. Cas. 993 ; 36 C. W. N. 173 ; 36 Ind. Cas. 474 ; 9 Ind. Cas. 232.

Police custody.—The accused must be in police custody. 6 A. 509 (513). The person must be an accused and must be in police custody. 5 M. L. J. Article p. 128 ; see also A. I. R. 1928 Pat. 491=6 Pat. L. T. 537=29 Cr. L. J. 790 ; 35 Ind. Cas. 962. As soon as an accused person comes into the hands of a police officer, he is in the absence of clear and unmistakeable evidence to the contrary, no longer at liberty and is therefore in custody within the meaning of ss. 26 and 27. 25 Cr. L. J. 381=77 Ind. Cas. 429. Custody does not necessarily mean detention. Submission to custody by word, or action under s. 46 (1) Cr. Pro. Code amounts to police custody. 32 P, L. R. 347=131 Ind. Cas. 93=32 Cr. L. J. 650=A. I. R. 1931 Lah. 278 ; see also A. I. R. 1933 Pat. 149 (F. B.)=1933 Cr. C. 404=34 Cr. L. J. 349=14 P. L. T. 82. It also includes surveillance. 139 Ind. Cas. 429=33 P. L. R. 826=33 Cr. L. J. 756=A. I. R. 1932 Lah. 609.

So much of the information as relates distinctly to facts thereby discovered.—In 34 C.W. N. 106 (111) *Lort Williams J* said : " 'Relates to' means ordinarily 'is connected with' or has reference to while 'distinctly' means 'clearly' or 'definitely' or 'positively' or 'undeniably' or 'undoubtedly'." So according to this view, under this section is admitted not only so much of the information as leads directly and immediately to the discovery of the fact, but also the portion of the information which leads immediately by way of explanation. 19 W. R. Cr. 51. The other view construes the words "as relates distinctly to" to mean "as leads directly and immediately to" or "is the proximate cause of." 5 M. L. J. Art. pp. 129, 130 ; see also 11 B. H. C. 42 ; 3 B. 12 ; 6 A. 509 ; 4 A. 198 ; 11 C. 635 ; 12 M. 153 ; 14 B. 260 ; A. I. R. 1929 Lah. 344 (F. B.) ; 29 Ind. Cas. 817=10 Cr. L. J. 545 ; 28 P. R. 1894 ; 44 Ind. Cas. 967=52 P. L. R. 1918 ; A. I. R. 1926 Lah. 138 ; 34 C. W. N. 106 ; A. I. R. 1930 Sind. 225=126 Ind. Cas. 449=31 C. L. J. 1026 ; 21 P. L. R.. 701=A. I. R. 1930 Lah. 530 ; 32 Bom. L. R. 574=A. I. R. 1930 Bom. 244 ; 10 Lah. L. J. 531=112 Ind. Cas, 55 ; A. I. R. 193 Pat. 145=10 Pat. 153 ; 50 M. 274 ; A. I. R. 1928 Lah. 308 ; A. I. R. 1928 Pat. 162 ; A. I. R. 1926 Bom. 513=50 B. 683.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Scope.—A confession is deemed to be voluntary if (in the opinion of the Judge) it is shown to have been made after the complete removal of the impression produced by any inducement, threat or promise which would otherwise render it involuntary. Step Dig. Art. 22 ; see also 2 L. B. R. 168 ; 74 Ind. Cas. 264=59 C. 127 ; 5 N. W. P. 86 ; 9 B. H. C. R. 358 ; A. I. R. 1933 All. 31=1932 A.L. J. 1125= 1933 Cr. C. 42=55 A. 91=34 Cr. L. J. 489.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Scope.—"A confession shall not be inadmissible in evidence merely because it has been obtained by deception. Even when the prisoner has made it only on receiving a preliminary oath of secrecy from the person trusted, such person will be competent and compellable to reveal it (*R.* v. *Shaw* 6 C. & P. 372) ; and a confession made by a prisoner while drunk has been received. *R.* v. *Spilsbury* 7 C. and P. 187)"—*Powell*, 111. Confession made in consequence of deception is not to be excluded. 20 W. R. 33. Confession otherwise admissible does not become inadmissible because accused was not warned. 33 Cr. L. J. 542=1932 M. W. N. 449=62 M. L. J. 559=A. I. R. 1932 Mad. 431 ; see also A. I. R. 1933 Oudh. 404 ; A. I. R. 1933 Sind. 166 ; A. I. R. 1933 All. 31 ; 15 W. R. 71 Cr. ; 16 W. R. 21 ; 5 M. H. C. App. 9 ; 26 Cr. L. J. 731 ; 6 Lah. 183 ; 33 C. W. N. 454 ; 4 Cr. L. J. 385.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation.—"Offence" as used in this section, includes the abetment of, or attempt to commit the offence.

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B, said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B, is not being jointly tried.

Legislative changes.—The explanation was inserted by Act III of 1891.

Principle. This section is entirely a new provision of the law. There was no such provision either in Act II of 1855, or in the Criminal Procedure Codes of 1861 and 1872. Before the passing of the Indian Evidence Act the confession of an accused person was only evidence against himself. (6 W. R. 84 Cr.) and it could not be taken to be corroborative evidence or any evidence at all, against any body other than himself. 8 W. R. 35 Cr. So the confession of one prisoner could not be used as corroborative evidence against another prisoner. 13 W. R. 14 Cr. "Until the passing of the Indian Evidence Act, such dangerous material as this could not be used as evidence against the accused person, and even by that Act, the legislature only bestowed a discretion upon the Court to take into consideration such confession as against such person as well as against the person who makes such confession." *Per Phear J. in Queen* v. *Sadhu Mundal*, 21 W. R. 69 Cr. (71). The old cases followed the English cases on the subject. Vide *R.* v. *Fletcher*, 4 C. & P. 250 ; *Roscoe Cr. Ev.* 55 ; R. v. *Turner*, 1 Moo. C. C. 347 ; R. v. *Blake*, (1844) 6 Q. B. 126 ; R. v. *Appleby*, 3 Stark. 33.

The principle underlying this section is thus stated by *Phear J. in Queen* v. *Belat Ali*, 19 W. R. 67 : "It seems to me that it is this implication of himself by the confessing person which is intended by the Legislature to take the place as it were of the sanction of an oath, or rather which is supposed to serve as some guarantee for the truth of the accusation against the other." So "where a person admits guilt to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth, and the Legislature provides that his statement may be considered against his fellow prisoners charged with the same crime." *Per West J. in Empress* v. *Daji Narsu*, 6 B. 288 (291) ; see also A. I. R. 1930 All. 29=120 Ind. Cas. 257=31 Cr. L. J. 26. What was intended was that where a prisoner 'to use a popular phrase, 'makes a clean breast of it' and unreservedly confesses his own guilt and at the same time implicates another who is jointly tried for the same offence, his confession may be taken into consideration against such other as well as against himself, because the admission of his own guilt *operates as a sort of sanction*, which to some extent takes the place of the sanction of an oath, and so affords some guarantee that the whole

statement is a true one." *Per Straight J.* in *Queen-Empress* v. *Jagrup*, 7 A. 646, 648. "The object sought by the rule of law" said *West J.* in *Queen Empress* v. *Nur Mahomed*, 8, B. 223, "is a safe-guard for sincerity and for information." This principle, it must be observed, is sound in theory rather than in practice. In the first place the confession of a crime is not an absolute guarantee of its truth as to the person making it, for it may have been falsely made from a sense of hopelessness of contending against the array of circumstantial evidence against him. But from being a guarantee of the truth of the confession as against the confessing party, to its operating similarly as regards another person, is a wide step. It does not follow necessarily that because a man has truly implicated himself, therefore his implication of another is also true. If his self-implication was actuated by remorse or a sense of justice, there would be ground for believing the whole of his confession, even as against another, but very few confessions have that character, and therefore in most confessions the sanction of an oath is really wanting; nor its trustworthiness is guaranteed by confrontation or cross-examination. 5 Mad L. J. (journal) p. 220.

Scope of the section.—"The provision is flatly in contradiction to the Law of England where Judges always take the greatest pains to prevent the statements of a prisoner affecting the case of a fellow prisoner; and I do not think that Judges in India have looked with much favour on the section". *Morkley Ev.* p. 28; see also 19 W. R. 57 Cr.; 21 W. R. Cr. 69; 14 Ind. Jur. N. S. 19; 21 W. B. 71. This section should be construed with great strictness 19 W. R. 57 (64); 54 M. 788=61 M. L. J. 358=A. I. R. 1931 Mad. 820; 1929 M. W. N. 698; 14 L. W. 474. Section 30 relates to confessions made by accused persons who are being jointly tried for the same offence. 5 C. P.L.R. Cr. 9; 22 C. 51; 21 W. R. Cr. 65; 25 Cr. L. J. 13=75 Ind. Cas. 701; 29 P. R. 1901 Cr.=P. L. R. 1900 p. 32. This section does not refor to statements made at the trial but the statements made before and proved at the trial. A. I. R. 1928 All. 322=45 A. 323; 4 C. 483=3 C. L. R. 270; but see 38 M. 302=22 Ind. Cas. 157=15 Cr. L. J. 13. A statement by one accused can only be used against a co-accused if the provisions of this section are applicable. 20 A. L. J. 178=65 Ind. Cas. 849=A. I. R. 1922 All. 24. Evidence of accomplice may be corroborated by confession of co-accused as against other accused where truth of confession is guaranteed. A. I. R. 1933 Oudh 355=1933 Cr. C. 976=10 O. W. N. 688.

Tried jointly.—The words "are being tried jointly" which occur in the section refer to the initiation of the proceedings before the particular judicial officer who deals with the case under Chapter XXII of the Cr. Pro. Code. L. B. R. (1893-1900) 643; see also 21 W. R. Cr. 65; 25 Cr. L. J. 13=75 Ind. Cas. 701; 22 C. 51; 37 A. 347; 3 P. R. 1879 Cr.; 13 P. R. 1878 Cr.; 5 B. 63; 7 M. 102; 14 Ind. Jus. 125; 17 A. 524; 19 B. 195.

Same offence.—The expression "same offence" in this section means the identical offence and does not mean even offence of the same kind. The legislature did not intend the section to cover different offences in the same transaction by different persons. The illustration to s. 30 makes the meaning of the section quite clear. A. I. R. 1929 Cal. 14=32 C. W. N. 1004; see also 9 O. & A. L. R. 836; 14 L. W. 74; A. W. N. 1881, 164; 32 P. R. 1882 Cr.; Rat Un Cr. C. 450; 20 Ind. Cas. 136=14 Cr. L. J. 376; A. W. N. 1899, 63; 9 P. R. 1886 Cr.; 8 P. R. 1874; 7 M. 579; 5 B. 63=5 Ind. Cas. 425.

Confession.—The word "confession" as used in the Act, must not be construed as including a mere inculpatory admision, which falls short of being an admission of guilt. 11 Bom. L. 633=3 Ind. Cas. 742. A confession within the meaning of this section is a full and unqualified admission of the guilt of the person making it and of a character to justify his conviction upon it. A. W. N. 1881, 20; A. W. N. 1881, 99; see also 2 A. 444; 6 B. 288; 19 W. R. 16; 19 W. R. 67; 10 B. H. C. R. 497; 21 W. R. 48; 21 W. R. 53; 23 W. R. 24; 25 W. R. 8; 25 W. R. 43; 6 C. 279; 7A. 646; 20 P. R. 1905 Cr; 16 P. R. 1886 Cr; 89 Ind. Cas. 516=26 Cr. L. J. 1380; 54 M. 75=A. I. R. 1931 Mad. 177. The confession of a co-accused cannot be taken into consideration where he does not substantially implicate himself to the same extent as the other accused, but on the contrary ties as far as he can to minimise the part he took. 8 Ind. Cas. 719=9 M. L. T. 318=1910 M. W. N. 754; see also 25 W. R. Cr. 8; 14 Cr. L. J. 586=21 Ind. Cas. 378; 94 Ind. Cas. 258=27 Cr. L. J. 594=A. I. R. 1926 Pat. 440; 2 A. L. J. 53=2

Cr. L. J. 22 ; 2 A. 646 ; 6 Lah. L. J. 434=26 Cr. L. J. 531=85 Ind. Cas. 371 ; 53 Ind. Cas. 691 ; but see A. I. R. 1924 All. 511.

Made.—The word "proved" in s. 30 must refer to a confession made beforehand : 4 C. 483.

Affecting himself and some other.—To render the confession of one person jointly tried with another, admissible in evidence against the latter, it must appear that the confession implicates the confessing person substantially to the same extent as it implicates the person, against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried. 10 B. L. R. 453=19 W. R. Cr. 67 ; 19 W. R. Cr. 16 ; L. B. R. (1893—1900) 7 ; A. W. N. 1885; 303 ; 25 W. R. 43 ; A. I. R. 1925 Nag. 78 ; 94 Ind. Cas. 258 ; 91 Ind. Cas. 1002 ; 31 C. W. N. 239 ; 2 A. 444 : 86 Ind Cas. 347=7 Lah. L. J. 51 ; A. I. R. 1929 Pat. 275=8 Pat. 289 ; 25 Cr. L. J. 761=81 Ind. Cas. 249=A. I. R. 1925 Sind. 116 ; 24 P. R. 1910 Cr.=193 P. L. R. 1910=8 Ind. Cas. 250 ; 32 C. W. N. 731=47 C. L. J. 526 ; 9 N. L. J 80 =9 Ind. Cas. 1002=27 Cr. L. J. 186 ; 81 Ind. Cas. 89=25 C. L. J. 1067 ; A. I. R. 1935 Oudh. 1. A. I. R. 1931 Sind. 154 ; 26 Cr. L. J. 1537=21 N. L. R. 88 ; A. I. R. 1923 Lah. 293 ; 1 Bom. L. R, 428. A statement which entirely exonerates the maker and inculpates his co-prisoners cannot be called a confession and hence it can not be used against his co-accused 19 W. R. 16 ; 19 W. R. 67 ; 10 B. H. C. R. 497 ; 21 W. R. 8 ; 21 W. R. 53 ; 6 B. 288 ; 23 W. R. 24 ; 25 W. R. 8 ; 6 C. 279 ; 25 W. R. 43 ; 2 A. 444 ; 19 W. R. 67 Cr, ; A. I. R. 1934 Cal. 724=1934 Cr. C. 1110.

Proved.—This section requires that a confession made by one prisoner which is to be used for the purpose of affecting another must be proved. 24 W. R. 42 ; see also 6 B. 124 ; 7 C. 65 ; 54 M. 788=61 M. L. J. 358=A. I. R. 1931 Mad. 820 ; 45 A. 323. "Proved" means proved before pursuation case ends. A. I. R. 1931 Mad. 820= 61 M. L. J. 358 ; but see A. I. R. 1931 Nag. 169 ; A. I R. 1935 Lah. 35.

May take into consideration.—The court has discretion to exclude a confession by an accused altogether from consideration against the co-accused if it is so disposed. A. I. R. 1930 Nag. 242 (F. B.)=26 N. L. R. 229=125 Ind. Cas. 673 The words "may take into consideration" mean may treat as evidence. 9 Rang. 404=A I. R. 1931 Rang. 235 ; See also Rat. Un. Cr. 311 ; 4 O. C. 69 ; 24 W. R. Cr. 42 ; value of such confession depends on circumstances of case. A. I. R. 1933 Rang. 57=34 Cr L. J. 286=11 Rang. 4=1933 Cr. C. 452.

Confession of a co-accused must be corroborated.—Although a confession of one co-accused may be taken into consideration against another under the provisions of this section, it would be unsafe, if not illegal, to rely on it without further corroboration in material particulars. A. I. R. 1929 Lah. 338 ; A. I. R. 1930 Oudh. 353=127 Ind. Cas. 247 ; A. I. R. 1930 Lah. 257=30 P. L. R. 646 ; 19 W. R. Cr. 57 ; 24 W. R. Cr. 1 ; 21 W. R. 69 ; 23 W. R. 24 ; 10 B. 231 ; 8 A. 306 ; 14 Ind. Jur. N. S 20 ; 25 W R. 63 ; 15 B. 66 ; 1 A 664 ; 1A 675 ; 59 Ind. Cas. 913 ; 81 Ind. Cas 817 ; 1 M. 163 ; 9 Cr. L. J. 30 ; 2 C. W. N. 741 ; 11 O. C. 328 ; 54 Ind. Cas. 479 ; 27 C. 295 ; 10 C. W. N. XVI (notes) ; 5 C. W. N. 249 ; 38 B. 156 ; 95 Ind. Cas. 71=7 Cr. L. J. 748=A. I. R. 1926 Rang. 127 ; 11 Ind. Cas. 1001 ; A. I. R. 1923 Lah. 73 ; A. I. R. 1925 Oudh 1 ; 22 Cr. L. J. 161 ; 54 Ind. Cas. 479=21 Cr. L. J. 79 ; 21 Cr. L. J. 638 ; 43 B. 739. But there is no rule as to what constitutes sufficient independent corroboration in a particular case. That must depend upon the circumstances of that case. 28 C. 689=5 C. W. N. 670 ; 38 C. 559=15 C. W. N. 98 ; 30 L. W. 403=A. I. R. 1929 Mad. 491. The confession of one co-accused cannot be said to be corroborated by the confesssion of another accused as against the accused person who was not confessed at all. 60 Ind. Cas. 786=22 Cr. L. J. 290 ; 15 Bom. L. R. 975=28 B. 156 ; A. W. N. 1881, 18 ; see also 36 C. W. N. 874=1933 Cr. C. 26=34 Cr. L. J. 23. Testimony of approver requires independent corroboration in material particulars. 133 Ind. Cas. 545=32 Cr. L. J. 1036=32 P. L. R. 792=A. I. R. 1932 Lah. 73 ; see also A. I. R. 1933 Lah. 838 ; 1933 Cr. C. 1116=A. I. R. 1933 Lah. 871 ; 1933 Cr. C. 1411=A. I. R. 1933 Lah. 956 ; 9 O. W. N. 1191 ; A. I. R. 1933 Rang. 134=34 Cr. L. J. 835=1933 Cr. C. 720=144 Ind. Cas. 829 ; A. I. R. 1933 Nag. 249=16 N. L. J. 129=1933 Cr. C. 933 ; A. I. R. 1935 Lah. 230.

Retracted confession and co-accused.—A retracted confession is admissible but should have no weight to it unless either corroborated in material particulars or unless the tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases the retracted statement may be given full weight and can be used even against a co-accused. A. I. R. 1929 Pat. 212=10 P. L.

T. 228 ; see also A. I. R. 1929 Cal. 14 ; 81 Ind. Cas. 62 ; 130 Ind. Cas 641=A. I. R. 1931 Lah. 196 Rat. Un. Cr. C. 108 ; Rat. Un. Cr. C. 771 ; 5 P. R. 1911 ; 29 A. 931 ; 32 Cr. L. J. 42=A. I. R. 1930 Oudh. 412 ; 114 Ind. Cas. 771=A. I. R. 1929 Oudh. 162 ; 30 P. L. R. 616=119 Ind. Cas. 325 ; 113 Ind. Cas. 65=11 Lah. L J. 5 ; 125 Ind. Cas. 638 ; 68 Ind. Cas. 401=4 Lah. L. J. 41. A retracted confession carries much less weight than a confession which has been adhered to ; 62 Ind. Cas. 545=22 Cr. L. J. 529 ; A. I. R. 1931 Oudh. 83=131 Ind. Cas. 72 ; 14 L. W. 474 ; 8 Pat. L. T. 566=101 Ind. Cas. 881=A. I. R. 1927 Pat. 257 ; 40 C. L. J. 551 ; 60 Ind. Cas. 56=2 Pat. L. T. 776=22 Cr. L. J. 200 ; 33 P. L. R 691 ; A. I. R. 1932 All. 228=1932 A. L. J. 162 ; A. I. R. 1933 Rang. 134 ; A. I. R. 1933 Nag. 249 ; A. I. R. 1933 Rang. 320 ; A. I. R. 1934 Rang. 30 ; 148 Ind. Cas. 8 ; A. I. R. 1934 Pesh. 11 ; A. I. R. 1934 Oudh. 418 ; A. I. R. 1934 Lah. 718 ; A. I. R. 1934 Pat. 586 ; A. I. R. 1934 Rang. 300.

Confession of co-accused and evidence of an accomplice.—A confession of an accused person implicating a co-accused under section 30, cannot be considered as the same thing as "testimony of an accomplice" which is referred to in section 133 of the Act. Section 133 contemplates that the accomplice shall be examined as a witness. 109 Ind. Cas 801=29 Cr. L. J. 609=A. I. R, 1928 Nag. 213 ; 9 C. P. L. R. 37 Cr ; 9 C. P. L. R. 35 Cr. ; 21 Ind. Cas. 673=38 B. 156. Statements of co-accused persons are not entitled to even as much consideration as the testimony of an accomplice. Rat. Un. Cr. C. 468 ; Rat. Un. Cr. Cr. 370 ; Rat. Un. Cr. C. 456 ; 35 C. W. N. 490 ; A. I. R. 1934 Cal. 853=39 C. W. N. 27. Confession cannot take place of evidence against co-accused. 129 Ind. Cas. 645=32 Cr. L. J. 448=54 M. 75=59 M. L. J. 471=32 M. L. W. 527=A. I. R. 1931 Mad. 177.

Explanation.—Under the explanation to section the word "offence" always includes statements and attempts.54 M. 75=59 M. L. J. 471=129 Ind. Cas. 645.

Admissions not conclusive proof, but may estop.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Scope.—An admission made before a Registrar or contained in a deed of sale that the consideration has been received by the vendor, raises only a rebuttable presumption, the weight of which varies with the circumstances of each case. A. W. N. 1899, 142. Admission must be taken as a whole. 60 Ind. Cas. 483. Under this section admissions are not conclusive evidence of the matters admitted. 8 Pat. 776=10 Pat. L. T. 191.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

32. Statements, written or verbal, or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance can not be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :—

When it relates to cause of death.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business.

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business,

or in the discharge of professional duty ; or of an acknowldgement written or signed by him of the receipt of money, goods, securities or property of any kind ; or of a document used in commerce written or signed by him ; or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker ;

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom or matters of general interest ;

(4) Whe the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship ;

(5) When the statement relates to the existence of any relationship * [by blood,, marriage or adoption] between persons as to whose relationship* [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs ;

(6) When the statement relates to the existence of any relationship * [by blood, marriage or adoption] between persons deceased and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (a) or is made by several persons and expresses feelings relevant to matter in question.

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is metioned in section 13, clause (a)

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is whether A was murdered by B ; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B ; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(*b*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that on a given day, he attended A's mother and delivered her of a son is a relevant fact.

(*c*) The question is, whether A was in Calcutta on a given day.

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* These words in s. 32, cls. (5) and (6), were inserted by the Indian Evidence Act Amendment Act (18 of 1872).

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day, the solicitor attended A at a place mentioned. in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour is a relevant fact.

(*e*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured. is a relevant fact.

(*i*) The question is whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend. announcing the birth of A on a given day, is a relevant fact.

(*m*) The question is, whether, and when, A and B were married.

An entry in a memorandum-bonk by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Scope.—This section is also an exception to the hearsay evidence. Secondary evidence of any oral statement is called hearsay. The repetition by a witness of that which he was told by some one else who is called as a witness is hearsay, and is therefore, as a general rule inadmissible. The reasons for this rule are obvious. We can generally trust a witness who states something which he himself has either seen or heard ; but when he tells us something which he has heard from another person, his statement is obviously less reliable and satisfactory. A multitude of probable contingencies diminish its value. The witness may have misunderstood or imperfectly remembered, or even may be wilfully misrepresenting the words of the third person ; or the latter may have spoken hastily, inaccurately or even falsely. Moreover the person who is really responsible for the statement did not make it on oath ; he was not cross-examined upon it, and the Court had no opportunity of observing his demeanour when he made it. It is a fundamental principle of our law that evidence has no claim to credibility, unless it be given on oath, or what is equivalent to an oath, and unless the party to be affected by it has an opportunity of cross-examining the witness. (*Powell Ev.* 305). There are various exceptions to this general rule and they are based on good reasons. The exceptions as stated in this section are as follow :—Statements written or verbal, of relevant facts when made by a person who is (*a*) dead or (*b*) who cannot be found, or (*c*) who has become incapable of giving evidence or (*d*) whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable are admissible ; (1) when it relates to the cause of his death, or (2) when it is made in course of business ; or (3) when it is made against the interest of the maker ; or (4) when it gives opinion as to public right or custom, or matters of general interest ; or (5) when it relates to existence of relationship ; or (6) when it is made in will or deed relating to family affairs ; or (7) when it is made in document relating to transaction mentioned in section 13,

clause (*a*) ; or (8) when it is made by several persons and expresses feelings relevant to the matter in question. Dying declaration is relevant under s. 32 even though maker does not expect to die. 35 Bom L. R. 1021=A. I. R. 1933 Bom. 479.

Verbal—Includes sign. 7 A. 385 (F. B.) ; 2 P. R. 1886. Cr.

Cause of death.—In England such declarations are admissible only in trials for murder or man-slaughter made under a sense of impending death, The grounds of admissions there are (1) death (2) necessity and (2) the sense of impending death which creates a sanction equal to obligations of an oath. But this clause states that the accused need not be in expectation of death. 6 C. L. R. 278. Moreover according to this clause such a statement is admissible irrespective of the nature of the proceedings. The admission of dying declarations is not limited to cases in which the death of the injured party is the sole object of inquiry. It is admissible in all criminal cases. 3 N. W. P. 212 : 13 P. R. 1889, Cr ; 25 B. 45 ; 8 C. 211 ; 6 W. R. Cr. 75 ; 19 W. R. Cr. 44 ; 9 W. R. Cr. 211. Cases are not uncommon in this country of false deposition being made by a dying man. 4 Ind. Cas. 1127. A Court should receive a dying declaration with caution. 117 P. R. 1866 ; see also 4 P. W. R. 1909=1 Ind. Cas. 100 ; 2 Weir 753. Such declarations need not be made in the presence of the accused. 2 Weir 750. Oral evidence of such declarations is admissible. 2 Weir 755 ; 2 Weir 753 ; 6 C. W. N. 621. Statements long before incident of death are not admissible under s. 32 (1) A. I. R. 1933 Nag. 136=34 Cr. L. J. 505=29 N. L. R. 251=1933 Cr. C. 610. Statement of person who is dead throwing light upon cause of his death is relevant evidence. A. I. R, 1931 Mad. 180=59 M. L. J. 816=32 Cr. L. J. 357 ; see also A. I. R. 1933 Oudh. 53=34. Cr. L. J. 101=9 O. W. N. 977 ; A. I. R. 1932 Lah. 14=33 P. L. R. 8=32 Cr. L. J. 1118=1932 Cr. C. 24 simply because dying declaration is false in some part, it should not be disregarded as a whole. A. I. R. 1933 Bom. 479=35 Bom L. R. 102.

Form of dying declarations.—Where a dying declaration is made by signs in response to questions put, it is admissible in evidence. 2 P. R. 1886 Cr. ; 7 A. 385 (F. B.) ; 1 Pat. 401=3 Pat L. T. 771=71 Ind. Cas. 353 ; see also 26 C. W. N. 414=49 C. 600 ; 84 Ind. Cas. 552=5 Lah. 305. Although a dying declaration if properly recorded is a valuable piece of evidence, but if while the statement is being recorded a third person is present and prompts the deceased to give out names of certain accused it would be exceedingly unsafe to attach any wright to such a dying.statement. 8 L. L. J. 296=96 Ind. Cas. 215=27 P. L. R. 484=27 Cr. L. J. 903=A. I. R. 1926 Lah. 496. The recording of a dying declaration which may subsequently be produced as evidence in a Court of justice is a grave and solemn proceeding unauthorised persons should not be permitted to crowd round when the declaration is being made. A. I. R. 1934 All. 908.

Condition of receiving dying declaration.—The death of the declarant is the condition precedent of receiving dying declaration in evidence. 25 B. 45 ; 10 C. 1047 ; 4 Bom. L. R. 434.

First information report.—The first information report is admissible under this section as a dying declaration where it is the statement of a person who is since dead relating to the circumstances of the transaction which resulted in death. A. I. R, 1930 Lah. 450=31 Cr. L. J. 475 ; 44 C. L. J. 253 ; A. I. R. 1931 Lah. 103.

Nature of the proceeding in which dying declaration is admissible.—A dying declaration as to the cause of death is admissible even when the charge is not one of homicide. A. I. R. 1928 Pat. 162=6 Pat. 747=106 Ind. Cas. 698 ; see also 6 W. R. Cr. 75.

Dying declaration made by an accomplice.—The statement of an accomplice incriminating himself and others just prior to his being hanged, is not admissible under this clause but is admissible under clause (3). 31 Cr. L. J. 661=A. I. R. 1930 Nag. 259 ; see also A. I. R. 1925 P. C. 52=6 Lah. 45=52 I. A. 121 P. C.

Proof of dying declaration.—A dying declaration may be either verbal or written. A verbal dying declaration recorded by a Magistrate cannot be accepted in evidence, when it has not been proved by taking the statement of the Magistrate. 17 P. R. 1911 Cr.=14 Cr. L. J. 131 ; 11 B. H. C. 247 ; 7 C. P. L. R. Cr. 14 ; 7 Lah. 91=92 Ind. Cas. 167=27 Cr. L. J. 215 ; 49 C. 358. The statement may be proved by a person who heard it. 52 C. 446=88 Ind. Cas. 860. Dying declaration can be proved by examining persons recording it or persons who heard it being made. A. I. R. 1930 Cal. 218=50 C. L. J. 584 ; 6 C. W. N. 921 ; 5 O. C. 246.

Value of dying declaration.—The weight to be attached depends not upon the expectation of death which is a guarantee of its truth, but upon the circumstances and surroundings under which it was made. 29 C. W. N. 738=52 C. 987=88 Ind. Cas. 100=42 C. L. J. 247. So statements made by a dying man relating to the cause of his death are admissible in evidence against person causing his death, but too much reliance cannot be placed upon the details of such statements as they are hearsay. 76 Ind. Cas. 389 ; see also 86 Ind. Cas. 826=A. I. R. 1925 Lah. 549. Cases are not uncommon in this country of false deposition being made by a dying man. 5 M. L. T. 217=4 Ind. Cas. 1127=11 Cr. L. J. 193. A court should receive a dying declaration with caution. 117 P. R. 1866; 8 P. R. 1868 Cr. ; 2 Weir. 753 ; 108 Ind. Cas. 526=29 Cr. L. J. 418 ; A. I. R. 1929 Pat. 249 ; 129 Ind. Cas. 252=A. I. R. 1931 Mad. 180=59 M. L. J. 876 ; 1930 M. W. N. 1121. But much weight must be given to the dying declaration recorded by a Magistrate where it is supported by the conserted evidence led on behalf of the prosecution. 10 Lah. L. J. 281 ; see also 4 P. W. R. 1909 Cr.=9 Cr. L. J. 156=1 Ind. Cas. 100. It is not safe to base a conviction on the dying declaration of the deceased, when the other evidence in the case is tainted and has to be rejected. A. I. R. 1934 Oudh. 405=1934 Cr. C. 1228=11 O. W. N. 851=35 Cr. L. J. 1113=150 Ind. Cas. 819 ; see also A. I. R. 1934 Lah. 805=36 P. L. R. 24.

Must be taken as a whole.—As regards a dying declaration to accept a portion and reject the rest is entirely out of the question ; there must be absolute guarantee of the accuracy of the record and the truth of the entire statement before it can be acted upon. 29 C. W. N. 738=42 C. L. J. 247=88 Ind. Cas. 1000=26 Cr. L. J. 1256=52 C. 987. It must be taken as a whole and a portion of it cannot be allowed. A. I. R. 1930 Cal. 211=50 C. L. J. 584 ; 22 M. L. J. 435.

Dying declaration—Cases. One of the dacoits engaged in a dacoity was captured in a seriously wounded state and before his death he made a dying declaration as to the circumstances of the dacoity before the Magistrate and also so as to the circumstances causing his death. *Held*, that the statement of the declarant was admissible to prove his own participation in the dacoity but was not admissible against the other accused. L. R. 5 A. 201 Cr. Where the declaration of a person wounded by the accused in committing dacoity was made on the 13th August 1899, and he died on the 20th of that month, and there was no other evidence to prove that the death was caused or accelerated by the wounds, received at the dacoity, or that it was the transaction which resulted in his death, the High Court *held*, that his declaration ought not to have been admitted in evidence. 25 B. 45=2 Bom. L. R. 331. In a case of murder the statement made by the deceased before his neighbours and in the presence of a head constable was admitted as evidence under s. 32 (1) of Act I of 1872, that section providing that such statement is relevant, whether the person who made the statement was or was not, at the time it was made, under expectation of death. 19 W. R. Cr. 44. Where the police recorded certain statements relating to the cause of the death, made by the deceased during the investigation of a criminal case, *held*, that they were admissible in evidence. 17 P. R. 1886 Cr. A declaration made by a person who was dying at the time he made it is a dying declaration in the legal sense of the term and is admissible under this section, though the person making it may have lingered for six days afterwards and then died. A. I. R. 1929 Lah. 64=10 L. L. J. 463. The statement of a deceased person was recorded in the absence of the accused, Subsequently in the presence of the accused, the statement was read over and the accused were allowed to cross-examine the dying person. *Held*, that the statement was not a dying deposition under s. 33 of the Evidence Act, and was not admissible under section 32 (1) unless it was proved by examining the Magistrate who recorded it or some one who heard it made. 14 Cr. L. J. 396=20 Ind. Cas. 220=6 Bur. L. T. 68. The statement of a deceased person that she was confined in the house of an accused, that H was keeping watch over her and that another accused had raped her on account of which she had become pregnant and that they were getting ready to give her medicine to miscarry and so to put an end to her life is admissible under s. 32 (1), as a statement made by a person as to the circumstances of a transaction which resulted in her death, in a case in which the cause of death comes into question. A. I. R. 1929 Sind. 250.

Course of business.—The grounds for reception of such evidence is the presumption of truth which arises from the mechanical and generally disinterested nature of entries made in the course of duty, and from their constant liability, if false,

to be detected by the declarant's superiors (*Phipson, Ev. 250*). The phrase 'course of business' does not apply to any particular transaction of an exceptional kind, such as the execution of a deed of mortgage, but to business of professional employment in which the declarant was ordinarily or habitually engaged. The business referred to may be of a temporary character. 13 C. W. N. 71=1 Ind. Cas. 376. The law under this clause does not reqnire corroboration as under s. 34. 16 C. L. J. 24.

Clause (3).—The reception of this evidence is based upon the presumption that what a man states against his interest is probably true. But the interest involved must be pecuniary or proprietary. Any statement by a person tending to show that he owes money, or has received money, owing to him, is considered to be against his interest. (*Higham* v. *Ridgway*, 10 East, 109 ; *Cockle Cas.* 196). In *Sussex Peerage Case*, 11 C and F. 108 it was laid down that where the statement was made under circumstances, which showed that the person making it would be liable to criminal prosecution, it was not sufficient to come under this clause. But the Indian Legislators departed from that view of the law and distinctly laid down that such statements are relevant. If any part of a statement by a deceased person is against his interest, the whole statement is admissible. (*Taylor* v. *Witham*, L. R. 3 Ch. D. 605). The declarations must also have been against such interest at the time they were made ; it is not sufficient that they might possibly turn out to be so afterwards. (*Smith* v. *Blakey*, L. R. 2 Q. B. 326. *Massey* v. *Allen*, 13 Ch. D. 558. *Edwards* v. *Tollemache*, 14 Q. B. D. 415)—*Phipson* 241. A statement by a deceased landlord that there was a tenant on the land, is a statement against the landlord's proprietary rights. 31 C. 965. See also, 23 B. 63 ; 32 C. 6 ; 11 Ind. Cas. 380 ; 8 Ind. Cas. 268 ; 35 C. 751 ; 30 I. A. 94=7 C. W. N. 465 (P. C.) ; 68 Ind. Cas. 314 ; 78 I. C. 1033 ; 78 Ind. Cas. 219 ; 53 Ind. Cas. 863 ; 63 Ind. Cas. 685.

Clause (4).—The ground of admission are :—(1) death. (2) necessity, ancient facts being generally incapable of direct proof ; and (3) the guarantee of truth afforded by the public nature of the rights, which tends to preclude individual bias, and to render mis-statements difficult by exposing them to constant contradiction. (*Phipson Ev. 257*). Public rights are rights of highway, ferry, fishery in a tidal river etc. General rights are those affecting any considerable section of the community—*e g*, questions of boundaries of a parish or manor. (*Ibid*). In proof of public or general rights or customs, or matters of public or general interest, statements made by a deceased person of competent knowledge as to the existence of such rights, etc, and as to the general reputation thereof in the neighbourhood, if made "*ante litem motam*," are admissble. (*Weeks* v. *Parks*, 1 M. & S. 679 ; *Cockle Cas* 212). Such evidence is not admissible as to private rights. 25 B. 433. Public or general rights must be common to all persons interested, as to all the inhabitants of a particular manor. A right is not within this rule simly because it is enjoyed by many persons in their own individual capacities, such as a right of common enjoyed by several persons, in the same manner in their individual capacities on an aggregate of private rights. Evidence of reputation, or declarations, is admissible although no actual enjoyment of the right be proved. (19 L. J. Q. B. 388=15 Q. B. 791 ; *Cockle Cas.* 215.) But it is only to be received as showing a general reputation and not as evidence of particular facts. (*R.* v. *Bliss* 7 L. J. Q. B. 4 ; *Mercer* v. *Dunne* (1904) 2 Ch. 534). Persons whose statements are receivable in evidence as declarations must be shown to have been "competent declarants" that is, they must have been so situated as to the place in question, by residence, duty or other connection that it may be concluded they had both the means and the motive for giving a true account of the matter. (*Newcastle* v. *Broxtowe*, 4 B. and Ad. 273 ; *Cockle Cas*, 219). But this clause is not applicable to a case where the evidence is required to prove a fact in issue, and not merely a relevant fact. 15 B. 565. Where the question was whether certain property was dedicated to a wakf and certain documents which related to the neighbouring lands and which contained recitals as to the character of the suit property, were put in, held that they were admissible in evidence under this clause. 33 C. W. N. 439=119 Ind. Cas. 116.

Clause (5).—According to English law, the statements, verbal or written, and conduct of deceased persons who were related by blood or marriage with a family in question, if made "*ante litem motam*," are admissible to prove relationship, or family succession, or facts upon which such matters depend such as births, marriages and deaths (*Vide Cockle Cas.* 202 ; *Berkley Peerage Case*, 4 *Campbell*, 401). A controversy in a family, though not at that moment the subject of a law suit, is sufficient to exclude evidence of declarations as to pedigree made at the time of such controversy on the ground that they were not made "*ante litem motam*"

(*Butler* v. *Mountgarrett*. 7 H. L. Cas. 633 : *Cockle Cas.* 206). In a case where there is no question of relationship, no question of descent, no question of pedigree, none as to the position of any person in any family, such evidence is not admissible *Harries* v. *Guthrie*, L. R. 13 Q. B. D. 818. According to English law statements made by servants or intimate acquaintances, whatever their position or knowledge may be, are not admissible (*Johnson* v. *Lanson* 9 Moore. 183 : *Cockle Cas. 209*). But herein the Indian Legistators departed also from the English law and laid down that statement of persons having special means of knowledge would be relevant. So a statement as to the age of a member of a family made by another member is no doubt admissible after the latter's death under this clause. 25 M. 183. But special means of knowledge should be shown. 10 Ind. Cas. 199. The statement in a pedigree made by a deceased member ef one branch of a family, regarding the descendants of another branch thereof, before any dispute arose as to the latter, is relevant and admissible in evidence. 32 C. 6. But this clause does not cover statements of facts made by interested parties in denial, in the course of litigation, of pedigrees set up by the opposite parties. 9 A. 467. The effect of the section is to make a statement made by a deceased person, relating to the existence of any relationship by blood, marriage or adoption, admissible. to prove the facts contained in the statements on any issue. 24 C. 265=1 C. W. N. 270. A family priest's statement is also admissible. 4 C. L. R. 473. But a Muktear's statement is not admissible. 12 C. 219=12 I. A. 183 (P. C.) see also 20 C. 758 ; 13 C. W. N. 1 P. C. ; 20 C. 115 ; 24 A. 94 P. C=29 I. A. 1 ; 8 Ind. Cas. 728 ; 27 I. A. 238 ; 66 Ind. Cas. 66 ; 9 O. L. J. 186 ; 11 O. L. J. 164 ; 22 A. L. J. 657 ; 10 O. & A. L. R. 1226 ; 10 L. W. 67.

Clause (6)—Horoscope to prove age is not admissible under this clause. 17 C. 849. The words 'family pedigree' do not necessarily include such a pedigree as is in the possession of a member of the family concerned, nor do they indicate that the actual possession of the record need be with the family concerned. In order that a "family pedigree" be admissible in evidence under this clause, it is not essential that all the writers of the pedigree should have special means of knowledge. 63 Ind. Cas 968.

Clause (7)—A deed of mortgage containing an assertion of title as owner by the mortgagor is relevant under s. 13 as evidence of the title asserted. Where the mortgagor is dead, the recitals in the deed as to how he got the title are also evidence under this clause as statements made by a deceased person in a document relating to a transaction mentioned in s. 13—1921 M. W. N. 560.

Clause (8)—The meaning of this clause is that where a number of persons assemble together to give vent to a common statement expressing the feelings or impressions made in their minds at the time of making it, that statement may be repeated by the witness and is evidence. 23 W. R. 35 C. R.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judical proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of case, the Court considers unreasonable ;

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminial trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Scope.—It has long been settled as one of the exceptions to the general rule excluding hearsay that the testimony of a witness given in a former action or at a former stage of the same action is competent in a subsequent action or in a subsequent proceeding in the same action, where it is shown that the witness is dead or that a valid legal reason exists for his non-production, that the parties and questions in issue are substantially the same and that such former testimony can be *substantially* reproduced upon the second hearing, (*Burr Jones J 336*). It is impossible to lay down any hard and fast rule for the application of section 33 of the Evidence Act. *Jati Mati* v. *Emperor*, 33 C. W. N. 918.

Parties.—The rule is that such evidence is proper, not only when the point in issue is the same in a subsequent suit between the same parties, but also for or against persons standing in the relation of privies in blood, privies in state or privies in law. The testimony will not necessarily be rejected, although there were other parties to the record in the former proceedings, when the issues are substantially the same and the parties affected by the second suit had the opportunity to cross-examine the witnesses. But the parties must be substantially the same and it is for the party offering the testimony to establish this. (*Burr Jones* § 338). In two suits the partis must be the same or their representatives in interest. 12 C. 627, See. 7 C. 42 ; 8 A. 672 ; A. W. N. 1896, 182.

Form of proceedings.—If the parties and the issues are the same in each case, it is not necessary to the admission of the testimony that the form of the second proceeding should be the same as that of the first. Nor that the former trial should be a trial immediately preceding that in which the testimony is offered. The rule covers any former trial, where evidence was given by a party since deceased which it is subsequently desired to use. A testimony given in a preliminary examination on a criminal charge may be admitted at the trial. (*Burr Jones* § *339*). Evidence in section 9 case is admissible in a subsequent suit. 23 C. 44. Depositions given before a counsel is admissible. 3 B. 334.

Criminal cases.—The application of this section in criminal cases, ought to be confined within the narrowest limits. 17 Bom. L. R. 570. See also 18 Bom. L. R. 284 ; 25 O. C. 142 ; 2 A. 696 ; L. B. R. (1872-1892), 134 ; 3 B. 334 ; Rat. Un. Cr. C. 347 ; A. W. N. 1898, 72 ; A. W. N. 1881, 138 ; 2 Weir. 755 ; 17 P. R. Cr. 1919 ; 42 A. 24 ; 12 P. L. R. 1919 ; 52 Ind. Cas. 385 ; 35 M. L. J. 657.

Cross Examination.—The ground upon which the exception stands is that, in an authorized action or proceeding, testimony being given under the solemnity of an oath, where the witness was or might have been cross-examined, the probabilities of the truth having been told are so great as to justify the resort to that testimony when the witness has died or become insane since the former trial. It is immaterial to the admission of the evidence whether the party actually cross-examined, or did not cross-examine, if he were bound so to do. All that is required is that he had an opportunity to cross examine the witness. (*Bur. Jones* § *341*). So where a plaintiff was examined in chief but died before cross-examination his deposition is not admissible. 20 M. L. J. 400. See also 23 W. R. 42. The words "opportunity to cross examine" include the method of cross-interrgotories. 19 B. 749. See 6 A. 224 ; 25 B. 168=2 Bom. L. R. 761 ; 71 C. W. N. 230.

Incapable of giving evidence.—These words denote incapacity of a permanent character, and not of a momentary or temporary character. 4 C. L. R. 504 ; *contra* 6 C. 774. See 22 W. R. 343 ; 2 A. L. J. 91 ; 7 C. 42=8 C. L. R. 273. A party's deposition is not admissible under this section. 14 B. L. R. App. 3. It is only in extreme cases of expense or delay that the personal attendance of a witness should be dispensed with. 2 A. 646. For meaning of "could not be found," vide A. W. N. 1905, 202. See 21 W. R. Cr. 56 ; 20 W. R. Cr. 69 ; 21 W. R. Cr. 12.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000 and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence to prove the debt.

Scope.—Entries to be admissible as evidence by way of corroboration of other testimony must be made in the regular course of business. Rat. Un. Cr. C. 344. Although this section makes an entry in a book of account relevant, such a book is not by itself relevant to disprove an alleged transaction by the absence of any entry concerning it. 10 C. 1024. It must be kept in regular course of business in order to be admitted under this section. 8 Ind. Cas. 81 ; A. W. N. 1881, 65 ; 2 O. C. 311 ; 63 P. R. 1897 ; 29 C. 334 ; 45 P. R. 1899 ; 25 B. 433 ; 52 Ind. Cas. 704. It is only the account books that are properly kept that are admissible in evidence as relevant. 51 A. 519=27 A. L. J. 115.

Relevancy of entry in public record, made in performance of duty.

35 An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Scope.—This section only provides that "any entry in an official book, which is duly made by a public servant in the execution of his duty, is itself a relevant fact." But it is no evidence for the purpose of proving the absence in them of any particular entry. 7 C. L. R. 356. The entries must be in a book, register or record and they must be made by public servants in the discharge of their official duties. 5 Ind. Cas. 827. See also 59 P. R. 1901 ; 18 C. 534 ; 6 C. L. R. 139 ; 15 M. 19 ; 17 C. 849 ; 23 C. 366 ; 25 C. 90 ; 8 B. 543 ; 35 M. 21 ; 9 C. 431 ; 9 C. 586 ; 2 S. L. R. 82 ; U. B. R. 1906, Ev. 3 ; 15 M. 378 ; 25 A. 90 ; 14 O. C. 68 ; 9 Ind. Cas. 567 ; 33 M. L J 60 ; 35 Ind. Cas. 551 ; 1 Bur. L. J. 111 ; 3 Pat. L. R. 605 ; 66 Ind. Cas. 923 ; 65 Ind. Cas. 866 ; 65 Ind. Cas. 182 ; 1922 P. 87 ; 45 M. 332 ; 36 C. L. J. 389 ; 20 A. L. J. 601 ; 25 O. C. 229 ; 68 I. C. 676 ; 28 C. W. N. 679 ; 22 A. L. J. 690 ; 76 Ind. Cas. 449 ; 3 Pat. 85 ; 49 Ind. Cas. 984 ; 22 O. C. 250 ; 1919 Pat. 323 ; 12 Bur. L. T. 88 ; 52 Ind. Cas. 851 ; 46 C. 152 ; 22 O. C. 124 ; 53 Ind. Cas. 20 ; 29 C. L. J. 607 ; 51 Ind. Cas. 876 ; 34 C. L. J. 465 ; 34 C. L. J. 141 ; 25 C. W. N. 857 ; 59 Ind. Cas. 8 ; 59 Ind. Cas 298 ; 61 Ind. Cas. 177 ; 63 Ind. Cas. 226 ; 59 Ind. Cas. 963 ; 10 Pat. L. T. 399.

Relevancy of statements in maps, charts and plans.

36. Statements of fact in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Scope.—Topographical Survey Map of 1869, in which the boundary lines between two villages is given is admissible under this section. 11 C. W. N. 220. Entries In thakbust survey is relevant under this section. 7 C. W. N. 849. *Kistwari*, maps are under this section, evidence between the parties *quantum valet*. 64 Ind. Cas. 326.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of "any other legislative authority in British India constituted for the time being under the Indian Council Act, 1861, the Indian Councils Acts, 1861 and 1892 or the Indian Councils Acts, 1861 to 1909"* or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any Local Government,

* Substituted by Act 10 of 1914.

or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.*

Relevency of statements as to any law contained in law books.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

Scope.—Unauthorised translation of the Code Napolean is not a work to which reference can be made under this section. 26 C. 931=3 C. W. N. 614. But Ceylon Insolvency Ordinance can be looked into. 14 Ind. Cas. 560.

How much of a Statement is to be proved.

What evidence to be given when statement forms part of a conversation, document book or series of letters or papers.

39. When any statement of which evidence is given forms part of a longer statement, or a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Principle.—If a part of the conversation or transaction has been given in direct testimony, the remainder, so far as it is relevant, may be called out by the cross-examination, as the inquiry and answer in such case may tend to impeach, rebut, explain or qualify the testimony already given. A party will not be permitted to glean out certain facts from his witness, which without explanation would give a false colouring to the matter about which he testifies, and then save his witness from the shifting process of cross-examination by which the real transaction could be shown *Burr, Jones Ev.* § 822). This section cannot be invoked for the purpose of letting in a confusion in respect of which the bar created by ss. 24, 25 and 26 has not been removed by s. 27. 10 Lah. 283=11 Lah. L. J. 159=115 Ind. Cas. 6.

Judgment of Courts of Justice when relevent.

Previous judgment relevant to bar a second suit or trial.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question in whether such Court ought to take cognizance of such suit or to hold such trial.

Judgment.—Judgments are of two kinds—*in Rem* and *in Personam.* The former term seems never to have been clearly defined, but if it is commonly understood to apply to all judgments affecting the legal *status* of some subject-matter, person or thing ; e.g. Admiralty judgments in cases of forfeiture or prize, Divorce Court decrees, grant of Probate and Administration, and adjudications in Bankruptcy. Such judgments are conclusive against all persons, whether parties or strangers. Judgments in *personam* are all ordinary judgments between persons not so affecting status. Such judgments bind only parties and privies as to the facts in issue. But all judgments are conclusive against all persons of their legal effect, as distinguished from the facts upon which they are based. (*Cockle Cas. 44*). All judgments whatever are conclusive proof as against all persons of the existence of that state of things which they actualy effect when the existence of the state of things so effected is a fact in issue or is or is deemed to be relevant to the issue. (*Stephen's Digest* § 40.)

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* The last paragraph added by s. 2. of the Indian Evidence Act, 1899 (5 of 1899) was repealed by the Schedule No. 11. of Act 10 of 1914.

Scope.—This section lays down that judgment, order or decree in a previous suit is a relevant fact, i. e. admissible in evidence if it operates as *res judicata* or prevents any Court from taking cognizance of a suit or holding a trial. According to the phraseology of English lawyers such judgments, are admissible when they operate as estoppel by record. A person who was a party to legal proceedings in which judgment was given or who claims under a person who was a party thereto, is estopped from denying the facts upon which such judgment was based, if such judgment be pleaded as estopped. But a judgment *"in personam"* does not estop persons who were neither parties nor privies thereto. Nor are parties or their privies estopped from denying matters which merely came collaterally into question in such legal proceedings, or which were incidentally cognizable, or which might be inferred by argument from the judgment. *The duches of Kingston's Case*, (20 How. St. Trial 355 ; *Cockle Cas.* 40). A former judgment between the same parties on the same subject matter will operate as an estoppel and be conclusive only when it is so pleaded, or there is no opportunity of so pleading it, Otherwise it is only a relevant fact from which the Court may draw a conclusion in favour of the person who tenders it in evidence. (*Vooght* v. *Winch*, 2 B. & Ald. 662 ; *Cockle Cas.* 44). This section was intended to include all judgments which by law operate to prevent a Court, whether civil or criminal, from taking cognizance of a suit, or trying any particular issue, and admit as evidence all judgments *inter partes* which would operate as *res judicata* in a second suit. 6 C. 171. This section applies to a case in which the Court has been decided before. 49 C. L. J. 441=33 C. W. N. 795=118 Ind. Cas. 857=A. I. R. 1929 Cal. 374 (F. B.) ; 23 C. 533 ; 19 A. 277 ; 25 C. 522.

Cases.—A finding in a former suit where the question was tried between all the parties to the subsequent suit, is admissible as evidence. 22 W. R. 457. "It is not competent for the Court, in the case of the same question arising between the same parties, to review a previous decision." *Per Lord Macnaghten*, in *Badar Bee* v. *Habin Merican Noordin* (1909) A. C. at p. 623.

"The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence might have brought forward at the time." *Henderson* v. *Henderson*, 3 Hare, 115.

Relevancy of certain judgments in probate, etc., jurisdiction.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person :

that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [order or decree] declares that it had been or should be his property.

Legislative changes.—The words within brackets have been inserted by Act 18 of 1872.

Scope.—These are judgments *in rem*. They are conclusive on every body, and as such admissible against every body. Such adjudication, being the solemn declaration of the property accredited Court, which has the best right so to adjudicate, concludes not merely the parties to the action and their privies, but all persons, from asserting the contrary. (*Powell Ev. 66.*) Such judgments are conclusive "not merely as

to the point actually decided, but as to a matter which it was necessary to decide, and which was actually decided as the ground work of the decision itself, though not then directly the point at issue." *Per Coleridge, J.* in *R.* v. *Hortington* 4 E. and B. at p. 794. But it must clearly appear that a decision on such matter was actually necessary to the judgment. *Concha* v. *Concha*, 11 App. Cas. 541. *Ballantyne* v. *Mackinan*, (1896) 2 Q. B. 455. Judgments *in rem* i. e. affecting the status of a person or of thing e. g. a decision of a Prize Court, Probate, Divorce or Admiralty Court, or Ecclesiastical Court, bind all the world. A judgment in bankruptcy proceeding has the effect of a judgment *in rem*. (*Exparte Learoyd In re Foulds*, 10 Ch. D 2.) Such. Judgments are binding not only on the parties to the proceedings but upon all the world, and not only on the tribunals of the country where pronounced, but on the tribunals of other countries ; but such a judgment must not have been obtained by fraud, must not carry a manifest error on its face, and must not be contrary to natural justice. (*Powell Ev.* 451). A final judgment or order of a competent Court, in the exercise of probate jurisdiction, as conferring the status of executor on the grantee of a probate, is conclusive proof of the existence of such status and the fact that the Will is genuine. It operates as a judgement *in rem*, and its effect can not be nullified except by a proceeding for revocation of probate. 31 C. 357=8 C. W. N. 197 ; see also 14 C. 861 ; 16 M. 380 ; 14 P. R 1912 ; 22 A. 270 (F. B.) The expression "legal character" when it has reference to a judgment of a Court of Probate, means the status of an Administrator of executor and that only, though, when it has reference to a Matrimonial Court, it includes wifehood and widowhood, and a judgment of a Court of probate is conclusive proof that the person to whom letters or probate have been granted has been clothed with the powers and the responsibilities of the deceased and with nothing else ; and a question of status decided by a Court of Probate cannot be raised again. U. B. R. 1910, 4th Qr. 61. No judgment except that passed by a Court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, upon any matters indicated in this section can have the effect of a judgment in *rem*. 26 A. L. J. 797=A. I. R. 1928 A. 395.

Relevancy and effect of judgments, order or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry ; but such judgements orders or decrees are not conclusive proof of that which they state.

Illustrations.

A sues B for trespass on his land. B alleges the existence of a public right-of-way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right-of-way is relevant, but it is not conclusive proof that the right-of-way exists.

Scope.—Judgments are not deemed to be relevant as rendering probable facts which may be inferred from their existence, but which they neither state nor decide—

as between strangers ;

as between parties and privies in suits where the issue is different even though they relate to the same occurrence or subject matter ;

or in favour of strangers against parties and privies.

But a judgment is deemed to be relevant as between strangers ;

(1) if it is an admission, or

(2) if it relates to a matter of public or general interest, so as to be a statement under s. 13.—*Stephen's Dig*, § *44*,

Where any question of rights or custom is to be decided, opinion of persons who would be likely to know its existence are under s. 48 admissible in evidence. A judgment of the High Court, regarding the transferability of tenures held under similar conditions in an adjoining village of the same *perguna*, is evidence of the usage of transferability, 23 C. 427. When a question of status is in issue, judgment and orders between the parties in mutation cases, succession certificate cases, rents suits, suits for possession, etc. are admissible in evidence. 1924 Nag. 387.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act.

Judgments, etc., other than those mentioned in sections 40 to 42 when relevant.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says the matter alleged to be libellous is true and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C, is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c*) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgement against B is irrelevant,

(*d*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(*e*) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(*f*) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Legislative changes.—Illustrations (*e*) and (*f*) were added by Act 3 of 1891.

Scope.—"Having now disposed of judgments which render the matter *res Judicata* between the parties, judgments which from their special character are conclusive against all the world, and judgment which as relating to matters of a public nature, are relevant though not conclusive, between strangers to the suit, we come to the general rule of exclusions *viz.*, that all other judgments are irrelevant. To this rule however, there is a highly important limitation. A judgment, though inadmissible for proving the truth of what it asserts, may be valuable as evidence for some other purpose. Its very existence may be a fact in issue, and then, of course, evidence of it may be given ; or it may be a fact relevant within some one of the classes of relevant facts given in the Act, and then, again, evidence of it can be given." (*Cunningham Ev. 190*). "The cases contemplated by s. 43 are those where a judgment is used not as *res judicata* or as evidence more or less binding upon an opponent by reason of the adjudication which it contains. But the cases referred to in s. 43 are such , I conceive, as the section itself illustrates *viz.*, when the fact of any particular judgment having been given in a matter to be proved in the case. As for instance, if A sued B for slander, in saying that he had been convicted of forgery and B justified it upon the ground that the alleged slander was true, the conviction of A for forgery would be a fact to be proved by B, like any other fact, in the case, and quite irrespective of whether A had been actually guilty of the forgery or not. This I conceive, would be one of the many cases alluded to in s. 43." *Per Garth C. J.* in *Gujjulal* v. *Fatehlal* 6 C. 171 (F. B.) Similarly *Straight J.*, in 12 A. 25 observed : "Section 43 of the Evidence Act declares that judgments, orders and decrees other than those mentioned in ss. 40, 41 and 42 are of themselves irrelevant that is, in the sense that they can have any such effect or operation as is mentioned in those recited sections as *qua* judgments, orders and decrees, but I do not take this to make them absolutely inadmissible, when they are the best evidence of something that may be proved *aliunde*."

Cases.—Decrees in former suits are relevant under this section, but not sufficient to bind those who are not parties to the suits. 61 P. R. 1875. A judgment between the plaintiff and other parties is not admissible though the facts found therein may support plaintiff's title disputed in the present suit. 1925 Pat. 68, The judgment of Criminal Court is inadmissible in evidence. 1922. Rang. 143.

44. Any party to a suit or other proceeding may show that any judgment, order or degree which is relevant under section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court nor competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment or incompetency of Court, may be proved.

Scope.—In the *Duchess of Kingston's Case,* 20 H.S. T. 355 *Sir William De Grey C J.*, observed : "Yet, like all other acts of the highest judicial authority, it is impeachable from without ; although it is not permitted to show that the Court was mistaken, it may be shown that they were misled. Fraud is an extrinsic collateral act which vitates the most solemn proceedings of Courts of Justice. *Lord Coke* says, it avoids all judicial acts, ecclesiastical or temporal." This section lays down not only a rule of law relating to evidence, but also a rule of procedure. 27 C. 11=3 C. W. N. 660. A judgment of a Court, which has no jurisdiction is not binding. The words 'not competent' refer to a Court acting without jurisdiction. 12 M. 228. So long as letters of administration are not revoked by a competent Court, the allegation that it is invalid cannot be entertained. 10 C. W. N. 422. This section does not enumerate the grounds on which a decree can be attacked by a separate suit. 9 A. L. J. 1 ; see 26 A. 272 ; 27 C. 11 ; 21 B. 205 ; 3 N. L. R. 185 ; 8 Ind. Cas. 1197 ; 1 C. L. J, 65 ; 5 C. W. N. 594 ; 21 C. W. N. 594 ; 1921 Pat. 209.

Judgments In rem.—Having regard to the wide terms of this section it is possible to say that it is not open to a Court other than the Court from which a grant has been issued in cases of fraud or collusion, to deal with the matter and decide whether the grant has been obtained by fraud or collusion. But the better course in such cases would be, when it is open to the party alleging fraud to apply to the Court from which the grant is issued to stay the suit to enable an application to be made to revoke the grant. 15 C. W.N. 207.

OPINIONS OF THIRD PERSONS RELEVANT.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting [or finger impression] *the opinions upon that point of persons specially skilled in such foreign law, science or art, † [or in questions as to identity of handwriting] or finger impression]* are relevant facts.

Opinion of experts.

Such persons are called experts.

Illustrations.

(*a*) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*) The question is, whether A, at the time of doing a certain act, was by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind, usually renders persons incapable of knowing the nature of the acts which they do or of knowing that what they do, is either wrong or contrary to law, are relevant.

(*c*) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of expert on the question whether the two documents were written by the same person or by different persons, are relevant.

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* The word "or finger impressions" in both places where they occur in s. 45, were added by the Indian Evidence Act, 1899 (5 of 1899). For discussion in Council as to whether "finger impressions" "thumb impressions" *see* Gazettee of India 1898 Pt. VI, p. 24.

† The words within brackets in s. 45 were inserted by the Evidence Act Amendment Act (18 of 1872.)

Scope.—An expert witness is one who has devoted time and study to a special branch of learning, and thus is specially skilled on those points on which he is asked to state his opinion. His evidence on such points is admissible to enable the tribunal to come to a satisfactory conclusion. An expert may be called to answer questions on any matters of science, art, medicine architecture, handwriting, valuation, or foreign law—indeed, any matter on which special skill or learning is necessary in order that a reliable opinion may be formed. He need not be a paid professional expert who makes a living by giving such evidence, but he must have devoted sufficient time and study to the subject to render his evidence trustworthy. The Judge decides on the competency of an expert witness ; the jury decides on the weight of his evidence. (*Powell Ev.* 41). The matters upon which such opinion evidence can be given include *interalia* causes of death, insanity, effects of opinion, genuineness of works of art, value of articles, genuineness of hand-writing, proper navigation of vessels, meaning of trade terms, foreign law, etc. And in support of such opinion evidence the witness may prove experiments, inspections and other acts upon which he bases his opinion although they were made or done in the absence of the party. (See *R.* v. *Heseltne.* 12 Cox. 404) ; *Cockle Cas. Ev. 119.* An expert can cite books of admitted authority. *Nelson* v. *Beidport*,, 8 Beav. 527 ; *Sussex Peerage Case*, 11 Cl. and F. at p. 114. The opinions of experts are not binding on the jury, for it is with the jury, and not with the experts, that the determination of the case rests ; the weight due to their testimony is a matter to be determined by the jury, and it will be proportionate to the soundness of the reason adduced in its support. 1 C. W. N. 465 ; 32 C. 759.

Cases.—To base a conviction on the evidence of an expert in hand-writing, as a general rule, is very unsafe. There may be cases in which the hand-writing is of such a peculiar character that the conclusion as to the identity of the writer is irressistible. 1 A.L.J, 184=19 Cr. L.J. 498 ; 15 Ind. Cas. 979 ; see also 2 A. L J. 444. 6 A. L. J. 184 ; 11 Cr. L. J. 114 ; 36 M. 159 ; 37 C. 467 ; 8 Ind. Cas. 93 ; 86 Ind. Cas. 993 ; 26 C. W. N. 113 ; A. I. R. 1931 Lah. 408. Comparison of hand-writing is permissible in criminal no less than in civil cases. 2 Weir. 759. It is not right to assume that a Sub-Registrar is an expert in the matter of thumb marks. 2 Weir 760. The evidence of an expert in hand-writing is inadmissible, if there in no comparison with proved or admitted hand writing in open Court in the presence of the party affected. 16 C. W. N. 812=14 Ind. Cas. 757=39 C. 606. The expert evidence is not conclusive. 32 C. 759=9 C. W. N. 520=2 Cr. L. J. 259. The Court can apply its own eyes and mind to the evidence and verify the results submitted to it by experts. 23 Cr.L.J. 694 =69 Ind. Cas. 374. But it is always unsafe to hold that a document is a forgery on the personal inspection of the document by the Court. 72 Ind. Cas. 748=A. I. R. 1924 Pat. 284 ; 78 Ind. Cas. 668 ; 28 C. W. N. 579 ; A. I. R. 1928 Pat. 129. Evidence of experts as regards thumb impression may be relied. 9 P. R. 1914 Cr. ; see also A. I. R. 1929 Lah. 210 ; 55 Ind. Cas. 273 ; 30 C. W. N. 373=43 Cr. L. J. 79 ; 35 C. W. N. 863=A. I, R. 1931 Cal. 441 ; 6 Pat. 305 ; 36 L. L. J. 9=70 Ind. Cas. 194. Expert evidence as regards date of thumb impression is not conclusive. 97 Ind. Cas. 335=A. I. R. 1926 Pat. 575, The report of the finger print expert is inadmissible in evidence unless be is called in as a witness and subjected to cross-examination in open Court. A. I. R. 1924 Nag. 183. An expert witness however impartial he may wish to be, is likely to be unconsciously prejudiced in favour of the sides who calls him. 3 Lah. L. J. 110=59 Ind, Cas. 220 ; 29 C. 32. Where the so called expert witness is given no date in support of their opinions should be rejected. A. I. R. 1931 Lah. 364 ; see also 96 Ind. Cas. 641=27 Cr. L. J. 977. It is not satisfactory to examine an expert witness on commission and not in the presence of the accused 10 Lah. 235=108 Ind. Cas. 369=29 Cr. L. J. 377=A. I, R. 1928 Lah. 533 ; see also 15 C. P, L. R. 66 ; but see 2 O. W. N. 377=12 O. L. J. 497=88 Ind, Cas. 848=26 Cr. L. J. 1232=A. I. R. 1925 Oudh. 616. The value of ordinary or non-expert oral evidence mainly rests on the credibility of the witness—his inclination and capacity, for telling the truth ; the value of *expert* evidence rests on the skill of the witness—the extent of his competency for forming a reliable opinion. 3 N. L. R. 1=5 Cr. L. J. 220. A medical man, who had not seen the dead body and who had not been present at the *post mortem*, could be asked to give his opinion about the cause of death, after placing before him the appearance of the body as spoken to by the medical man who made *post mortem* examination, together with the signs spoken to by him as having been noticed by him when making *post mortem* examination. 15 C. 589. See 6 O. L. J. 178 ; 3 Lah. L. J. 110. The letter of a medical officer

expressing an opinion is not evidence. 12 W. R. Cr. 25 ; 11 W. R. Cr. 2 ; see also 2 Weir. 660 ; A. I. R. 1929 Cal. 244 ; 2 Weir 659 ; 24 Bom. L. R. 893=47 B. 74= A. I. R. 1923 Bom. 183 ; 84 Ind. Cas. 643 ; A. I. R. 1926 Lah. 675=26 P. L. R. 80. The report of the chemical examiner is evidence in criminal trial if it bear the signature of the examiner. The original should be produced. 6 B. L. R. App. 112=15 W. R. 49 ;2 Weir 661 ; see also 50 Ind. Cas. 26=20 Cr. L. J. 266 ; 21 A. L. J. 869=83 Ind. Cas. 904 ; 98 Ind. Cas. 177=5 Bur. L. J. 100=A. I. R. 1926 Rang. 193 ; 83 Ind. Cas. 485=28 C. W. N. 561. Evidence of an expert should be approached with considerable caution especially where much depends upon such evidence. 1 C. L. J. 385 ; 2 A. L. J. 444. See 9 C. 455 : 13 O. C. 1 ; 4 L. B. R. 125. But if he has not been cross-examined , the weight of his evidence is not diminished 55 Ind. Cas. 273.

Facts bearing upon opinion of experts

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a*) The question is whether A was poisoned by a certain poison.

The fact that the other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that person, is relevant.

(*b*) The question is whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that the other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Scope.—Facts not otherwise relevant, have in some cases been permitted to be proved as supporting or being inconsistent with the opinion of experts. (*Step. Dig. art.* 50). Facts although otherwise irrelevant, may be given in evidence in corroboration, illustration, or rebuttal of opinion. So, on cross-examination he may be asked, *inter alia* whether he has not expressed opinions inconsistent with his present testimony ; and if he deny the fact it may be independently proved. (*Phipson, Ev.* 347).

Opinion as to hand-writing, when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustrations.

The question is, whether a given letter is in the hand-writing of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him, C is B's clerk, whose duty it was to examine, and file B's correspondence. D is B's broker, to whom H habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwritting of A are relevant. though neither B, C nor D ever saw A write.

Scope.—Hand-writing may be proved not only by the person who saw the particular document signed but also by any person acquainted in any manner with the hand-writing of the person said to have signed the document in question,

e. g. by (a) having seen him write at any time, (b) having received documents purporting to be in his hand-writing, or (c) having, in the ordinary course of business, observed or dealt with documents purporting to be his hand-writing, *Doe* v. *Suckermore*, 7 L. J. K. B. 33; *Cockle's Cas. 327*. "The only evidence of hand-writing which is entitled to be called direct is the evidence of a witness who proves that he himself wrote or signed the document in question, or that of a witness who proves that he saw the document signed or written. All other evidence of hand-writing must rest in greater or less degree upon inferences drawn from the appearance of the writing in question or other circumstances". *(Wills. Cir. Ev. 184)*.

Cases.—A witness need not state in the first instance how he knew the hand-writing, since it is the duty of the opposite party to explore on cross-examination the sources of his knowledge, if he be dissatisfied with the testimony as it stands. It is permissible and may often be expedient that the matters referred to in the explanation should be elicited on the examination-in-chief. Yet, it is within the power of the presiding Judge and often may be expedient to permit the opposite advocate to intervene and cross-examine so that the Court may be in a position to come to a definite conclusion on adequate materials as to the proof of the hand-writing. 5 Bom. L. R. 663=28 B. 58. The ordinary methods of proving. hand-writing are (*i*) by calling as a witness a person who wrote the document or saw it written or who is qualified to express an opinion as to the hand-writing by virtue of s. 47; (*ii*) by a comparison of hand-writing as provided in s. 73; and (*iii*) by the admission of the person against whom the document is tendered. A comparison of hand-writing is a made of ascertaining the truth which ought to be used with very great caution. 26. C. W. N. 113. The opinions of those who have not carefully studied the art of caligraphy is not as a rule of very great utility. 64 Ind. Cas. 234.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if if it existed are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustrations.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Scope.—By s. 98, evidence may be given with reference to a document, to show the meaning of technical, local and provincial expressions, abbreviations and words used in a peculiar sense. For this purpose the opinions of persons having special means of knowledge on the subject would be the best evidence. (*Cun. Ev.* 202). Section 32, clause (4) makes the statement of dead persons, as regards the existence of public right or custom or matters of public or general interest, relevant. These are all exceptions to the rule of rejection of opinion evidence. So the statements made by persons who are in a position to know of the existence of a custom or usage in their locality are admissible under this section. 26. C. 184 A general custom or general right may be proved by evidence, under this section—by the opinions of persons who would be likely to know of its existence. if it existed such opinions are relevant, but such opinions must be given by witnesses who gave evidence. 1 L. B. R. 80. It is admissible evidence for a witness to give his opinion on the existence of a family custom. 23 A 37. (P. C.). See 10 C. W. N. 730 P. C. 5 C,; 744 P. C.; 23 C. 427; 12 C. W. N. 74 P. C.

Opinions as to usages, tenents, ect, when relevant.

49. When the Court has to form an opinion as to—

the usages and tenents of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people.

the opinions of persons having special means of knowledge thereon, are relevant facts.

Cases.—Where witnesses, as members of a family, have special means of knowledge, as to the usages of the family, their evidence will be relevant under this section, so far as the existence of such usage is concerned. 32 C. 6. It is admissible evidence for a witness to give his opinion on the existence of a family custom, and to state, as the grounds of that opinion, information derived from deceased persons. But it must be the expression of independent opinion based on hearsay, and not mere repetition of hearsay. 10 M. L. J. 267 P. C.=23 A 37. As regards proof of paternity of illegitimate child, vide. 27 M. 32.

Opinion on relationship' when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise has special means of knowledge on the subject, is a relevant fact :

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code.

Illustrations.

(*a*) The question is whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b*) The question is whether A was the legitimate, son of B. The fact that A was always treated as such by members of the family, is relevant.

Scope.—The scope of this section, leaving the exception out of consideration, seems to be that the person himself is not to be called to state his own opinion ; but that, when he is dead or cannot be called, his conduct may be proved by others. The section appears to afford an exceptional way of proving a relationship, but by no means to prevent any person from stating a fact of which he or she has special means of knowledge. A husband or wife is not, therefore, precluded from proving his or her marriage. 9 M. 9=1 Weir. 572. Under the proviso to this section, in proceedings of the kind therein specified, opinion relevant under this section is not by itself sufficient to prove marriage which must, in consequence, be proved in some other way. 5 P. R. 1894 Cr. ; see also 5 A. 233=A. W. N. 1883. 1. Where marriage is an ingredient in any offence, *e. g.*, adultery, bigamy and the like, there must be, acording to this section, strict proof, in the regular way of the fact of the marriage. 5 C. 566 (F. B.). A person claiming as an illegitimate son must establish his alleged paternity like any other disputed question of relationship, and can, of course, rely upon statements, of deceased persons under s. 32, cl, (5), upon opinion expressed by conduct under s. 50. 27 M. 32. The proof as to whether there was a marriage between two parties is to include a consideration of the character and conduct of various relatives. 56 I. A. 201=10 Lah. 725=31 Bom. L. R. 346=117 Ind. Cas. 17=50 C L. J. 89.

Grounds of opinion, when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Object.—An important test of the value of the expert's evidence is thus provided. The Court is not left to the bare statement of an opinion but can inquire into the grounds on which it is based, and thus ascertain whether there are any grounds or whether they are reasonably adequate. This section is to a great extent a repetition of section 46. (*Cun. Ev.* 204.) See also, 10 Bom. L. R. 97 ; 26 B 1 (P. C.). In criminal trial, chemical examiner must give in his report opinion and grounds on which opinion is based. A. I. R. 1933 All. 394=34 Cr. L. J. 754=1933 Cr. C. 664.

CHARACTER, WHEN RELEVANT.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In civil cases, character to prove conduct imputed, irrelevant.

Principle.—"The general character is not in issue. The business of the Court is to try the case, and not the man ; and a very bad man may have a very righteous cause." (*Thompson* v. *Church.* 1 Rost. 312 : *Wig. Cas.* 29).

Criticism —"The accepted general rule is that evidence of the general character of parties to civil ac ions, where character is not a part of the issue, is inadmissible. The rule seems to be one of practical convenience, for the purpose of avoiding the confusion of issue. On principle, howevet, it would seem that there ought to be exceptions to this general rule. In as much as the general rule is not based upon any philosophical reason, but is merely one of convenience, it ought not to be applied to cases where justice to the defendant requires that the inconvenience arising from a confusion of the issues should be disregarded, and he be permitted to give evidence of his previous good character, or, in other words, that such evidence ought to be received in a civil action when it is of a character to bring it within all of the reasons for admitting such evidence in criminal cases. Civil actions for an indecent assault, for seduction, and kindred cases, are of this character ; such cases are not infrequently mere speculative and black-mailing schemes. The consequences to the defendant of a verdict against him in such a case are most serious, for the issue as to him involves his fortune, his honour, and his family. From the very nature of the charge, it often happens that an innocent man can only meet the issue by a denial of the charge and proof of his previous good character. Ought a defendant in such a case to be deprived of the right to lay before the jury evidence of his previous good character, because it will tend to confuse the issue, while a defendant in a case where the State charges him with a simple assault, involving no more serious consequences than the payment, perhaps, of a fine of five dollars, is accorded the absolute right to give such evidence ?—*Per Start C. J.* in *Hein* v. *Holdridge* (1900) 81 N. W. 522. See also 6 W. R. Cr. 62 ; 7 W R. Cr. 7 ; 59 Ind. Cas. 560 ; 1 C. W. N. 146 ; 26 Ind. Cas. 625 ; 62 Ind. Cas. 545 ; 13 Ind. Cas. 102 ; 16 C. W. N. 69.

Scope.—The character of the parties to civil action is generally irrelevant and inadmissible. *Attorney General* v. *Bowman* 2 B. and P. 532.

53. In criminal proceedings the fact that the person accused is of a good character is relevent.

In criminal cases previous goods character relevant.

Principle.—The accused in a criminal case can always give evidence of his good character. *R* v. *Rowton*, 34 L. J. M C. 57. A man's character is often of the utmost importance in explaining his conduct and judging of his innocence or criminality. Many acts, which standing alone, would be suspicious, are freed from all suspicion when we come to know the cricumstances and. character of the person by whom they are done. (*Cunningham Ev.* 205). No importance can be attached to evidence of good character when the case against the accused is clear.

Evidence of character.—Evidence of character is admissible for the prisoner, who may show by general evidence that his character is such that he is not likely to have committed the offence which is imputed to him. He can only support that part of his character which is impeached, and only by general evidence not by evidence of his conduct on particular occasions. The proper form of the qusetion is from your knowledge of the prisoner does he bear a good character for honesty, humanity, etc," as the case may be. (*Roscoe. Ev.* 95.)

54. In criminal proceedings the facts that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Previous bad character not relevant, except in reply.

Explanation. 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Legislative changes.—This section has been substituted by Act 3 of 1891.

Scope.—It is generally stated, that evidence of a prisoner's good character is admissible, but evidence of his bad character is inadmissible, except in answer to evidence of his good character. But why cut up the rule into two parts? It seems to be simply this—evidence of the prisoner's character, good or bad, is always admissible at the prisoner's option whenever his good character is admitted his bad character is admissible. (*Cockle's Cas.* 112). "Evidence of character must, of course, be applicable to the particular nature of the charge; to prove for instance, that a party has borne a good character for humanity and kindness, can have no bearing in reference to a charge of dishonesty. The correct mode of inquiry is as to the general character of the accused." (*Will's Circumstantial Ev. p.* 226). Evidence of bad character should not be put before the jury. 15 W. R. Cr. 37; 7 W. R. Cr. 7; 8 W. R. Cr, 11; 6 W. R. Cr. 72; 2 B. H. C. R. 125; 5 L. B. R. 4; 15 P. R. 1888 Cr.; 5 Bom. L. R. 1034 52 M. 358. Under this section the fact that the accused has a bad character is irrelevant and cannot be admitted whether elicited by the prosecution or by the defence. 6 L. B. R. 4=9 Cr. L. J. 576=2 Ind. Cas. 349; 54 B. 524=A. I. R. 1930 B. 157; 15 P. R. 1888 (F. B); But this restriction does not apply to cases where bad character of any person is itself a fact in issue. A. I. R. 1930 Oudh. 455=128 Ind. Cas. 739; see also 7 P. R. 1895 Cr; A. I. R. 1932 Cal. 474; A. I. R. 1933 All. 674. Except for the purposes of awarding enhanced punishment in cases falling within the provisions of s. 75, Penal Code, evidence of previous convictions after amendment by Act III of 1891, s. 6 stands upon the same footing, as regards admissibility, as other evidence of bad character. 7 P.R. 1895 Cr; 5 Bom. L.R. 105=28 B. 129; 5 Bom. L. R. 1035. Previous conviction may be admissible when such conviction is a relevant fact under s. 14 of the Act. 1 C. W. N. 146; A. I. R. 1928 Cal. 430; 16 C. W. N. 69. The evidence of a police-officer that the accused person was under police surveillance in order to make the prosecution story sound and probable, is hopelessly inadmissible. A. I. R. 1931 Pat. 345=12 Pat. L. T. 471. But if evidence is otherwise relevant it is not inadmissible. A. I. R. 1932 Cal. 474.

Explanation 1.—In all actions or proceedings in which a plaintiff's character, is actually in issue, as in actions for defamation, evidence of the plaintiff's charac er may be given. *Scott* v. *Sampson*, L. R. 8 Q. B. D. 491; see also A. I. R. 1928 Oudh. 430; 46 C. 700=54 Ind. Cas. 53; A. I. R. 1930 Bom. 157. In prosecution for rape, or assault to commit rape, or indecent assault evidence of the bad character of the prosecutrix, may be given in defence, her character, under the circumstances, being considered, to some extent, in issue. (*R.* v. *Clarke*, 2 *Starkie* 241; *Cockle's Cas.* 112). In a bad livelihood case, the character of the accused is a fact in issue and as such evidence of his bad character is admissible in evidence. See 11 C. W. N.789. Upon the conviction of an accused, the Court has to determine what punishment to award, and, to do this should take into consideration, not only the nature and gravity of the offence committed, but also the character of the accused, the bad character of the accused then becomes a fact in issue. Evidence of bad character being admissible as affecting the sentence, evidence may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition is shown. Evidence as to previous convictions is an exception to this rule. Evidence of departmental punishment is inadmissible for the purpose. L. B. R. (1893-1900), 352.

Explanation 2.—It has been held that if a prisoner's counsel elicited on cross-examination, from winesses for the prosecution that the prisoner has borne a good character, a previous conviction might be put in evidence against him, in like manner as if witness to his character had been called. *Per Park B.*, in *R.* v *Gadbury*, 8 C. and P. 676. See also *R.* v. *Shrimton*, 8 Den. C. C. R. 319=21 L. J. M. C. 37. Where a man is being tried upon a specific charge, unless within the four corners of the law, proof of a previous conviction is allowed for the purpose of proving guilty knowledge, or whatever it might be, no question ought to be permitted and no evidence allowed to show that he is a man of bad and dishonest character. But if the accused at his trial, choose to put in issue the question of his good character, it is then competent to rebut such evidence by giving evidence of general evil reputation. 14 A. 25. This section has no bearing whatever upon the question of the relevancy of a previous conviction after an accused has been covicted of the

offence with which he has been charged, and for the purpose of enhancing the sentence to be passed upon him. It refers solely to the relevancy of a previous conviction as evidence to prove that the accused is guilty, and should be convicted of the particular offence with whch he is charged. L. B. R. (1872-1892). 449.

The Evidence Act gives the Court a discretion to admit previous conviction as evidence of character, at any stage of the trial, in all cases in which there is such a connection between the act of which the prisoner was found guilty on the previous conviction and the facts to be proved, as bears upon the probability of the prisoner having committed the act charged, and in those cases where the previous conviction is of a kind falling within any of the classes of connection with the facts to be proved stated in ss. 6 to 16.—2 Weir 760. See also 14 C. 721. But in other cases the proof of previous convictions as evidence giving rise to an inference regarding the character of the prisoner is not admissible. 5 C. 768=6 C. L. R. 219: L. B. R. (1893-1900), 93; 5 Pat. L. J. 706.

The proof of a previous conviction not contemplated by s. 75 Penal Code, may be adduced after the accused is found guilty, provided the previous conviction is relevant under the Act. 16 Bom. L. R. 934=26 Ind. Cas. 996.

Cases.—The fact that the accused had a bad character is not irrelevant under this section when the evidence relating to it is not given for the purposes of showing that the accused was a bad character and therefore likely to commit offences of the kind of which he has been convicted. 2 Lah. L. J. 653. Evidence of previous conviction is admissible not as evidence of character but to prove habit and association. 10. O. W. N. 686=A. I. R. 1933 Oudh. 355.

Character as affecting damages.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54, and 55. the word "character" includes both reputation and disposition; but [except as provided in section 54,] evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Legislative changes.—The words within brackets have been substituted by Act 3 of 1891.

Scope.—In all actions or proceedings in which a plaintiff's character is actully in issue, as in actions for defamation, evidence of the plaintiff's character may be given. (*Scott* v. *Sampson*. L. R. 8. Q. B. D. 491.) In a few cases, where the amount of damages depends upon character, as in seduction and breach of promise of marriage, evidence may be given of the character of the woman seduced, or the female plaintiff, but upon the question of damages only. *Very* v. *Watkins*, 7 C. and P. 308. In general, in actions unconnected with character, evidence as to the character of either of the parties to a suit is inadmissible, being foreign to the point in issue, and only calculated to create prejudice. For the same reason, where particular acts of misconduct are imputed to a party, evidence of general character is excluded but it is otherwise where general character is put in issue; (*Doed Foar* v. *Hicke*, per *Buller J.*); for evidence of bad character is admitted in some actions with a view to the amount of damages. Thus, in actions of criminal conspiracy, the defendant could adduce evidence of the wife's bad character for chastity, and even of particular acts of adultery committed by her before her intercourse with him; for by bringing the action, the husband put her general behaviour in issue. So in seduction the defendant may show the previous bad character of the person seduced. But even in such cases it has been held that the plaintiff cannot give evidence of the good character of the wife or daughter, until evidence has been offered on the other side to impeach it. *Bamfield* v. *Massey*, 1 Camp. 460; and if such evidence be not general, but go only to a specific instance, it has been ruled that the paintiff cannot, in reply, give evidence of general character, but must be restricted to disproof of the specific instance. *Ibid*; *Dodd* v. *Norris*, 3 Camp 519. So, in an action for slander imputing dishonesty to the plaintiff, he cannot adduce evidence, in the first instance, of good character. *Stuart* v. *Lovell*, 2 Stark. 93; *Cornwall* v. *Richardson*, *Ry.* and M. 305 =*Rosceo Ev.* 87.

Explanation.—It seems that this explanation is based upon the dissenting judgment of *Wills, J.* in *R.* v. *Rawton*. 10 Cox. Cr. 25. Therein he observed: "I apprehend that the man's disposition is the principal matter to be inquired into, and

that his reputation is merely accessory, and admissible only as evidence of disposition. The judgment of the particular witness is superior in quality and value to mere rumour. Numerous cases may be put in which a man may have no general character—in the sense of any reputation or rumour about him—at all, and yet may have a good disposition. For instance, he may be of a shy, retiring disposition, and known only to a few, or again, he may be a person of the vilest character and disposition, and only his intimates may be able to testify that this is the case. One man may deserve that character [reputation] without having aquired it, while another man may have acquired without deserving it. In such cases the value of the judgment of a man intimates upon his character becomes manifest. In ordinary life, when we want to know the character of a servant, we apply to his master. A servant may be known to none but members of his masters family ; so the character of a child is only known to its parents and teachers, and the character of a man of business to those with whom he deals. According to the experience of mankind one would ordinarily rely rather on the information and judgment of a man's intimetes than on general report ; and why not in a Court of law ?" But the English law is based upon the judgment of the majority according to which evidence of character must not be evidence of particular facts, but must be evidence of general reputation only having reference to the nature of the charge ; not evidence of disposition. The Indian Legislature more wisely accepted the views of the minority so far as disposition is concerned but laid down that only general reputation and general disposition are admissible.

PART II.

On Proof

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Principle.—There are certain matters which are considered too notorious to require proof ; such matters are therefore "judicially noticed," that is to say, the Judge takes notice of their existence and nature without requiring any evidence thereof. English law is dealt with in the same way, as, although it may not be so notorious to the public generally, it is taken to be within the knowledge or rather, in the "breast" of the Judge. (*Cockle's Cas.* 13). "The maxim that what is known need not be proved, *manifesta* (or *notoria*) *non indigent probantione*, may be traced far back in the civil and the common law ; indeed, it is probably coeval with legal procedure itself. We find it as a maxim in our own books, and, it is applied in every part of our law. It is qualified by another principle, also very old, and often overtopping the former in importance—*non report quid notum sit judice, si natum non sit in farma judici.* These two maxims seem to intimate the whole doctrine of judicial notice." *Thayer Pre. Treat.* on *Ev.* 277. When a cause is presented at the bar for trial, the Court and Jury are presumed to be uniformed concerning the facts involved in the case, and it is incumbent upon the litigant parties to establsh by evidence facts relied upon by them respectively. There is, however, a large class of facts which need not be proved, since they are "judicially noticed" by the Court and Jury, that is to say, there are a great many thing of such common knowledge that the Courts ought to be presumed to know them,—such as the Declaration of Independence ; the earthquake and the great fire of San Francisco in 1906, and other matters of past history ; the existence and procedure of their own Court ; the public laws : the calendar, the public mortality tables ; treaties entered into by their own government, and many other matters of such general notoriety that every well-informed man or woman within the limits of the Court's jurisdiction must or should know. If it so happened that the proof of any such facts formed part of a litigant's case, he is excused from proving them, as it is said the Court will take judicial cognizance of their existence, or in other words they will be taken as proved. And the importance of the subject of judicial notice can hardly be over-estimated, for there is no case in which there are not some matters which will fall within the judicial cognizance of the tribunal before which it is tried,

since the very law itself which is administered by the forum is a subject of judicial notice. (*Burr Jones Ev.* § *105*).

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts;—

(1) all laws or rules having the force of law now or heretofore, in force, or hereafter to be in force, in any part of British India :

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(3) Articles of War for Her Majesty's Army or Navy :

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act, * or any other law for the time being relating thereto.

Explanation.—The word "Parliament" in clauses (2) and (4) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland ;
(2) the Parliament of Great Britain ;
(3) the Parliament of England ;
(4) the Parliament of Scotland ; and
(5) the Parliament of Ireland ;

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland ;

(6) all seals of which English Courts take judicial notice, the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council ; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India, or in the official Gazette of any Local Government :

(8) the existence, title and national flag of every State or Sovereign recognised by the British Crown :

(9) the divisions of time, the Geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette ,

(10) the territories under the dominion of the British Crown :

(11) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons :

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders other persons authorized by law to appear or act before it :

(13) the rule of the road † [on land or at sea].

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Scope.—It will be readily seen that the subjects of judicial notice are so numerous and varied that it is next to impossible to classify them, or to say further

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* 24 & 25 Vict., c. 67

† These words in section 57, para (13), were inserted by the Indian Evidence Act Amendment Act (18 of 1872), s 5.

than that they embrace subjects, "judicial, legislative, political, historical, geographical, commercial, scientific and artistic, in addition to a wide range of matters, arising in the ordinary course of nature, or the general current of human affairs, which rest entirely upon acknowledged notoriety for their claims to judicial recognition." (*Burr Jones* § 105). The matters enumerated in this section are by no means exhaustive. In this section certain matters are mentioned of which judicial notice should be taken. But the Courts can take judicial notice of facts not mentioned in this section. (See also *Stephen's Dig* Art. 58). A Court can not take judicial notice of a Government Notification under s. 57 of the Evidence Act. 107 Ind. Cas. 578=A. I. R. 1928 A. 355. A Court can not take judicial notice of theft in a railway. A. I. R. 1928 Lah. 837.

Clause (1).—The English Courtst ake judicial notice of the Laws of England and Ireland nor that of the Channel Islands, nor of Scotland, except in the House of Lords, nor that of the colonies and India except in the Privy Council, and, naturally, nor that of foreign countries. (*Cockle's Cas. 16.*) The law thus noticed includes both public and private Acts of Parliament, general customs and some local customs of well known extensive application, such as Gavelkind and Borough-English customs ; but generally local or particular customs must be proved (*Ibid*). A Judge may refer to authorities to refresh his memory. So far as Indian law is concerned, the English rule should serve as a guide.

Clause (2).—As has been mentioned in clause (1) the English Court takes judicial notice of all Public Acts passed by the Parliament and since 1850 Private Acts also. It was customary, before 1850, to insert a clause in Private Acts of Parliament declaring that the same should be deemed public and be judicially noticed. The effect of this clause was to dispense with the necessity, not only of pleading the Act specially but of producing an examined copy or a copy printed by the Printer of the Crown ; a public Act requiring neither to be specially pleaded nor proved. By 13 and 14 Vict. c. 12, it was enacted : "That every Act made after the commencement of this Act shall be deemed and taken to be public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act." Thrs provision is now repealed by the interpretation Act, 1889, 52 and 53 Vict c. 63, which provides, by s. 8, that every Act passed after 1850 "shall be a Public Act and shall be judicially noticed, as such, unless the contrary is expressly provided by the Act." So now every personal Act or local Act should be taken notice of by the Indian Courts.

Clause (3).—Vide the Indian Army Act (VIII of 1911).

Clause (4).—The English Courts will judicially notice the Law of England and Ireland, including the Law and Custom of Parliament and the privileges and course of proceedings of each House of Parliament. *Stockdale* v. *Hansard*, 9 A. and E. 1=2 P. and D. 1. The Court should take judicial notice of debates of Parliament. 14 C. W. N .713=37 C. 760.

Clause (5).—The English Courts take judicial notice of the great privy seal (*Lord Melville's Case*, 29 How. St. Tr. 707) ; of royal proclamation ; of the signature of the Clerk of the Parliaments (*Badische* v. *Levinstein*. 4 R. P. C 470 ; seal of the Corporation of London (*Doe* v. *Mason*, 1 Esp. 53) ; seal of the Apothecaries Company (14 and 15 Vict. C. 99. s 81) ; the seal of the Board of Trade ; seals of district registeries. (Judicature Act, 1873, S. 61) ; seals and signatures of Commissioners for Oaths (*Ex parte Magee*) 15 Q. B. D. 332) ; the seal of a notary public in any part of His Majesty's dominions. but not of a foreign notary public. *In re Davis*, (1910) W. N. 212 ; seals of county Courts, etc.

Clauses (6) and (7)—10 C. L. R. 469.

Clause (7)—5 Ind Cas. 537.

Clause (8).—4 O. C, 182 ; 51 P. R. 1886.

Clause (9).—The Court can take judicial notice of public holidays. 59 Ind. Cas. 926 ; 16 N. L. R, 198.

Clause (13).—It is provided by the Indian Evidence Act that than on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books of reference. 1 M. L. J. 326. Under the penultimate paragraph of this section and of the first proviso of this section Taylor's Medical Jurisprudence mas be referred to. 12 C. L. R. 86.

The statement by H. M.'s Commissioner and Consul General for Uganda is sufficient for the Courts taking judicial notice, of the existence of hostilities between Katuga, the king of Unyard and Her Majesty the Queen, and the protected State of Uganda. 23 B. 54. See also. 46 Ind. Cas. 119 ; 22 C. W. N. 745=28 C. L. J. 32.

Case.—13 Ind. Cas. 599.

Facts admitted need not be proved.

58. Not fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings.

Provided that the Court may, in its discretion require the facts admitted to be proved otherwise than by such admissions.

Scope.—Any matters which have been admitted for the purpose of the trial need not be proved. Admissions thus expressly made in the proceedings prior to or at the trial are sometimes called formal or express admissions, to distinguish them from those informal or casual statements made by a party against his interest, which may, at the trial, be proved by witnesses. Formal or Express admissions may be made (*a*) on pleadings ; (*b*) on notice to admit facts or documents, served by one party on another ; (*c*) in answer to interrogatories administered by one party to another ; (*d*) by Solicitor or counsel, in the exercise of his discretion, at or before trial. (*Cockles Cas* 37.) It should, however be noted here that express admissions are only allowed in civil cases. They are never allowed in criminal cases, unless a plea of "guilty" can be treated as such. (*Ibid*, 37.) But see Rat. Un. Cr. C. 769. Under this section no fact need be proved which the parties agree to admit at the hearing or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. U. B. R. (1897-1901). Vol. 11. 379. When an agreement sued upon is admitted by the defendent, proof of it is dispensed with. 11 Ind. Cas. 810. Where a document is by reference included in the plaint or written statement, and its terms and execution admitted on the record by the pledings it is not necessary to prove it or put it in evidence and its non-registration is immaterial. U. B. R. 1904, 3rd Qr. Evidence 1. See also 9 Ind. Cas. 470 ; 12 Bom. L. R. 712 ; 11 Ind. Cas. 850 ; U. B. R. 1907, Ev. 1 ; 9 Ind. Cas. 970.

An accused person is bound by an unqualified admission made at the trial by his solicitor. In England, a formal admission by the counsel at a trial has been allowed in order to dispense with mere formal proofs. In India there is nothing to prevent a prisoner, on being questioned under s. 342, to make an admission ; and it is obvious that some admissions on formal matters of law can be better trusted to his legal adviser, and there seems to be no reason in principle why, when the admission has been so made in his presence at the trial so as to dispense with the attendence of witnesses for the prosecution, it should not be held to bind him. Rat. Un. Cr. C. 769. When an agreement sued upon is admitted by the defendaut, proof of it is dispensed with. A Court cannot dismiss a suit based on an admitted document, on the ground that the document was not sufficiently stamped. 11 Ind. Cas. 810.

Cases.—2 Lah. L. J. 253 ; 20 M. L. T. 44 ; 42 B. 352 ; 1918 M. W. N. 853.

CHAPTER IV.

OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Scope.—All facts except the contents of a document may be proved by oral evidence. The sworn testimony of a witness should not be ignored and disbelieved unless discredited or broken down by contrary proof, or by matter elicited in cross-exmamination, which may tend to show that the persons giving such evidence have deliberately perjured themselves, or have made a false and concocted statement, or unless the evidence is, upon the face of it, so absurd or improbable that no person ought to believe it. A. W. N. 1887, 189 ; 26 A. 108 (P. C.)=31 I. A. 38. It is not correct to hold that, for the determination of the

merits of cases, oral testimony unsupported by documentary evidence is of no value. 18 W. R. 328. The evidence of one witness, if reliable, is not insufficient to prove a fact. 11 W. R. 94.

Discrepancies in evidence must be carefully considered and their effect allowed for, but when they can be fairly reconciled by explanation or can be naturally and reasonably accounted for, evidence, otherwise trustworthy, cannot be put aside, although its value may be *pro tanto* impaired, solely because of their concurrence. U. B. R. (1897—1901) Vol. I, 162.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it:

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also, that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Direct.—The term is used in two senses; as evidence of fact actually in issue *i. e.* opposed to circumstantial evidence and evidence of a fact actually perceived by a witness with one of his senses, or of an opinion actually held by himself (as distinguished from hearsay evidence.) (*Cockle's Cas. 3*).

Scope.—Direct evidence, as opposed to hearsay evidence is generally required. The evidence must be given by a witness who perceived directly by one of his senses the fact to which he deposes. Hearsay evidence, that is the evidence of a witness as to a fact which he did not himself perceive, but which he proves was stated by any other person, is not admissible, except in a few special cases. (*Stokbart* v. *Dryden*, 5 L. J. Ev. 218; *Cockle Cas. 149*); see also 12 B. L. R. App. 18; 1924 Rang. 363; 1924 Lah. 733.

Principle.—The grounds commonly assigned for the rejection of hearsay evidence are—(1) the irresponsibility of the original declarant; (2) the depreciation of truth in the process of repetition; (3) the opportunities for fraud its admission would open; to which may be added the tendency of such evidence to protract legal inquires, and to encourage the substitution of weaker for stronger proofs. (*Phipson Ev. 189*). In the *Berkeley Peerage case*, 4 Camp. 415, *Sir James Mansfield C. J.* observed: "By the general rule of law, nothing that is said by any person can be used as evidence between contending parties, unless it is delivered upon oath in the presence of those parties. If material witnesses happen to die before the trial, the person whose cause they would have established may fail in the suit; but although all the bishops on the bench should be ready to swear to what they heard those witness to declare, and add their implicit belief of the truth of the declarations, the evidence would not be received."

It was not intended by this section to exclude the circumstantial evidence of things which can be seen, heard or felt. 12 B. L. R. App. 18.

Where information was given to the Police that the first three accused were collecting in the house of the fourth accused with intent to commit dacoity, and the person who gave the information was not produced before the Court, *held* the Judge

had wrongly admitted the hearsay evidence of the Police officers as to the intention of the accused to commit dacoity, although the Judge was not wrong in allowing the officers to name the person who told them that they would find the first three accused in the house of the fourth. 2 Weir 702.

Cases.—22 C. W. N. 75 ; 38 M. 466 ; 4 Ind. Cas. 579.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Scope.—There are two methods of proving a document—either by primary or by secondary evidence. When primary evidence is available secondary evidence is not admissible, Where a copy of a document is admitted in the Court below without any objection, objection to the admissibility of the same should not be allowed in the appellate Court. 31 C. 155.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each conterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each in primary evidence of the contents to the rest, but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Explanation 1.—Where a mortgage deed has been executed in duplicate, each part would be primary evidence of the document under this section. U. B. R. (1892-1896) Vol, 11, 234. "Duplicate originals" or copies executed by all parties are primary evidence against all such parties. Counterparts or copies executed by certain parties only, are primary evidence against such parties only (*Cockle Cas.* 308).

Secondary evidence.

63. Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained ;
(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;
(3) copies made from or compared with the original ;
(4) counterparts of documents as against the parties who did not execute them ;
(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a latter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Scope.—This section is exhustive of the kinds of secondary evidence admissible under the Act. 43 M. L. J. 37, ; see also 10 Ind. Cas. 852.

Clause (1).—Certified copies mean copies signed and certified as correct by officials having custody of originals. They are allowed as evidence by various statutes. (*Cockle Cas.* 323).

Clause (2)—Vide Illustrations (*b*) and (*c*).

Clause (3)—This clause includes copies proved by oral evidence to have been examined with and to correspond with the originals. The witness may either have examined the copy which another person, not called as a witness read from the original. All public documents may be proved in the manner, but certified or office copies are generally used when available. (*Cockle Cas.* 323). See also 1924 Nag. 375; 20 L. W. 719. Printed copy of the depositions of a party to the former suit made in English, which depositions came up to the Madras High Court in 1900 on appeal, is admissible in evidence. A. I. R. 1929 Mad. 187=115 Ind. Cas. 147.

Clause (4)—"Counterparts" or copies executed by certain parties only, are primary evidence against such parties only. *Cockle Cas.* 308.

Clause (5).—66 Ind. Cas. 557; 36 Ind. Cas. 696. "Seen" includes also "read over." 73 Ind. Cas. 654. See also 71 Ind. Cas. 654; 3 Bur. L. J. 172; 22 A. L. J. 864=80 Ind. Cas. 939=(1924) All. 792.

Illustration (c)—A copy of a copy is inadmissible in evidence. 54 Ind. Cas. 941=1 P. L. T. 47; 7 A. 738.

Cases.—No secondary evidence can be given of a document, which is not proved to have been written by the accused or to have ever existed. 8 A. L. J. 302=12 Cr. L. J. 259=10 Ind. Cas. 852. It is not open to the appellate Court to consider whether the provisions as to secondary evidence have been complied with. 3 Pat L. T. 397. A statement made by a party or his authorised agent in a previous suit, in which he refers to a document which is against his interest, is secondary evidence of that document. 53 Ind. Cas. 667. See also, 25 M, L. T. 19. A translation of a *purwanah* or grant is not secondary evidence of that grant and so it is not admissible in evidence. 35 Ind. Cas. 201=4 L. W. 331.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Scope.—Secondary evidence is not admissible where loss of primary evidence is not proved. U. B. R. (1892-1896). As regards documents the best evidence in the possession or power of the party tendering it must be given. Generally, the best evidence of a document is the original document, which is "primary evidence" of its contents. Such original must be produced unless its absence is accounted for. *Macdonal* v. *Evans*, 21 L. J. C. P. 141. The original document must be produced whenever there is a question as to its contents or terms, unless for special reasons secondary evidence is allowed. *R.* v. *Elworthy*, L. R. 1 C. G. R. 103=37 L. J. M. C. 3; *R.* v. *Hunt* 3 B. and Ald. 566. But when the loss of the original has not been proved and inspite of that the Court of first instance admitted a copy of the sale certificate, without any objection from the other party, no objection can be taken in the appellate Court. 3 L. B. R. 40.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(*a*) when the original is shown or appears to be in the possession or power—
of the person against whom the document is sought to be proved, or
of any person out of reach of, or not subject to, the process of the Court, or
of any person legally bound to produce it,
and when, after the notice mentioned in section 66, such person does not produce it ;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest ;

(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;

(*d*) when the original is of such a nature as not to be easily moveable ;

(*e*) when the original is a public document within the meaning of section 74 ;

(*f*) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;

(*g*) when the original consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*) (*c*) and (*d*) any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, aud who is skilled in the examination of such documents.

Clause (a)—Secondary evidence of a document is admissible when the original is in the possession of an adverse or opposite party, who refuses to produce it after a proper notice to produce. The object of a notice to produce is merely to give the other party sufficient opportunity to produce the document if he pleases, and not that be may have time to consider the terms of the document and to prepare evidence or argument in suport of or against it. Therefore, where the document is in Court at the time of the trial, a notice to produce it immediately is sufficient to render secondary evidence of its contents admissible if it be not produced. 21 L. J. Ex, 925 ; *Cockle Cas*, 314. Secondary evidence of a document is also admissible when the original is in the hands of a stranger, or third person, who is, on the ground of privilege, not compellable by law to produce it, and whe refuses to do so, either when summoned as a witness with a "*subpoena duces tecum*" or when sworn as a witness without a *subpoena* if he admits that he has the document in Court. *Mills* v, *Oddy*, 6 C. and P. 728 ; *Cockle Cas*, 316. But where he can be compelled to produce the document, secondary evidence is not competent. *R.* v. *Inhabitants of Leanfaethly*, 23 L. J. M. C. 33=*Cockle Cas*, 317. The law requires that a party shall do all that he can legally do to compel production of a document by a stranger before he puts in secondary evidence against an opponent. *Cockle Cas.* 318 ; see also 12 Ind. Cas. 861 ; 31 Ind. Cas. 892.

Cases.—L. R. 3. A. 8 ; 1922 (Bom.) 177 ; 3 Lah. 282 ; 67 I.C. 237 ; 4 Lah. L.J. 418 ; 66 Ind. Cas. 360 ; 24 O. C. 272 ; 62 Ind. Cas. 60 ; 62 Ind. Cas. 444 ; 23 Bom. L. R. 506 ; 49 Ind. Cas. 507 ; 41 A. 592 ; 35 Ind. Cas. 328 ; 34 Ind. Cas. 153 ; 23 C. L. J. 112 ; 12 Ind. Cas. 861 ; L. R, 4 A. 201 ; 71 Ind. Cas. 825 ; 1923 Rang. 113 ; L. R. 4 A. 152 ; 71 Ind. Cas. 568 ; 16 C. 753 ; 26 C 53.

Clause (c)—Secondary evidence of the contents of a document is admissible when the original is lost. U. B. R. (1897—1901) Vol. II. 382. But it must be shown

that proper search has been made for it. What is proper search depends on the nature and value of the document. More careful search will be required for a valuable than for a useless document. (*Brewster* v. *Sewell*, 3 B. & Ald. 296 ; *Cockle Cas.* 318). Such evidence is not admissible by mere assertion of loss. L. R. 3 A. 539 ; see also 67 Ind. Cas. 565 ; 4 Lah. 416 ; 49 Ind. Cas. 1006 ; 32 Ind. Cas. 399 ; 45 Ind. Cas. 888. Whether or not sufficient proof of search for or loss of an original document, to lay a ground for the admission of secondary evidence, has been given, is a point proper to be decided by the Judge of the first instance and depends very much on his discretion. A. I. R. 1929 Nag. 288.

Clause (d).—Secondary evidence of a document is admissible where the original cannot be brought to Court ; because it is physically impossible to bring the original, as in the case of writings on walls, tombstone and the like. *Mortimer* v. *M'callan*, 4 Jur. 172=*Cockle Cas.* 321.

Clause (e).—Secondary evidence of a document is admissible where the original cannot be brought to Court, because the law does not allow, or require, the original to be brought to Court, on grounds of public convenience, as in the case of public registers and other "Public Documents" including the books of the Bank of England. *Mortimer* v. *Macallan*, 4 Jur. 172=*Cockle Caa.* 321. So long as the original is in existence no secondary evidence other than a certified copy is admissible. 63 P. R. 1878. See also 17 C. P. L. R. 161 ; 2 Bom. L. R. 533 ; 10 C. P. L. R. 59 ; 34 C. 293 ; 22 C. W. N. 742.

Clause (f).—A registration office-copy of sale deed is admissible. 11 Ind. Cas. 50 ; 36 Ind. Cas. 673.

Clause (g).—Vide 2 Lah. L. J. 714 ; 6 M. 80 ; 5 C. 568.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is [or to his attorney or pleader,] such notice to prodoce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

(1) when the document to be proved is itself a notice ;

(2) when from the nature of the case, the adverse party must know that he will be required to produce it ;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;

(4) when the adverse party or his agent has the original in Court ;

(5) when the adverse party or his agent has admitted the loss of the document :

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Lagislative changes.—The words within brackets have been inserted by Act. 18 of 1872.

Scope.—Secondary evidence of a document is admissible when the original is in possession of an adverse or opposite party, who refuses to produce it after proper notice to produce. *Dwyer* v. *Collins*, 21 L. J. Ex. 225 ; See also 34 Cr. L. J. 305. A Court can in exercise of the discretion reserved to it by this section, dispense with the issue of a notice to produce it. 36 Ind. Cas. 696. No objection should be allowed to be taken in the Appellate Court as to the admissibiity of a copy of a document which was admitted in evidence in the first Court without any objection. 34 Ind. Cas. 539=216 P. W. R. 1912. It is doubtful if a *proforma* defendant who is not interested in suit property or in the decision of the case is an "adverse party" within the meaning of Proviso (2). 27 A. L. J. 1091=118 Ind. Cas. 663=A. I. R. 1929 A. 680.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of signature, and handwriting of person alleged to have signed or written document produced.

Scope.—To prove the execution of a bill of sale executed in their favour by the plaintiff's father, the defendant called a *Kagi* who deposed that the vendor came before him accompanied by witnesses, and acknowledge the execution of the deed, which was then registered. The lower appellate Court found it was sufficiently proved. On special appeal to the High Court it was contended that the execution was not sufficiently proved under this section. *Held*, that the proof of execution was sufficient : direct evidence of handwriting of the executant was not necessary under s. 67. 12 B. L. R. App. 16. This section does not require the subscribing witnesses to a document to be necessarily produced. 21 W. R. 429. Although under s. 67 no particular kind of proof is required for the purpose of establishing the fact of execution, it must nevertheless be shown to the satisfaction of the Court that the mark or signature denoting execution was actually fixed to the document by the person who professed to execute it. A Court is not bound to treat registration or endorsement as conclusive proof of the fact of execution. 46 Ind. Cas. 279= 5 O. L. J. 191.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence.

Proof of execution of document required by law to be attested.

"Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied."*

Scope.—When a document is (required by law to be) attested, one of the attesting witnesses must be called in order to prove it, if he be alive and capable of giving evidence. *Abott* v. *Plumbe*, 1 Douglas, 216 ; *Cockle Cas.* 931. A scribe is not an attesting witness. 35 A. 254 ; 20 C. W. N. 699 ; 5 N. L. R. 3. *Contra* 41 M. 535. Where only an attestor proved a mortgage bond attested by more than two witnesses and where its due execution was not denied, *held* that having regard to s. 68, the document may be taken as properly proved. 29 C. 355=6 C. W. N. 395. Sale-deed and surety bond do not require to be proved by attesting witnesses. 30 Ind. Cas. 64 ; 26 C. 222=3 C. W. N. 228. An unattested mortgage document cannot be proved even as containing a personal covenant to pay. 18 M. 29. Such objection cannot be taken for the first time in the appeal. 13 M. L. J. 143.

Where the requisite attestation is wanting that involves a question conclusively as to the validity of the transaction ; whereas, where an attesting witness, who ought to have been called, has not been called, that raises a question exclusively as to proof and admissibility. 2 M. L. T. 175=17 M. L. J. 213=30 M. 251. It is not necessasy that two attesting witnessess should be called when two are alive nor that even assuming that one only need be called, he should at least be made to prove that another attesting witness besides himself saw the execution. 39 M. L. J. 463=21 M. L. T. 213=58 Ind. Cas. 80. Mere proof of the genuineness of the signature if the executant of a document does not dispense with the proof of its proper attestation of the document is one required by law to be attested before it can effectuate a transfer. 55 Ind. Cas. 501.

Proviso.—The effect of this proviso is that if the document in question be not a Will and if it be a registered document, no attesting witness need be called to prove its execution unless its execution is specifically denied by the other party. All the cases laying down a contrary principle are made obsolete by this proviso.

* This proviso has been added by Act 31 of 1926.

A. I. R. 1922 Sind. 235 ; 33 C. W. N. 248. The amendment of s. 68 of the Evidence Act by Act XXXI of 1926 is a provision relating to processual law and not to substantive law and therefore must be taken to be retrospective in its operation. 57 M. L. J. 588=1929 Mad. 881.

Cases.—6 N. L. R. 152 ; 2 C. W. N. 603 ; 5 C. W. N. 454 ; 29 C. 355 ; 5 C. W. N. 454 ; A. W. N. 1897. 146 ; 14 C. W. N. 1046 ; 22 Bom. L. R. 136 ; 67 Ind. Cas. 87 ; 35 C. L. J 473 ; 14 L. W. 563 ; 2 Pat. L. T. 614 ; 59 M. L. J. 463 ; 316 Ind. Cas. 507 ; 48 C. 61 ; 34 C. L. J. 498 ; 61 Ind. Cas. 125 ; 60 Ind. Cas. 234 ; 14 L. W. 344 ; 91 Ind. Cas. 637 ; 53 Ind. Cas. 79 ; 4 Pat. L. J. 511 ; 1 Pat. L. J. 369 ; 22 C. W. N. 444 ; 7 L. W. 241 ; 43 Ind. Cas. 919 ; 16 A. L. J. 121=40 A. 256 ; 15 A. L. J. 167=39 A. 112 ; 15 A. L. J. 164 ; 69 Ind. Cas. 284 : 27 C. W. N. 263 ; 1923 Nag. 322 ; 1923 Lah. 174.

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Scope.—This section is applicable only in cases where the document in question is a Will or an unregistered document or if it be any other document in that case if its execution is specifically denied. *Vide proviso to section* 68. In order that a case many attract the operation of s. 69 of the Evidence Act it must be proved that no such attesting witness can be found. 7 Pat. 312=110 Ind. Cas. 756=A. I. R. 1928 Pat. 356.

Notes.—The plaintiffs sued the heirs of a mortgagor on a mortgage-deed, execution of which was denied. In order to prove the deed, witnesses were examined who were acquainted with the handwriting of two of the attesting witnesses, who were admittedly dead. There was no evidence on record to show that the other attesting witnesses were not alive or were not subject to the process of the Court. There was only a statement by the plaintiff's pleader to the effect that he had been unable to ascertain their whereabouts. *Held*, that under the provisions of the Evidence Act, evidence could not be admitted to prove the signature of the attesting witnesses until the absence of all the attesting witnesses had been duly accounted for. 21 Ind. Cas. 225. See also 34 A. 615 ; 10 A. L J. 217 ; 35 A. 364 ; 27 Ind. Cas. 866. When the Court of first instance comes to a finding as to a document having been "legally proved" within the meaning of this section, it cannot be legally interfered with by the appellate Court, especially when no objection was taken to the admissiblity of the document at the time of the hearing. 32 Ind. Cas. 766. Ss. 68 and 69 read together were intended to lay down how a document which was required by law to be attested, could be proved, and the intention was, that if the provisions of the sections as to proof was complied with the document, in the absence of any evidence to the contrary must be considered proved, and that it was not the intention of the legislature that an attesting witness or some other witnesses should have to prove further that the document was in fact signed by the mortgagor in the presence of at least two attesting witnesses. 39 A. 109=41 Ind. Cas. 171. An illiterate witness may be an attesting witness. 12 A. L J. 1114.

Admission of execution by party to attested document.

70. The admission of a party to an attached document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Scope.—Now this section is to be read subject to the proviso to section 68 *supra*. According to English law a document which requires attestation must be proved by one of the attesting witnesses and this is so even if the person by whom the document was executed has admitted its execution by himself. But this section deviates from that view and lays down that where its execution in admitted by the party an

attesting witness need not be called. The term "admission" relates only to the admission of party in the course of the trial of a suit, and not to the attestation of a document by the admission of the party executing it. 27 C. 190 ; 7 N. L. R. 85 ; 7 C. W. N. 384. Non-admission of execution is effectual under this section unless it amounts to an acknowledgment of the formal validity of the instrument. 36 C. L. J. 373. The word "execution" in this section means that the party by affixing his signature or mark has signified his assent to the contents of the document, and if a party admits that he has done this, he admits execution. 24 Bom. L. R. 1296. This section was intended to dispense with the necessity of calling attesting witnesses and with formally proving execution in a case where the party admitted it. 19 A. L. J. 855. Where there are two executants to a mortgage-deed attestation may be according to law in respect of one of them but not in respect of the other. 47 Ind. Cas. 9. The admission referred to in this section is an admission made in the course of the proceedings in which the attested document is produced. 13 N. L. R. 197 ; see 47 B. 137 ; 38 C. L. J. 114 ; 1 Rang. 557 ; 74 Ind. Cas. 969 ; 74 Ind. Cas. 839 ; 27 C. 19 ; 38 A. 1=13 A. L. J. 881=30 Ind. Cas. 376 ; 47 Ind. Cas. 9 ; 11 Ind. Cas. 689=7 N L. R. 85 ; 49 C. L. J. 347 ; 109 Ind. Cas. 576.

Scope.—This section is also to be read subject to the proviso of section 68. Where in a mortgage suit it was found that one of the attestors was dead and the other either denied or did not recollect the execution of the document, the execution of the same can be proved by other evidence. 1 Pat. 154. The mere fact that the attesting witnesses repudiate their signatures or make statement suggesting that they attested at the instance of persons other than the executants or in their absence, does not invalidate the document, if it can be proved by evidence of a reliable character that they have given false testimoney. 48 Ind. Cas. 538. See 48 Ind. Cas. 624 ; 41 All. 250. The endorsements made by the registering officer amount to some *prima facie* evidence at least under this section, that the executant himself and as one representing, or personating him appeared before the registering officer and that upon being examined by the officer with reference to the document, he admitted he had executed it. Subject to compliance with the provisions of s. 68 an admission of execution, once it becomes admissible under this section, is good evidence in proof of execution, and there is nothing in law which prohibits a Court from treating it as sufficient by itself to establish the fact admitted. 13 N. L. R. 197.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Cases.—A suit was brought for sale of the mortgaged property. It was found that the mortgage was not executed in accordance with law and the suit was dismissed. In appeal the plaintiff gave up his right under the mortgage and asked for and obtained a simple money decree. *Held*, that the document not being properly attested the provisions of s. 68 of the Act and did not apply, and that it was admissible in evidence under this section. 13 A. L. J. 553 ; 29 Ind. Cas. 363.

Comparison of signature, writing or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such persons.

This section applies also, with any necessary modification to finger-impression.

Legislative changes.—The last para was added by Act 5 of 1899.

Scope.—Under this section it is not necessary that the writing which is in dispute must itself be in terms express or indicate that it was written by the person to whom

the writing is attributed. The word "purports" in the section means "alleged." 14 Bom. L. R. 313=15 Ind. Cas. 649. See also Rat. Un. Cr. C. 491 ; See also 48 Ind. Cas. 68=53 M. L. J. 698. Comparison of signatures is one of the modes of proving handwriting. Although where there is no other evidence, such proof would be regarded hazardous and inclusive, it cannot be regarded as an error in law to base the conclusion on such proof alone, and a Court of Second Appeal would have no power to set aside a finding based on such comparison. 11 M. L. T. 424= 14 Ind. Cas. 741 ; see also 10 C. 1042 ; 37 C. 467 ; 16A. 151 (P. C.) ; 62 Ind. Cas. 882.

Finger-impression—A Court has power to direct an accused person to make finger-impression and the same is admissible in evidence. So also is the evidence of an expert concerning finger-impression. 2 Bur. L. J. 270 ; 1 Rang. 759 (F. B.) ; 1924 Rang. 115 ; 17 Cr. L. J. 616=35 Ind. Cas. 492.

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents :—

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive whether of British India, or of any other part of Her Majesty's dominions or of a foreign country :

(2) Public records kept in British India of private documents.

Cases.—Census Registers are not public documents within the meaning of this section. 6 Bom. L. R. 535. All the papers filed in a suit, in which a compromise is effected by a decision, form part of the record. Such a record is a public document. 25 W. R. 68. Letters between district authorities are public documents as they form records of acts of public authorities. Hence they are admissible in evidence under s. 74. 23 W. R. 272. Documents purporting to be abstract from, or copies of Government measurements, chittas, produced from the collectorate, there being nothing to show that they were the records of measurements by any Government officer, are not public documents. 7 C. 76. A circular by which the Director General of Post and Telegraphs notified that stamps of a certain kind would soon be issued to Post offices for sale to the public was not an act or record of an act of a public officer within the meaning of s. 749 of the Evidence Act or an order of Government within the meaning of s. 78. 115 Ind. Cas. 809=1929 M. W. N. 193.

Municipal proceedings are also public documents. 19 A. 293 ; but see 30 Ind. Cast 643=16 Cr. L. J. 659.

Will filed in the office of the Registrar General of Ceylon is not a public document. 23 M. 499=10 M. L. J. 310. The loan Register of the Public Debt office in the Bank of Bengal is a public document. 31 C. 284=8 C. W. N. 125. Registers prepared and kept under the Land Registration Acts are public documents and admissible in evidence. 2 Pat. 839. A public document is one prepared by a public servant in the discharge of this official duty. *Mahtab* v. *Kasar*, 107 Ind. Cas. 618.

Private documents.

75. All other documents are private.

Private documents.—The list of public documents has been given in s. 74. That list is complete. All other documents besides those mentioned in s. 74 are private documents.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificates shall be dated and subscribed by such officer with his name and his official title, and shall be

sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Notes.—A right to inspect public documents is, however, assumed in this section of the Evidence Act. 20 M. 189. Ss. 76 and 77 refer to public documents, and are not applicable to *kobalas*. 22 W. R. 355. The contents of the *jama bandi* can be proved by the production of certified copies furnished as provided by ss. 76 and 77 of the Act. L. R. 3 A. 386 (Rev.).

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Scope.—Public documents can be proved by producing certified copies of the same. 3 O. C. 205. A certified copy of the order of a Court passed upon a compromise should be received in evidence, if offered in proof of the compromise, under this section, as it is a copy of a document forming the record of an act of a public judicial officer. 1 A. L. J. 369. See also 22 W. R. 355 ; 14 C. 486 (P. C.) ; 10 C. L. R. 469 ; 10 C. 608.

Proof of other official documents.

78. The following public documents may be proved as follows :—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments or of any Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government :

(2) The proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or, purporting to be printed by the Queen's Printer :

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Govenor General of India in Council :

(5) The proceedings of a municipal body in British India,—

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body :

(6) Public documents of any other class in foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the orginal, and upon proof of the character of the document according to the law of the foreign country.

Scope.—Besides certified copies there are special ways of proving certain public documents which are pointed out in this section (*Cunningham Ev.* 170.).

Clause—(5)—30 Ind. Cas. 643=16 Cr. L. J. 659; 17 C. W. N. 531=18 Ind. Cas. 651.

Clause. (6)—15 C. W. N. 1053=14 C. L. J, 375.

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Scope.—The registering officer's evidence is not necessary to prove the certificate of registration the genuineness of which is to be presumed under this section. 71 Ind. Cas. 805.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement or confession was duly taken.

Scope.—The statements as to which this section says that certain presumptions shall be drawn, are statements or confessions taken in accordance with the law. The section does not render admissible any particular kind of evidence, but only dispenses with the necessity for formal proof in the case of certain documents taken in accordance with law. Section 80 does not operate to render it admissible. The section merely gives legal section to the maxim "*Omnia praesumantur rite esse acta*" with regard to documents taken in the course of a judicial proceeding. 9 M. 224=2 Weir. 125. But it must purport to be signed by a Judge or Magistrate, and where the person taking the deposition omits to claim the position of a Judge or Magistrate, the presumption that he is so, does not arise. The defect may be supplied by oral evidence. 1 L. B. R. 268. A confession by an accused person recorded by a Magistrate, who had no jurisdiction is also admissible. 10 C. P. L. R. Cr. 16. The attestation of a deposition by a Magistrate in the presence of the accused is not obligatory. 10 A. 174=A. W. N. 1888, 11; *contra* 18 C. 129. This section has no bearing on the question of the admissibility of a statement made by the deceased as a dying declaration. 9 P. R. 1900 Cr. See also. 11 B. H, C. R. 247.

See also. 15 M. 63; 15 Ind. Cas. 985; P. L. R. 1900 Cr. 83; 10 C. P. L. R. Cr. 16; 7 C. W. N. 220; 1 L. B. R. 340; 1 B. 219; 10 O. C. 112; 60 Ind. Cas. 437; 56 Ind. Cas. 160.

Presumption as to Gazettes, newspapers private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency or possession or the British Crown, or to be a newspaper or journal or to be a copy

of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

English Law.—The Government Gazettes of London, Edinburgh, and Dublin are admissible (and sometimes conclusive) evidence of the public, but not of the private matters contained therein. *Phipson Ev.* 296.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of justice in England or Ireland without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature, is genuine and that the person signing it held, at the time when he signed it, the judicial or official character which he claims.

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Scope.—"The object of this section is to give currency in the Courts of India to the presumptions which with regard to certain classes of documents are recognised in the English Courts. Such documents are declared to be admissible in India as they would be in England, and it is no more necessary in an Indian Court than it would be in an English Court to prove the seal or signature or to prove that the person signing it held the office which he claims. This is founded on the Evidence Act, 1851 (14 and 15 Vict. c. 99), the effect of which is to make admissible in any part of the King's dominions, documents which without proof of the seal or signature or of the official character of the person by whom they purport to have been signed are admissible in English law." *Cunningham Ev. 175-176.* This section enacts that the document shall be admissible in India for the same purpose for which it would be admissible in England and Ireland. (*Woodroffe Ev.*)

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Principle.—The general ground of reception is that such documents contain the results of inquiries made under competent public authority and concerning matters in which the public are interested. *Phipson* 313.

Accuracy.—Accuracy of *Amin's* map means accuracy of drawing and measurement. It has no reference to correctness of boundaries etc., in relation to rights of parties. 25 W. R. 179. Government man is admissible under this section. 9 M. L. T. 415. But Government *chittas* made for its private use are not admissible in evidence against private parties for proving the character or tenure of the lands described therein. 9 C. 741. A *thak bust* map is presumed to be accurate under this section. 22 W. R. 519; 5 C. 822; 30 C. 291 (P. C.)=7 C. W. N. 193; 34 C. L. J. 205.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country.

and of every book purporting to contain reports of decisions of the Courts of such country.

Scope.—The general rule, as to the proof of foreign laws, is that the law which is written, that is, statute law, must be proved by a copy properly authenticated; and that the unwritten law must be proved by the testimony of experts, that is,

by those acquainted with the law. (*Burr Jones*, § 502) *Lord Chief Justice, Denham* observed in *Sussex Peerage Case*, 11 Clark and F. 85: "There does not appear to be in fact any real difference of opinion; there is no question raised here as to any exclusive mode of getting at this evidence, for we have both materials of knowledge offered to be. We have the witness, and he states the law, which he says is correctly laid down in these books. The books are produced; but the witness describes them as authoritative, and explains them by his knowledge of the actual practice of the law. A skilful and scientific man must state what the law is, but may refer to books and stautes to assist him in so doing." *California Civil Pro. Code* lays down. "The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of a sister state or foreign country, as are also printed and published books of reports of decisions of the Courts of such state or country, or proved to be commonly admitted in such Courts."

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a Notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Cases.—A power-of-attorney given by the executors under a will to a certain person authorising him to apply for letters of administration, did not purport to have been sxecuted in the presence of a Notary Public or any other of the persons designated in this section. 21 M. 492. In order to comply with the provisions of this section, the power-of-attorney must be executed before or be authenticated by one of the persons mentioned in the section. 16 C. 776. This section is mandatory. When a document purporting to be a power-of-attorney and to have been executed before, and authenticated by, a Notary Public is produced before the Court, an affidavit of identification as to the person purporting to make the power-of-attorney being the person named therein is unnecessary. 9 C. W. N. 986=33 C. 625. The language of the section does not warrant the assumption that the provision contained in this section is of an exhustive character and that other legal modes of proving the execution of a power-of-attorney are not admissible. 21 M. 492. A registered power-of-attorney is admissible in evidence to prove the agency under this section and unless its genuineness is suspected in which case proof of its execution can be called for, the agent should be allowed to appear and act within meaning of O. III rule 2 of C. P. Code. 33 Ind. Cas. 661.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India [in or for] such country to be the manner commonly in use in that country for the certification of copies of judicial records.

[An officer who, with respect to any territory or place not forming part of Her Majesty's dominions is a Political Agent therefor, as defined in section 3, clause (40), of the general Clauses Act, 1897, shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place].

Legislative changes.—The words within brackets in para 1, have been substituted by Act 3 of 1891. The last para has been substituted by Act V of 1899, s. 4.

Scope.—This section lays down that if a copy of a foreign judicial record purports to be certified in a given way, the Court may presume it to be genuine and accurate, The section, however, does not exclude other proof. 2 Bom. L. R. 562; 27 C. 639=4 C. W. N. 429 (P. C.); 8 Mad. Jur. 14; 22 W. R. 303. The certificate required by law under this section cannot be dispensed with here bacause it can be obtained at any time. 5 Lah. 105.

Cases.—It is doubtful whether the notification in the Calcutta Gazette of the 8th April, 1879, by the then Deputy Commissioner of Cooch Behar, regarding the mode of certifying copies of judicial records as correct copies, after the Governor General in Council had, under s. 434 of the Civil Pro. Code, notified that decrees of Cooch Behar Courts might be executed as if they were decrees of British Indian Courts, was a compliance with the provisions of this section of the Evidence Act, when there was a representative of the Government of India resident in Cooch Behar. 14 C. 546.

Presumption as to books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Scope.—A Court is justified in referring to books published long before the suit, in which the usage of the institution and its history are described both being matters relevant to the suit. 15 M. 241.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such massage was delivered for transmission.

Scope.—This section allows the Courts to treat telegraphic messages received, as if they were the original sent, with the exception, that a presumption is not to be made as to the person by whom they were delivered for transmission and, unless the non-production of the original is accounted for secondary evidence of their contents is inadmissible. U. B. R. (1847-1901). Vol. 11, 384. The Court is forbidden by the express provisions of this section to make any presumption as to the person by whom the telegram was sent. 42 M. 885=37 M. L.. J. 81.

Presumption as to due execution, etc., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Notes.—Where the attesting witnesses of a mortgage deed were dead, where it was proved that the mortgagor had executed the deed and that it had been returned to him at the time of the sale of the mortgaged property to the mortgagee and where the mortgagor failed to produce the deed before Court, though called upon to do so: *Held* that the execution of the mortgage deed was in view of this section of the Evidence Act satisfactorily established irrespective of the provisions of s. 68. 34 Ind. Cas. 168.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the hand-writing of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular cases are such as to tender such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(*b*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

Scope.—A document thirty years old *i. e.* a document dated thirty years back proves itself, if produced from proper custody as an ancient document. *Anderson* v. *Weston*, 9 L. J. C. P. 194. The rule that "ancient documents" or those thirty years old, prove themselves, or in other words, are presumed to have been duly executed applies only to those coming from proper custody ; that is, not necessarily from the strictly legal or most proper custody but from any custody consistent with their genuineness and legitimate origin, in which they might reasonably be expected to be found if they are what they purport to be. *Bishop of Meath* v. *Mayor of Winchester*. 3 Bingham, N. C. 183 ; Cockle Cas. 333. Under this section the Court can presume the genuineness of a document which was not thirty years old either on the date of the suit or in the date of its production but was thirty years old on the date when arguments were heard. 54 Ind. Cas. 368 ; see also 33 C. L. J. 382 ; 60 Ind. Cas. 96 ; 41 M. L. J. 310 ; 57 Ind. Cas. 786 ; 61 Ind. Cas. 959 ; 61 Ind. Cas. 125 ; 52 Ind. Cas. 314 ; 49 Ind. Cas. 419 ; 15 N. L. R. 192 ; 6 O. L. J. 311 ; 26 Ind. Cas. 117 ; 13 A. L. J. 921 ; 2. L. W. 509 ; 5 P. W. R. 1915.

No presumption can be made in favour of a copy of a document under this section. 16 N. L. R. 106=55 Ind. Cas, 426 ; *contra*, 16 L. W. 462 ; 16 L. W. 839 ; 29 C. L. J. 577. The fact that a document is more than 30 years old and is registered and that the genuineness of the signature of its executant on it is admitted may go to raise a presumption as to its genuineness. But such a presumption does not exclude the right of the person against whom the document is set up to rebut that presumption by showing that it was not properly attested and was therefore inoperative. 55 Ind. Cas. 501. It is open to a party when producing an old document to rely on the presumption under this section and also on its proof and the Court may presume a deed to be genuine even though it is not satisfied with the evidence tendered to prove its execution. 49 Ind. Cas. 419. In the case of a copy of a document 30 years old this section empowers the Court to presume that the copy is in the hand-writing of the person in whose handwriting it purports to be. 31 Ind. Cas. 579. A Court is entitled to presume under this section that a sale deed more than 30 years old is genuine. 35 Ind. Cas. 598. In practice a Court does not generally decide whether it will make the presumption or not under this section, until all the evidence in the case is before it. 10 A. L. J. 87. Where the Court of first instance presumed a document to be genuine under this section, it was competent for the first appellate Court to hold that it should not be presumed to be genuine and to reject it without calling for further proof of the same. 22 M. L. J. 217=14 Ind. Cas. 394.

Cases.—75 Ind. Cas. 57 ; 73 Ind. Cas. 66 ; 32 M. L. T. (H. C.) 89 ; 50 C. 526 ; 75 Ind. Cas. 660 ; 1923 Bom. 364 ; 1923 Bom. 293 ; 45 Mad. 92 ; 1923 A. 420 (2) ; 27 C. W. N. 964 ; 9 O. & A L. R. 893 ; 13 A. L. J. 921 ; 19 O. C. 321 ; 97 P. W. R. 1916=34 Ind. Cas. 168.

CHAPTER VI.

Of the Exclusion of Oral by Documentary Evidence.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills [admitted to probate in British India] may be proved by the probate.

Explanation 1 —This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three one only need be proved.

(*d*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other, indigo. The evidence is admissible.

(*e*) A gives B, a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Legislative Changes.—The words within brackets in exception 2, were substituted for the words "under the Indian Succession Act" by the Indian Evidence Act, 1872 (18 of 1872) s. 7.

Scope.—The general rule laid down in this section is that when the terms of a contract have been reduced to writing no evidence shall be given in proof of the terms of a contract except the document itself, or in certain cases, secondary evidence of its contents. But this rule is subject to the important exceptions contained in ss. 95 and 97. 30 M. 397 ; L. B. R. (1872—1892), 650. Where the document containing the transaction is inadmissible for want of registration, no other evidence of the terms of the contract can be received. L B. R. (1872—1892), 133. When the contract between the parties has been reduced to writing no evidence of it is admissible except the writing itself. U. B. R. (1897—1901) Vol. 11, 396. A question is to who the contracting parties are not a question as to the terms of the contract within the meaning of this section. 31 M. 45.

Principle.—This rule is founded on the best evidence principle. (*Phipson Ev.* 506).

Contract.—It seems more probable that the word "contract" was employed in a wide and general sense with reference to the whole of the transaction or transactions between all the parties in their several respective relations. U. B. R. (1892—1896) Vol. 11. 354.

Grant.—It is doubtful whether the word 'grant' in this section means a grant of property only or refers to other grants also. 27 M. 30.

Application.—Where a privata transaction is required by law to be in writing. *e. g.* a Will, contract under the statute of frauds, or marine insurance, or where a contract, grant or other disposition of property though not so required, has been reduced to writing by agreement of the parties and is intended to be complete and operative as such,—no extrinsic evidence is admissible to supersede the document, or to prove the transaction independently. (*Phipson Ev.* 508). This rule is applicable even when the real terms were acted upon before reduction to writing and, although the document itself is inadmissible *e. g.*, a bill of sale void for want of registration or stamp. Where, however, the oral

transaction is independent of the document, *e.* g.. where the possession of goods was taken on a certain understanding, although a receipt and inventory was also signed, or, where a loan of money is secured collaterally by a promissory note, oral evidence of the former is admissible. Even between strangers, the terms of the transaction can only be shown by the production of the document itself and not by oral testimony. (*Phipson Ev.* 509).

Exception (1).—The law assumes that any act done in public or any formal act privately performed will be done in due form by the person authorised to perform it. *Harris* v. *Knight*, 15 P. D. 170.

Exception (2).—The probate of a Will is in the nature of a public document, for it records the act of the Court in admitting the Will to probate. Moreover, a copy of the probate can be seen by any one at Court on payment of requisite fees. It constitutes the legal proof of the title of an executor and it is conclusive against all the world. It is a copy of the Will sealed with the seal of the Court granting the probate, and attached to a certificate which states that the Will has been proved and registered, and that administration of the goods of the deceased has been granted to one or more of the executors named therein. (*Vide Powell Ev. 258*).

Explanation (1).—Vide illustration (*a*).

Explanation (2).—Vide illustration (*c*).

Explanation (3).—Vide illustration (*d*) and (*e*)—Extrinsic evidence is sometimes admissible to prove the existence as distinguished from the terms of a transaction or relationship which has been reduced to writing. Payments of money may be proved by oral testimony, although a receipt for the same exists. 7 W. R. 384 ; 4 B. 126 ; 1 A. 442 ; 3 M. 533 ; 27 C. 951 (P. C.)=4 C. W. N. 631.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms ;

Proviso (*1*).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or, mistake in fact or law.

Proviso (*2*).—The existence of any seperate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (*3*).—The existence of any separate oral agreement,constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (*4*).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (*5*).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (*6*).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy cannot be proved.

(*b*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact, that at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(*c*) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d*) A enters into a written contract with B to work certain mines, the property of B upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500." B may prove the verbal warranty.

(*h*) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200, a monthly." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(*i*) A applies to be for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(*j*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Legislative changes.—The words "want or failure" were substituted for the words "want of faiure" by s. 8 of the Indian Evidence Act Amendment Act, 1872 (18 of 1872).

Notes.—The rule contained in this section is very ancient. *Lord Bacon* observed: The law will not couple and mingle matter of speciality, which is of higher account, with matter of averment which is of inferior account in law." (*Bacon's Maxims.* Reg. 23). "It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of the parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory." (*Countess of Rutland's case*, 5 *Coke* 2 56.)

Scope.—Parol evidence is not admissible to add to, vary, or contradict a written agreement, or any transaction in writing. *Meres* v. *Ansel*, 3 Wilson. 275; Cockle Cas. 339. "Another and a most important rule of evidence is also based upon the fact that the best method of preserving a clear recollection of the details of any transaction is to set them down in writing. It is for this reason that whenever the parties to any contract or grant or other disposition of property have set out its terms and conditions in writing, which they presumably intended to be a record of the transaction. the law forbids any attempt to establish any other terms by means of oral evidence. It would be manifestly unjust to allow either party to alter his liability by introducing terms which are not to be found in the document. Hence it is a clear rule of law that whenever a document purports to be the record of the final intention and agreement of two parties, who have entered into any contract or made any grant or transfer of property, no parol evidence is admissible to contradict or vary its terms." (*Powell, Ev.* 181) Oral evidence cannot be adduced to contradict the terms of a written document. 6 M. H. C. 393; see also L. B. R. (1872—1892), 538; 11 W. R. 450; 12 W. R. 264;

W. R. 1864, 388. Verbal evidence is not admissible to vary or alter the terms of a written contract in cases in which there is no fraud or mistake, and in which the parties intend to express in writing what their words import—as for instance to show that a deed of sale was intended to operate as a mortgage. 5 W. R. 68 ; 9 W. R. 251.

Proviso (1)—Parol evidence is admissible to show that a writing is not really the valid transaction which it purports to be. Such evidence may therefore be given to prove fraud, mistake illegality, incapacity, failure of consideration, or other matter affecting the validity of a writing as a document. (*Dobell* v. *Stevens*, 3 L. J. K. B. 89 ; *Cockle Cas.* 341).

Case.—82 Ind. Cas. 816.

Proviso (2)—Parol evidence is admissible to prove any collateral verbal agreement as to any matter on which a document is silent, which is separable from it and not inconsistent with its terms, and which might naturally be omitted from the writing. (L. R. 3 Ex. 70=*Cockle Cas*, 343). There is no rule that there shall be only one agreement upon any subject. There may be two or more as in the case, if they can consistently stand together ; and one may be written and the other oral. If proceedings are taken on the written agreement evidence may be given of the oral agreement. This is not "adding to" the written agreement although it may, at first sight look like it. (*Cockle Cas*, 343) . In order that the parol evidence may be admissible to prove a collateral agreement, it must not conflict with, or be inconsistent, with the written document ; the evidence must not amount in effect to adding additional terms to the writing. *Angell* v. *Duke*, 32 L. T. 320. This proviso applies where the document is of an informal character. 7 N. L. J. 25. In order to prove a contemporaneous oral agreement, oral evidence of subsequent conduct can under no circumstances be admitted. 4 Lah. 258.

Cases.—3 Bur. L. J. 326 ; 70 Ind. Cas. 844 ; 1923 Cal. 402 ; 25 Bom. L. R. 818.

Proviso (3)—Parol evidence to prove any collateral verbal agreement to the effect that a document, apparently complete and operative on its face, should be conditioned upon, and not operate until the happening of, a certain event, which has not occurred. *Pym* v. *Campbell*, 25 L. J. Q. B. 277. The case of a condition precedent to the performance of a contract in writing is different and evidence to prove such an oral agreement is admissible. It is open to a person who admits the execution of a promissory note to plead want of consideration. 45 A. 679. See also 25 Bom. L. R. 867.

Case.—1925 Rang. 83 ; 1924 A. 70 ; 26 O. C. 36 ; 71 Ind. Cas. 477.

Proviso (4)—Parol evidence is admissible to prove any subsequent verbal agreement rescinding or altering the terms of a written document, unless writing reguired by law to render the transaction in question enforceable, in which case such evidence cannot be given to alter the terms of such written document. (*Goss* v. *Lord Nugent*, 2 L. J. K. B. 127. *Cockle Cas. 350*). The clause does not exclude evidence of oral agreement substituting a new contract for a previous one in writing and registered. The clause refers only to an oral agreement to rescind or modify such contract. 169 P. R. 1883. The proviso does not exclude a distinct subsequent new oral agreement superseding the old one in toto. 14 P. R. 1889.

Cases.—2 Mys. L. J. 124 ; 74 Ind. Cas. 154.

Proviso (5)—Parol evidence is admissible to prove any local custom of general application, in order that it may be applied to the subject-matter and bind the parties to a written transaction, unless it is inconsistent with the writing. (*Wigglesworth* v. *Dallison* Douglas, 201 ; *Cockle Cas. 351*). Parol evidence is admissible to prove any trade or mercantile custom or usage, either as to the obligations of the parties in such transactions as that in question, or as to the meaning of words or terms used, in order that it may be applied to the subject-matter and bind the parties to a written transaction, unless it is inconsistent with the writing. (*Brown* v. *Byrne*, 23 L. J. Q. B. 313). Extrinsic evidence of custom and usage is admissible to annex incidents to written contracts, only when the incidents which it is sought to import into the contract are consistent. 17 B. 129. Notwithstanding an admission in a sale deed that the consideration has been received, it is open to the vender to prove that no consideration has been actually paid. 22 A 370 P. C. ; 10 C. L. J. 27.

Proviso. (6)—A contract reduced to writing must be construed on a consideration of the document itself, with only such extrinsic evidence of circumstances as may be required to show the relation of the written language to existing facts. 36 Ind. Cas. 597.

In a suit for bond, evidence of non-payment of consideration is admissible. 82 Ind. Cas. 347. Where a bill of lading evidences a contract of shipping no evidence of any oral agreement varying its terms is admissible. 79 Ind. Cas. 456. Where a date is fixed in the contract for performing the contract oral evidence to extend the periods is not so absolutely repugnant to the express terms of the contract as to make it inadmissible. 76 Ind. Cas. 62. Evidence of subsequent oral agreement not to charge compound interest is admissible, where the document is a registered one. 1924 Cal. 38. In cases of patent ambiguity no evidence can be given to supply the defect. 80 Ind. Cas. 944. But parol evidence is admissible for the purpose of explaining latent ambiguities. *Doe* v. *Needs*, 6 L. J. Ex. 59. The view that there has been introduced into the law of India such a radical change in the Law of Evidence as would have the effect of excluding from the class of mortgages many transactions which before the Evidence Act would have been held to be within that clause in not correct. 47 M. 429 (P. C.). Evidence of acts and conduct of parties to show that certain terms of a contract were never intended to be acted upon from the beginning is not precluded by this section. 27 C. W. N. 336.

Cases.—4 Pat. L. T. 577 ; 36 Ind Cas. 7.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) A agrees, in writing, to sell a horse to B for Rs. 1, 000 or Rs. 1, 500. Evidence cannot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Notes.—There are two sorts of ambiguities, patent and latent. A latent ambiguity is one which does not appear from the words of the document itself, but is created or shown by extrinsic evidence. Obviously, similar evidence should be allowed to explain or remove it. A patent ambiguity is one apparent on the face of the document. Parol evidence is inadmissible to explain such an ambiguity. (*Cockle Cas. 356*). "A good test of the difference is to put the instrument into the hands of an ordinarily intelligent educated person. If on perusal he sees no ambiguity, but there is nevertheless an uncertainty as to its application the ambiguity is latent ; if he detects the ambiguity from merely reading the instrument, it is patent. Thus in illustration (*b*), the blanks would be patent ambiguities and they could not be filled in by parol testimony as to the intention of the parties etc. In illustration to s. 95, no one could detect any ambiguity from merely reading the instrument. The ambiguity does not consist in the language, but is introduced by extrinsic circumstances, and the maxim is *quod ex faco oritur ambiguum verificatione facti tollitur.*" *Norton Ev.* 279.

Scope.—Parol evidence is admissible to show the subject-matter to which for the persons to whom, a written document applies or refers ; and for such purpose to explain latent ambiguities. Such parol evidence may be of the surroundiug circumstances or apparently, of statements of intention made by parties to a document. *Doe* v. *Needs* (1836) 6 L. J. Ex. 59. But parol evidence is not admissible to supply total blanks in written documents, or to explain the meaning of words or expressions so defective or ambiguous as to be meaningless in themselves, by showing what a party to such document intended to say. *Baylies* v. *Attorney General*, 2 At. 239. See 1, A. 875 ; 35 Cr. L. J. 87.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies, accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Scope.—"This section falls under the more general rule of English law that where the words of a document are free from ambiguity, and external circumstances do not create any doubt or difficulty, as to the proper application of the words, the document is to be construed according to the plain and common meaning of the words, and that, in such case, extrinsic evidence, for the purpose of explaining the document according to the supposed intention of the parties is inadmissible." *Cunn Ev.* 281. When the language used in a document is plain and applies accurately to existing facts, evidence is not admissible for the purpose of showing that it was not meant to apply to those facts. 29 Ind. Cas. 201. When a Court is executing an award it is only in cases where the words are ambiguous, or capable or more than one interpretation that oral evidence can be given as to their meaning. 78 Ind. Cas. 80.

Evidence as to the document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed "my house in Calcutta."

A had no house in Calcutta, but appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Scope.—This section and sections 96 and 97 lay down the rule as regards latent ambiguities. Parol evidence is admissible to show the subject-matter to which, or the persons to whom, a written instrument applies or refers; and for such purpose to explain the latent ambiguities. Such parol evidence may be of the surrounding circumstances, or apparently, of statements of intention made by parties to a document. *Doe* v. *Needs*, 6 L. J. *Ex.* 59. *Cockle* Cas. 355. Where the description of property sold in such that one portion of its applies to the whole of the house but the boundaries given below apply only to a portion of the same and both read together do not apply correctly either to the whole house or to aportion of it, a case of latent ambiguity arises. Extrinsic evidence is admissible for the purpose of solving the question whether by the description of the property taken as a whole the intention was to convey the whole house or only a portion of it. 66 Ind. Cas. 442. See also 1923 S. 42; 71 Ind. Cas. 589.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one of several persons of things, evidence may be given of facts which show which of those persons or thing it was intended to apply to.

Illustrations,

(*a*) A agrees to sell to B. for Rs. 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the *Deccan* or Haidarabad in Sind was meant.

Scope.—Where there are two or more persons or things, and each of them exactly answers to the description in the will, then all manner of parol evidence is admmissible (*Powell Ev.* 463.). When an instrument appears on its face to be free from ambiquity, but upon the endeavour being made to apply it to the persons or things indicated it transpires that the words are equally applicable to two or more things, this is called a latent ambiguity. In such a case extrinsic evidence is admissible to resolve it. The principle that when an instrument contains an ambiguity, evidence of user under it many be given in order to

show the sense in which the parties employed the language used applies to a modern as well as an ancient instrument. 36 C. L. J. 242. See also 72 Ind. Cas. 696. If the language of a document directly describes two sets of circumstances but cannot have intended to apply to both, evidence may be given to show to which it is intended to apply. 10 Bur. L. T. 246.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustrations.

A agrees to sell to B "my land at X, in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Scope.—This section is the converse of the preceding one in that there is language partially applicable to two sets, of facts : here there is language partially applicable to two sets of facts, but wholly applicable to neither. In this case, as in the former, extrinsic evidence is admissible for discovering the meaning. It is an extension of the rule laid down in section 95. *Cunningham's Evidence*, 280. Such parol evidence may be of the surrounding circumstances, or apparently, of statements of intention made by parties to a document. *Doe v. Needs*, 6 L. J. Ex. 59. Parol evidence is admissible only when the ambiguities cannot be otherwise explained by construction of the contents. (*Colpoys* v. *Colpoys*, Jacob, 451 ; *Cockle Cas.* 356). Where in a sale certificate there are two descriptions of the property which cannot be reconciled, it is open to the Court to look at the decree and decide which governs the sale. 1924 A. 856.

Evidence as to meaning of illigible characters etc.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, absolute, technical, local and provincial expressions, or abbreviations and words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B, "all my models." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Scope.—Put the case of short-hand writers' notes, when a Court, unskilled in the art of stenography must have explained or interpreted, before it can attach any meaning to the arbitrary signs. So, where the writing is that in ordinary use, but illigible, the evidence of experts may be adduced to decipher it ; as also in the case of foreign laws ; and all the other instances brought together in this section (*Norton Ev.* 284.) In order to interpret or ascertain the meaning of a written document parol evidence may be given of the meanings or sense in which, not only words, but also signs, symbols, private marks, or nicknames, have been used. Such evidence may be given although the words, etc., the meaning of which is in question, appear to have been used in a particular meaning only by the person whose document is under construction ; and not so used by any class of persons or in any locality. *Kell* v. *Charmer*, 23 Beav. 195 ; *Cockle Cas.* 362. Various words in written documents which *prima facie* present no ambiguity may be interpreted by extrinsic evidence of usage ; and their peculiar meaning, when found in connection with subject matter of the transaction, has been fixed, by parol testimony of the sense in which they were usually received . 34 C. L. J 160. See also 68 Ind. Cas. 138.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any fact tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Scope—This section, being mearly an enabling provision, cannot be held to prohibit the reception of evidence as to a fact in issue or a relevant fact admissible independently thereof. 27 M. 329. The rule of exclusion of oral evidence, embodid in s. 92 of the Act, is limited in its operation to parties to the instrument, which is sought to be contradicted or varied, and to the representatives in interst. This section enables strangers to an instruction to prove the real nature of the transaction by parol evidence. 2 C. L. J. 338. This section gives free hand to persons who are not parties and by necessary implicatsons when read with section 92, gives similar freedom to the executants of documents aginst such strangers. 4 N. L. R. 115. See also 8 Ind. Cas. 501 ; 3 A. L. J. 314. Section 99 is an enabling, section 92 is a disqualifyng section. The word "varying" in this section covers the same ground as the word "contradicting, varying, adding to or subtracting from" in s. 92. 53 Ind. Cas. 242.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1895) as to the construction of wills.

Saving of provisions of Indian Succession Act relating to wills.

Scope.—Act X of 1865 and Act XXI of 1870 have been repealed and re-enacted by Act 39 of 1925. So the provisions of this chapter is applicable to all instruments other than wills and to all wills which are not made in accordance with the provisions contained in that Act.

PART III.

Production and effect of Evidence.

CHAPTER VII.

Of the Burden of Proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Burden of proof.

When a person is bound to prove the existence of any fact, it is said that burden of proof lies on that person.

Illustrations.

(*a*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

Different meaning of the term.—The expression "burden of proof" has been used in a double sense ; (*a*) as meaning the duty of the person alleging the cause to prove it, (*b*) as meaning the duty of the one party or the other to introduce evidence.

The first is proper meaning of the term.—"The theory of burden of proof finds its application in the trial of every case ; yet it is a simple principle and one easily understood. It relates to our way of trying a case, and has become from long usage so thoroughly a part of our system that it seems the only reasonable and natural method. The burden of proving a case is naturally upon the person who puts it forward. The burden of proof in any action is fixed by the pleadings upon the shoulders

of the one party or the other. If the pleadings consist of the allegations of certain facts by the plaintiff, and their denial by the defendant the burden of proving the facts, be they negative or affirmative, is upon the plaintiff. In order to recover he must prove his case. If the plaintiff alleges certain facts, and the defendant admits those facts, but alleges other facts, which he claims to be a defence, the burden of proof is on the defendant. It is not upon the plaintiff, because it is not necessary for him to prove his case, on account of the admission of all the facts. An admission upon the trial does not affect the burden of proof. To relieve the plaintiff it must be a formal admission in the defendant's pleading of the facts which constitute the plaintiff's case. The defendant, if he sets up in his answer other facts which he claims to be a defence, is then the one who has alleged the facts which are in issue, and he must prove them." *McKelvey's Law of Evidence* p. 68.

Burden of proof—Before a Court can proceed to hear a case, it is obviously, necessary to determine which party shall begin, or upon whom the burden of proof of the whole case lies. The general rule is that the party who alleges any matter in issue must prove it. This would be simple enough if there were only one fact in issue, but there may be several facts in issue, the burden of proof of some being on one party and of others on the other party. The position is practically this, that the burden of proof lies at first on the party against whom judgment would be given if no evidence at all were adduced. When such party has given sufficient evidence to entitle him to judgment if no further evidence were given, the burden of proof shifts to the other party, and may be repeatedly so shifted. In a criminal case there is generally no difficulty, as all the allegations are invariably made by the prosecution, on whom the general burden of proof invariably lies So the burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact. This rule as to the burden of proof applies generally to negative averments. (*Cockle's Cas.* 123—124). See also, 35 C. 1051 ; 9 W. R. 192 ; 39 C. 245 ; 47 M. 337 (P. C.)=46 M. L. J. 546 ; 75 Ind. Cas. 733 ; 3 U. P. L. R. 44.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that is was obtained by fraud, which A denies.

If no evidence were given on either side, A would suceeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Scope.—The general burden of proof is upon the party who would be unsuccessful in the case if no evidence at all were given, and such party has the right to begin. The burden of proof of any particular fact in issue is upon the party who allows the affirmative thereof (*Amos* v. *Huges*, 1 M. and Rob. 464 ; *Cockle's Cas.* 125). In determining burden of proof the Court should consider what is the substantive fact to be made out, and on whom it lies to make out. It is not so much the form of the issue which ought to be considered, as the substance and effect of it. *Soward* v. *Leggatt*, 7 C. and P. 613. "The test, therefore, as to the burden of proof or onus of proof, whichever term is used, is simply this : to ask one-self which party will be successful if no evidence is given, (or if no more evidence is given)...the parties from moment to moment may reach points at which the onus of proof shifts. As soon as he brings evidence which, until it is answered, rebuts the evidence against which he is contending, then the balance descends on the other side, and the burden rolls over until again there is evidence which once more turns the scale." *Per Bowen L. J.* in *Abrath* v. *North-Eastern Railway Co.*, L. R. 11 Q. B. D. 440. In the same case *Brett, M. R.* says : "But, then, it is contended (I think fallaciously) that if the plaintiff has given *prima facie*

evidence which, unless it be answered, will entitle him to have the case decided in his favour, the burden of proof is shifted to the defendant as to the decision of the question itself...I cannot assent to it. It seems to me that the proposition ought to be stated thus. The plaintiff may give *prima facie* evidence, which, unless it be answered either by contradictory evidence or by the evidence of additional facts, ought to lead the jury to find the question in his favour. The defendant may give evidence either by contradicting the plaintiff's evidence or by proving other facts. The jury have to consider, upon the evidence given upon both sides, whether they are satisfied in favour of the plaintiff with respect to the question which he calls upon to answer. If they are, they must find for the plaintiff; but if upon a consideration of the facts, they come clearly to the opinion that the question ought to be answered against the plaintiff, they must find for the defendant. Then comes the difficulty; Suppose that the jury, after considering the evidence, are left in real doubt as to which way they are to answer the question put to them on behalf of the plaintiff; in that case, also, the burden lies on the plaintiff. And if the defendant has been able by the additional facts which he has adduced to bring the minds of the whole jury to a real state of doubt, the plaintiff has failed to satisfy the burden of proof which was upon him." So the burden of proof fixes upon the party who has the duty of first going forward with the case. If he fails to introduce any evidence at all, or if he fails to introduce sufficient evidence to justify a submission of a case to the Court, the case, without any evidence being introduced by the other party, must go against him. If he introduces enough evidence to justify a submission of the case to the Court, the case may still be, as it were, hanging in the balance. The Court may or may not find from the evidence introduced that he has proved his case. If however, he has introduced sufficient evidence to make out what is known as a "*prima facie* case," then in the absence of evidence to controvert such a case, the Court, would be bound to find in his favour.

Right here we run up against the other sort of burden of proof noticed above, which is not really burden of proof at all, but only the use of that term to express something very different. When the plaintiff has introduced enough evidence to make out a *prima facie* case, the defendant unless he would see the verdict for the plaintiff, must take up the case, and introduce evidence to controvert or weaken the effect of that which the plaintiff has introduced. This is the buden of going forward with the evidence, or the "burden of proceeding," as it may be called to distinguish it from the "burden of proof." "The question of burden or onus of proof is only a rule for deciding on whom the obligation of going further, if he wishes to win, rests." *Per Bowen, L. J.* in *Abrath* v. *North Western Railway*, *ubi supra*.

Cases.—27 A. 71=1 A. L. J. 423 : 11 B. 433 ; 11 U. B. R. (1897—1901) Vol. II, 412 ; U. B. R. (1897-1901) Vol. II. 409.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations.

(*a*) A prosecutes B for theft, and wishes the Court to believe that B admitted that theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Scope.—The term "burden of proof" is used in two senses as regards (1) the whole case (2) particular facts. Section 102 deals with burden of proof of the first class and this section deals with burden of proof of the second class. The burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact It is only necessary to add, and to emphasise, that the substance, and not the mere *form* of the pleading is to be considered. The position can not be altered, nor can the Court be misled by the ingenious manipulation of language. This rule as to the burden of proof applies generally to negative averments unless by reason of their complexity or difficulty of proof or by virtue or some statutory provision the burden is upon the person denying the allegation, as will be seen below (*Cockle's Cas. 123*). The difference between this section and section 101,

consists in this. By section 101 the party has to prove the whole of the facts which he alleges, to entitle him to judgment when the burden of the proof is on him. The present section provides for the proof of some one particular fact. The illustration sufficiently points to the meaning. The whole of the facts, however, numerous and complicated, which go to make up the person's guilt must be proved by the prosecution. If the prisoner wishes to prove a particular fact, his *alibi*, for instance, he must prove it. If the prosecutor wishes to prove the case, not by independent oral testimony, but by the isolated fact of the prisoner's admission, or if he wishes to throw that in as an additional fact, he must prove it. (*Norton Ev. 289-90.*)

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*) A wishes to prove a dying declaration by B. A must prove B's death.
(*b*) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

Scope.—The meaning of this section is that no person shall be allowed to give evidence before he has shown that he is in a legal position to do so. *Vide s. 136, Clause 2,* (*Norton Ev.* 290),

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a*) A, accused of murder, alleges that by reason of unsoundness of mind he did not know the nature of the act,

The burden of proof is on A.

(*b*) A accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c*) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grevious hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grevious hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

Scope.—In criminal cases, the general rule is that the prosecution must prove the facts alleged by it. This section is an exception to the general rule. Under the provision of this section, an answer setting up the right of private defence, must be supported by evidence, giving a full and true account of the transaction from which the charge against an accused person arises. No accused person can, at the same time, deny committing an act and justify it. 1 C. L. R. 62 ; A.W.N. 1898, 209 ; A. W. N. 1898, 210. The burden of proving the existence of circumstances bringing a case within any special exception of proviso contained in any part of the Penal Code is upon the person accused, and the Court shall presume the absence of such circumstances. 8 Ind. Cas. 259=11 Cr. L. J. 612. See also 7 A. L. J. 438 ; 11 C. L. R. 232 P. C.

Special exception.—The onus to show that a game is a game of mere skill is on the accused. 15 Cr. L. J. 279=23 Ind. Cas. 484 ; see 8 C. W. N. 714 ; U. B. R. (1893-1900 ; 207) 6 A. 200 ; 50 C. 318 ; 45 A. 329.

This section says nothing about pleas but places the burden of proof in certain circumstances on the accused. But if the prosecution has already performed

the task for him by letting in evidence circumstances from which such a plea necessarily follows it is the duty of the Court to give him the benefit of it. 81 Ind. Cas. 901.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Scope.—This is an exception to the general rule. Where the subject-matter of a party's allegation (whether affirmative or negative) is peculiarly within the knowledge of his opponent, it lies upon the latter to rebut such allegation. *Phipson Ev. 31.* In this connection *Bayley J.* : observed ; "I have always understood it to be a general rule, that if a negative averment be made by one party, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies, and who asserts the affirmative, is to prove it, and not he who avers the negative." Vide *R.* v. *Turner* 5 L. S. 206. Where a suit was brought by the legal representative of a deceased person, who was killed at an accident, while travelling in the train of the defendant company, the onus of proving that there was no negligence on the part of the Railway company, lies on such company. This decision is supported not only by the ruling in the case of the *Great Western Railway Company of Canada* v. *Braid* (1 Moore's Privy Council Cases, N. S. P. 101) namely, that the fact of a breach on a line of Railway is *prima facie* evidence of improper construction or maintenance which is for the Railway Company to rebut, but also by the general rule of the law of evidence that when any fact is specially within the knowledge of any person, the burden of proving that lies upon the person. 4 M.L. T. 251. See also 17 M. L. I. 339 ; 38 C. 127 ; 1 A. 53 (F. B.) 11 Ind. Cas. 202.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Scope.—Where there is proof of the existence of a state of things and no evidence of its cessation, the presumption is that such state of things continues for a reasonable length of time. Hence. if the question is as to the life or death of a person who has been once shown to be living, the burden of proving him dead lies, at first, on the party who asserts the fact. *Willson* v. *Hodges* ; 2 East 312 ; if however, there be a question as to the exact date at which a person died, this is for the Jury, (R. v. *Willshiye*, 6 Q. B. D. 366) and proof that he was alive at an antecedent date may or may not afford a reasonable inference that he was living at subsequent date. (*Powell Ev.* 411).

Burden of proving that person is alive who has not been heard of for seven years.

108. [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted in to] the person who affirms it.

Legislative Changes.—The words within brackets were substituted by Act 18 of 1872.

Scope.—There is a presumption that a person who is proved not to have been heard of for seven years, by those who would be likely to hear of him if living is dead ; but there is no presumption that he died at any particular time. *Nepeon* v. *Doe.* 2 M. & W. 894 ; *Cockle's Cas. 29.* In *Burden* v. *Henderson*, 2 Sim & G. 360, *Sir John Stuart, V. C. said* :—"The principle on which the Court presumes the death of a person of whom no tidings have been received for a long period of time, is this—that, if he were living he would probably have communicated with, some of

his friends and relatives. It is a conclusion which the Court draws from the probabilities of the case. It is quite clear, therefore, that when no such probability exists, the presumption cannot arise."

But this presumption will not arise if the person in question left his home under circumstances which rendered it improbable that he would communicate with his friends. There is no presumption as to the exact time, during the seven-years, when the person in question died. When that question is material, it must be a subject of distinct proof by the party interested in fixing the time ; for there is no presumption as to when, during the seven years, the person in question died. (*Powell Ev. 412*). Ss. 107, and 108 lay down no rule as to the presumption of the exact time of the death of a missing person, so that whenever the question as regards the exact time of death arises, it must be dealt with according to the evidence and circumstances of each case, when the death is alleged to have occurred at any time not affected by the presumption of law as to the seven years. 8 A. 714=A. W. N. 1886, 239 ; 23 B. 296 ; 14 M. L. J. 464. The presumption of death under this section is a presumption that the man was dead when the question was raised, that is at the date of the suit, and not at any earlier period. The English law is otherwise. 37 C. 103=14 C. W. N. 341 ; 35 C. 25 ; 8 A. L. J. 1052 (F. B.) ; *contra*, 8 Ind. Cas. 55. This section supersedes the rule of Mahomedan Law that a man will be presumed dead only after 90 years from the date of his birth. 42 P. R. 1892.

Cases.—41 M. L. J. 295 ; 19 A. L. J. 713 ; 1 Pat. 475 ; L. R. 3 A. 393 (Rev.) ; 64 Ind. Cas. 468 ; 43 A. 673 ; 1923 Bom. 208 ; 1923 Lah. 174 ; 45 A. 466 ; 1923 M. 182 ; 47 B. 451.

109. When the question is whether persons are partners, landlord and tenant or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

Principle.—This presumption of a continuation is clearly one of the most practical importance. It is frequently quite impossible to prove, for instance the the existence of a certain thing in a certain state or condition at the particular moment in question. It is sufficient with the aid of this presumption, to prove such existence and state at such an earlier time that, according to its nature it may fairly be presumed to have lasted to the moment in question (*Cockle's Cas, 29.*).

Scope.—Here the presumption arises from the probability of the continuance of things once shown to exist. *Price* v. *Price*, 16, M. & W. 232. Where, therefore, partners continue their business as before, after the partnership has expired ; *Clarke* v. *Peace*, 33 L. J. Ch. 290; or a tenant holds over after the expiration of his lease. *Torraino* v. *Young*. 6 C. & P. 8 ; or if in respect to the relation of principal and agent ; *Royan* v. *Lambs*, 12 Q. B. D. 460 ; if the facts existing be once established, the continuance of the partnership, the tenancy or authority on the old footing will be presumed. *Norton Ev. 295.*

Partners.—11 P. R. 1827.

Tenants.—4 C. 314 ; U. B. R. (1892-1896). Vol. II. 363 ; U. B. R. (1892-1901) Vol. II, 414.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving, that he is not the owner is on the person who affirms that he is not the owner.

Burden of proof as to ownership.

Scope.—The fact of possession as owner is sufficient *prima facie* evidence of ownership without the aid of any documentary proof or title deeds on the subject, until such further evidence is rendered necessary in support of the *prima facie* case of ownership which they made, in consequence of the adduction of some contrary proof on the other side. *Robertson* v. *French*, 4 East, 130. The fact of possession is clearly relevant to the fact of ownership as the former undoubtedly renders the latter probable. The person who possesses and acts as owner is generally the owner. (*Cockle's Cas.* 85). "The acts of enjoyment from which ownership of real

property may be inferred are very various, as for instance the cutting of timber, the repairing offences or banks, the perambulation of boundaries of a manor or parish, the taking of wreck on the foreshore, and the granting to others of licenses or leases under which possession is taken and held; also the receipt of rents from tenants of the property; for all these acts are fractions of that sum total enjoyment of which characterises *dominium*." (Wills 60). If a person is in actual possession, that is evidence that he is seised in fee. *Doe* v. *Penfold*, 8 C. and P. 536; *Jones* v. *Williams* 2 M. and W. 526. Possession is *prima facie* evidence of complete ownership throwing the burden of showing that it is held on some inferior title, upon him who seeks to dislodge the possessor. 1 B. 91. The word "possession" in this section is to be understood as opposed to judicial possession and to denote actual present possession. U. B. R. 1905, Rv. 7; 25 B. 287. The person who wants to oust a person in possession must prove absolute private proprietary title. U. B. R. (1897—1901), Vol. II. 416. Such title must be subsisting title and not previous ownership. U. B. R. (1897—1901), Vol. II. 421. See 13 Bur. L. T. 203.

Cases.—36 C. L. J. 396; 1923 Bom. 361; 27 C. W. N. 305.

Proof of good faith in transactions where one party is in relation or active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is a question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Scope.—The principle on which this section is based is a long established doctrine of equity and it has been repeatedly applied with special emphasis by the Lords of Privy Council to transactions to which the women of this country are parties. A. W. N. 1884, 84. This principle is applied by the English Courts to transactions between legal or medical practitioners and their patients, spiritual advisers and members of their congregations, trustees and their *cestues quetrustees*, guardians and words. (*Cunningham's Evidence. 305*). Where the husband stood in a position of active confidence to his wife and she entered into a transaction under his guidance, the burden of proving good faith is on him. To uphold the transaction, it must be shown she was given that care and advice which was due to her in her situation. 78 Ind. Cas. 850.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Scope.—"In every case where a child is born in lawful wedlock, the husband not being separated from his wife by sentence of divorce, sexual intercourse is presumed to have taken place between the husband and wife, until that presumption is encountered by such evidence as proves, to the satisfaction of those who are to decide the question, that such sexual intercourse did not take place at any time, when, by such intercourse the husband could, according to the laws of nature, be the father of such child." *Per Sir James Mansfield in Banbury Peerage Case* 1 L. J. Ch. 106. The presumption of legitimacy arising from the birth of a child during wedlock, the husband and wife not being proved to be impotent, and having opportunities of access to each other, during the period in which a child could be begotten and born in the course of nature, may be rebutted by circumstances inducing a contrary

presumption. This presumption can be rebutted by proof of non-access or impotence. But such evidence should exclude all doubt. 16 Cr. L. J. 84. A boy born seven months after marriage was also considered legitimate. 26 Ind. Cas. 969.

Cases.—146 P. L. R. 1910 ; 5 C. L. J. 1 ; 79 P. R. 1907 ; 7 Bom. L. R. 95 ; 29 C. 41 P. C ; 25A. 403 P. C ; 28 P. R. 1906 ; 10 Ind. Cas. 389 ; 68 Ind. Cas. 455 ; 44 A. 470.

Proof of cession of territory.

113. A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Notes.—It is doubtful whether the Government of India without the sanction of the Parliament can make a valid cession of territory. Vide 10 B. H. C. R. 37 on appeal to Privy Council in B. 367.

Court may presume existence of certain facts.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration.

The court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars ;

(*c*) that a bill of exchange, accepted or endorsed was accepted or endorsed for good consideration ;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;

(*e*) that judicial and official acts have been regularly performed ;

(*f*) that the common course of business has been followed in particular cases ;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(*h*) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(*i*) that when a document creating an obligation is in the hands of the obligator, the obligation has been discharged.

But the Court shall also have regard to such facts as the following ; in considering whether such maxims do or do not apply to the particular case before it :—

as to *illustration* (*a*)—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

as to *illustration* (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself ;

as to *illustration* (*c*) a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

as to *illustration* (*d*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence ;

as to *illustration* (*e*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course ;

as to *illustration* (*f*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances :

as to *illustration* (*g*)—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances.

as to *illustration* (*h*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

as to *illustration* (*i*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

as to *illustration* (*j*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

Scope.—Where the fact giving rise to such a presumption as may be drawn under this section, is undisputed and no explanation negativing the presumption is offered, the Court is justified in laying the onus proper where, but for the presumption, the onus could not be laid. But, where explanation negativing the presumption is forthcoming, the Court is not in a position to draw the presumption until it has heard the evidence in support of the explanation and, therefore, must ignore the presumption for the purpose of determining where the onus proper lies, on the principle "when conflicting evidence on a point covered by a presumption of law is to be gone into, the presumption of law is *functus officio* as presumption of law." Such a presumption, therefore, cannot shift "the burden of proof" in the strict sense of that term and the most it can effect is a shifting of "the burden of evidence" the burden of going forward with new evidentiary matter and s. 4 of the Act indicates that it is for the Court which is taking evidence to decide whether such a presumption is strong enough to produce even that limited effect. 1 N. L. R. 169. The illustrations appended to this section are not statements of the law qualified only by particular exceptions. They are merely what they call themselves, illustrations or instances. 69 Ind. Cas. 257.

Illustration (a).—The Court may presume, from the possession of stolen property, that the possessor is either the thief or has received it knowing it to be stolen property, unless the possession is accounted for. 15 P. R. 1891 Cr. Where a deaf mute was found in possession of stolen property a week after the theft, *held* in the special circumstances of the case, the presumption authorised under this illustration canot be applied. 25 Ind. Cas. 330. Where after six months after the dacoity some common ornaments were found in the possession of the accused, *held*, that, having regard to the nature of the ornaments, which were of common description, and were likely to pass from hand to hand, the case was not covered by s. 114, illustration (*a*), and the accused should not have been called upon to explain their possession. 3 A. L. J. 808=29 A. 138 ; see also A. W. N. 1881, 155. But when stolen property is found in a person's possession soon after the theft the Court may presume that the party is either a thief or a receiver of stolen property. 2 Weir. 489 ; 1 L. B. R. 382; 13 Cr. L. J. 140 ; 11 A. L. J, 94 ; 14 L. W. 418 : 32 C. L. J. 119. Illustration (*a*) to the section is merely an example, and it cannot be read as limiting the presumptions which may be drawn from recent possession of stolen property. 17 Cr. L. J. 32=32 Ind. Cas. 160 ; see also 14 L. W. 418 ; but see 32 L. L. J. 19=59 Ind. Cas. 204. Before a presumption under this illustration can arise, it must be proved that the goods found in the possession of the accused have been stolen. The presumption cannot arise when it may reasonably be presumed that the property in question is stolen property. In a criminal case the *onus* is on the prosecution to prove beyond reasonable doubt the guilt of the accused and the burden never changes. 52 C. 223=88 Ind. Cas. 515 ; see also 1 Rang. 520 ; 21 A. L. J. 836 ; A. I. R. 1932 Sind. 180. Presumption referred to in illustration (*a*) is not confined to charges of theft but extends to all charges however penal not even excluding murder. This presumption relates to offences of dacoity also. A. I. R. 1930 Pat. 513=9 Pat. 606 Where accused persons are found in possession of stolen property soon after the theft and they are unable to explain their possession they can be held guilty of receiving stolen property knowing it to be stolen. L. R. 5 A. 81. If he gives any explanation which in the opinion of the jury may possibly be true although they do not necessarily believe it then the crown cannot rely upon the presumption and must prove the guilt of the accused just as in any other criminal case accused did not prove his innocence. 35 C. W. N. 291. Where a person is found in possession of stolen property after it was stolen the Court may presume under illustration (*a*) that he is a thief. A. I. R. 1934 All. 455=35 Cr. L. J. 1092.

Possession must be recent—It is clearly established that, in order to put the accused on his defence, his possession of the stolen article must be recent, although what shall be deemed recent possession must be determined by the nature of the article stulen, *i. e.* whether they are of a nature likely to pass rapidly from hand to hand ; or of which the accused would be likely from his situation in life or vocation, to become possessed innocently. *Best Ev.* § 211. Possession of stolen goods about nine months after the loss does not given rise to any presumption under this section. 130 Ind Cas. 800=32 Cr. L. J. 614=A. I. R. 1931 Pat. 85 ; see also 54 B 171=A. I. R 1930 B. 155 : A. W. N 1881, 155 ; 1912 M. W. N. 97=13 Ind. Cas. 128=13 Cr. L. J. 140 ; 6 A. 224 ; A. W. N. 1887, 281 ; 1912 M. W. N. 362=15 Ind. Cas. 315=13 Cr. L. J. 475. But the presumption would arise where the accused is in possession of the stolen property three weeks after it was stolen. 3 M. L. T. 30=7 Cr. L. J. 30 ; 12 C. P L. R. Cr. 5 ; 1914 M. W. N. 84=25 Ind. Cas. 330. The mere fact that the accused points out the place in which stolen property is concealed does not give rise to any presumption under s. 114 or justify his conviction of the offence of receiving stolen property. But that presumption would arise when the accused is not able to account for his possession of such stolen articles. 126 Ind. Cas. 876=31 Cr. L. J. 1104=32 Bom. L. R. 574=A. I. R. 1930 Bom. 244. No fixed time can be laid down to determine whether possession of article is recent or otherwise. But every case must be judged on its own facts. If a few stolen articles are found in possession of a person under circumstances which may give rise to the probability of his coming by them honestly sometime after the theft the presumption under the law might not arise against him. 27 Cr. L. J. 617=94 Ind. Cas. 361=A. I. R. 1926 Cal. 925 ; see also A. I. R. 1928 Nag. 213=109 Ind Cas. 801 ; 3 A. L. J. 808=4 Cr. L. J. 436=29 A. 138 ; 1 L. B. R. 39 ; 26 M. L. T. 389=11 L. W. 43=53 Iad. Cas. 119 ; 22 C. W. N. 597=46 Ind. Cas. 158=19 Cr. L. J. 702 ; 20 L. J. 178=65 Ind. Cas. 849=23 Cr. L. J. 193 ; 85 Ind. Cas. 722=26 Cr. L. J. 578=A. I. R. 1925 All. 220 ; 96 Ind. Cas. 650=27 Cr. L. J. 986 ; 27 Cr. L. J. 807=95 Ind. Cas. 471=A. I. R. 1926 Lah. 528 ; 27 Cr. L. J. 112=91 Ind. Cas. 544=A. I. R. 1926 Lah. 272. Where the possession of the property stolen some years before, reasonably and circumstantially explained, such explanation should not be rejected merely because it is unproved. 15 P. R. 1891 Cr.; see also 19 Cr. L. J. 189=43 Ind. Cas. 605 ; 8 M. L. T. 418.

Possession must be exclusive—Vide L. B. R. (1872-1892) 397 ; 111 Ind. Cas. 732=29 Cr. L. J. 924 ; Ur B. R. (1897-1901) Vol. I p. 171.

Clause (b).—When there is no sufficient corroboration of the testimony of an accomplice, a conviction should not be based on such evidence. By this section the Court may presume that an accomplice is unworthy of credit unless corroborated in material particulars. 22 M. 491 ; 9 Ind. Cas. 978 ; 24 Ind. Cas. 146 ; 14 B. 331 ; 6 Bom. L. R. 1091=29 B. 264 ; 16 P. R. 1886 Cr. ; 9 Ind. Cas. 778 ; 8 Ind. Cas. 193 ; 2 Bom. L. R. 610 ; 10 C. W. N. 669 ; 26 B. 193 ; 14 B. 115 ; 6 Bom. L. R. 481 ; A. I. R. 1935 Lah. 230 ; A. I. R. 1935 All. 162 ; A. I. R. 1935 All. 477 ; A. I. R. 1935 Oudh 1 : A. I. R. 1935 All. 132. 11 Bom. L. R. 858 ; Rat. Un. Cr. C. 750 : 4 Lah. L. J. 284. The term "accomplice" signifies a guilty associate in crime ; or when the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused he is an accomplice. 27 M. 271. There is no rule of law or practice that the self-incriminating portion of the evidence of an accomplice is unworthy of belief unless corroborated. 6 Bom. L. R. 443. The testimony of an accomplice is not required by law to be corroborated. The rule of practice which lays down the requirement should be applied with due regard to the varying circumstances of each particular case. 15 Bom. L. R. 288 ; see also 28 C. 339 ; 16 C. W. N. 669 ; 63 I. C. 612 ; 2 Pat. L. T. 757. Corroboration need not be direct. A I. R. 1935 All. 132. Circumstantial evidence is sufficient. A. I. R. 1935 All. 85 ; A I. R. 1935 Lah. 125. Corroboration need not be in all details. Corroboration in some particulars, satisfying Court of truth of accomplice's story implicating accused is sufficient A. I. R. 1935 Lah. 125. For further discussion on this topic. Vide notes under s. 133, *infra.*

Illustrations (c).—This illustration authorises the presumption that a particular judicial or official act has been performed regularly, but it does not authorise the presumption without any evidence that the act has been performed. 6 C. W. N. 845.

Illustration (d).—This illustration does not compel, but certainly permits, the Court to make a presumption as to the continuance of the state of things.

29 Ind. Cas. 294=20 C. W. N. 48. Proof of the existence at a particular time of a fact of a continuous nature gives rise to rebuttable presumption within logical limits that it existed at a subsequent time or has previously existed. The limits of time within which the inference of continuance possesses sufficient probative force to be relevant must obviously vary with each case—always strongest in the beginning, the inference steadily diminishes in force with lapse of time at a rate proportionate to the quality of permanance belonging to the fact in question, until it ceases or perhaps is supplanted by a directly opposite inference. To put the matter shortly it will be inferred that a given set of facts whose existence at a particular time is once established in evidence continues to exist as long as such facts usually exist. 36 C. L. J. 336.

Illustration (e).—There is a well knwn maxim of law *omnia præsumaniur rite esse acta* : this is an infereuce of reasonable probability arising out of the experience of mankind. The law assumes that any act done in public or any formal act privately done will be performed in due form by the person authorised to do it. (*Powell Ev.* 391) Under this section, it is presumed that official acts have been regularly performed. "Regularly performed" means performed with due regard to form and procedure. 1921 Pat. 343=63 Ind. Cas. 226 ; 96 Ind. Cas. 571 ; 68 Ind. Cas. 740 ; 4 Lah. L. J. 448.

Illustration (f).—The posting of a letter, if proved and if the same is not returned by the Dead Letter Office raises the presumption that it must have reached the addressee. 45 M. L. J. 817.

Illustration (g).—The presumption indicated in this illustration arising from non production of evidence cannot displace the contrary inference supported by adequate evidence. 63 Ind. Cas. 740 (P. C.) In other cases the Court can draw such inference from non-production. 62 Ind. Cas. 697. Non-production of the account books justified the presumption under this section. 25 Ind. Cas. 749 ; (1922) P. C. 378. Where documents relevant to the case are withheld by the Crown, the Court will be justified in drawing an adverse inference against the Crown. 36 C. L. J. 346 : 36 C. L. J. 245.

Illustration (i).—This illustration only refers to presumptions that may be raised. It does not follow that such presumption would shift the onus of proof. 18 M. L. T. 94. Under the clause (1) it is open to the Court to presume that if a document creating an obilgation is in the hands of the obligor, the obligation is discharged. But in raising such a presumption the Court has to take into regard any facts or circumstances indicating that it might have been stolen. The burden shifts as the evidence is developed and when both the parties produce their evidence, the question on whom the initial onus lay ceases to be of much importance. 25 O. C. 125.

Presumption of death.—Where among some relations the evidence on the question who died first is quite evently balanced, the Court is entitled to say the probabilities are in favour of the younger man surviving the elder. 1922 Bom. 347.

CHAPTER VIII.

ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppels.—Most admissions can be withdrawn ; the fact that they were made remains, but the party who made them can be heard to explain that he made them rashly and carelessly, or under an honest misapprehension, or even that he knew what he said to be false. But an admission or statement may be made in so conclusive a manner or under such special circumstances that the law will not permit the person who made it to contradict it. He is said to be estopped from denying his former statement. In other words, an stoppel is a "bar which the law sometimes sets in the way of one who is endeavouring to maintain the contrary of that which he once asserted in words, or unequivocally implied by his conduct." The rules of evidence forbid to allege the existence of a state of things inconsistent with his previous representation, when to do so would be inequitable or contrary to the policy of the law. Neither he nor any one claiming under him can give any evidence to contradict it. This is what Lord Coke meant by his quaint definition. "An estoppel is where a man is concluded by his own act or acceptance to say the truth"—*Powell Ev.* 446.

Kind of estoppel.—According to English law estoppels are of three kinds : (1) By Record ; (2) By Deed ; and (3) By Conduct.

Estoppels by Record.—The judgment of a competent Court is an instance of this kind of estoppel. Vide ss. 40-44 supra.

Estoppels by Deed.—Where a man has entered into a solemn engagement by deed under his hand and seal as to certain facts, neither he nor any one claiming through or under him is permitted to deny the facts. (*Phipson Ev.* 606).

Estoppels by conduct.—Estoppels by conduct, or, as they are still sometimes called, estoppels by matter *in pais*, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate, and the like and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining and then the legal consequences followed. The doctrine has, however, in modern times been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been authoritatively stated as follows :—"Where one by his words or conduct wilfully causes another to believe in the existence of a certain state of things and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as exsisting at the same time"—*Phipson Ev* 608. This kind of estoppel has been dealt with in ss. 115 to 117. The object of the rule in this. The Court is to dispense justice and the rules of procedure should not be allowed to defeat the ends of justice. 46 A. 214.

Scope.—The rule is laid down in *Pickard* v. *Sears* (6 A. and E. 469). That rule is that "where one by his words or conduct wilfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, or to alter his own previous position, the former is concluded from averring against the the latter a different state of things as existing at the time. In *Freeman* v. *Cooke-Parke. B.* observed. By the term "wilfully" however, in the rule, we must understand, if not that the party represents that to be true which he knows to be untrue, at least that means his representation to be acted upon, and that it is acted upon accordingly ; and if, whatever a man's real meaning may be, he so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant he should act upon it, and did act, upon it as true, the party making the representation would be equally precluded from contesting its truth ; and conduct by negligence or omission, when there is a duty cast upon a person by usage of trade or otherwise to disclose the truth, may often have the same effect." No actual verbal representation is necessary to give rise to estoppel. It is quite enough that the conduct of the party leads another to act in the belief that he asserts no claim to the property. 19 I. A. 203 ; 80 Ind. Cas. 994 ; see also 34 A. 398 (P. C.) ; 77 Ind. Cas. 214. This section is not exhaustive. 33 C. 915, *contra*, 35 C. 904. There is no pecularity in the law of estoppel in India as distinguished from that of England. The law is clearly and substantially set forth in this section. 40 A. 728=51 I. A. 326 P. C, Where all the facts are within the knowledge of both parties there is no scope for the doctrine of estoppel. The phrase "act on such belief" must have altered his position with reference to have the subject-matter of the representation. 25 Bom. L. R. 1170. This section may no doubt override ss. 91 to 94 because the law of estoppel is one which must prevail against a rule of procedure only. 72 Ind. Cas. 931. A person who knows the truth can hardly be

allowed to rely upon an estoppel arising from a false representation. (1923) M. W. N. 225 ; 30 C. 539=5 Bom. L. R. 421 (P. C.). Where A and B convey property to C making him believe that they are sole owners of the property and C acting on that representation takes the property for consideration. A and B are estopped from asserting the title of a third person to the property of D who was aware of the title of that third person. 36 C. L. J. 78. Where a statement is relied upon as an estoppel, it must be proved that the statement caused a change of position of the parties setting up the estoppel. 62 Ind. Cas. 869 ; 57 Ind. Cas 263 ; 4 C. L. J. 323 ; 7 A. 511. The rule of estoppel is a rule of evidence and ought to be pleaded with sufficient clearness. 61 Ind. Cas. 807. The meaning of this section is that no declaration, act or omission will amount to an estoppel unless it has caused the person whom it concerns to alter his position ; and to do this, he must both believe the facts stated or suggested by it and act upon such belief. 7 A. 878 (F. B.) See also 7 C. L. R. 481.

Estoppel—Point of Law.—There is no estoppel by reason of misrepresentation on a point of law and a transaction which is invalid can be declared to be such at the instance of either party alone. 82 Ind. Cas. 126. Representation on a matter of law *i. e.* as to the validity of an adoption creates no estoppel. 70 Ind. Cas. 653. An admission on a point of law is not an admission of a "thing" so as to make the admission a matter of estoppel within the meaning of this section. 21 A. 285.

Person.—A minor is not estopped from setting up his minority. A judicially interpreted the Contract Act makes contracts entered into by a minor void and the court should not be compelled to pronounce them valid by the provisions contained in the Evidence Act. It is not apparently the case that the word "person" in the section does not include a "minor" or "certified lunatic" or "other person" under a disability to contract owing to imbecility of judgment. But it might be held that such a person could not be held to have intentionally caused anything. When the law of contract declared that an infant would not be liable upon a contract or in the Statute of Fraud in connection with a contract, he cannot be made liable on the same contract by means of an estoppel ; in other words there can be no doubt about the general law that the principle of estoppel which is a provision of adjective law cannot be invoked to defeat the plain provision of a Statute. 71 Ind. Cas. 161 ; 20 C. W. N. 418 , see also 9 A. L. J. 103 ; 8 A. L. J. 1058 ; *contra.* 31 A. 21 ; 29 C. 126 ; 15 C. W. N. 239 ; 21 B. 198 ; 19 Bom. L. R. 561 ; 23 Bom. L. R. 975. In the latter case it was also held that "person" includes minor or lunatic. See also 25 C. 316. 1 Lah. 389 ; 60 Ind. Cas. 267. Section 115 does not apply to minors. The term "person" in that section applies to one who is of full age and competent to enter into a cantract. 26 C. 381=3 C. W. N. 468.

Declaration, act or omission.—The estoppel under this section may arise by reason either of a declaration, an act or an omission but in either case there must be intention on the part of the person against whom the estoppel operates to cause or permit a belief in the mind of another. In the case of a mere omission no such intention can well be imputed unless the true facts are known to the person whose omission is in question, but where there is a deliberate declaration or act causing or permitting such belief and inducing another to act upon it, it must be presumed that such declaration or act was intended to have its ordinary and natural effect upon the mind and actions of the other party. 67 Ind. Cas. 744. Estoppel is purely a personal bar operating against the person whose conduct constitutes it, and against his privies and representatives. 14 C. 491 ; 17 M. 473.

Adoption.—Where an adoption made by a Hindu widow is invalid for want of permission from her deceased husband she is not estopped from repudiating or denying it by the circumstance of her having for sometime treated it as effective. An adoption *ab initio* invalid may be raised to the level of a valid adoption on the ground of estoppel only when, by a course of conduct long continued on the part of the family which has purported to affiliate him, his situation in his original family has been so altered that it would be impossible to restore him in it. 18 M. 145=5 M. L. J. 44 ; see also 14 B. 312 ; 18 M. 53 ; 19 B. 374. An adoption being according to the Hindu theory both a religious and a secular act, estoppel cannot take the place of a religious act on which rests the conventional Hindu belief that a valid adoption generates filial relation and religious competency to make funeral and annual offerings with efficacy. 18 M. 53. See also 19 B. 374. Where

a widow, has intentionally induced a boy's father to believe that she had authority from her husband to adopt and that, in pursuance of that authority, she received the boy in adoption, she would be estopped from denying such authority. 169 P. R. 1812 ; see also 15 M. 486=2 M. L. J. 114.

Estopple of tenant ; and of licensee of person in possession.

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immoveable property ; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Principle.—*In Cook* v. *Loxley*, 5 T. R. 5 ; *Cockle Cas* ; *52. Lord Kenyon*, C. J. laid down : "Conforming to the uniform decisions in all the cases upon this subject, I ruled at the trial, and continue to entertain the same opinion, that in an action for use and occupation it would not be permitted to a tenant, who occupies land by the license of another, to call upon the other to show the title under which he let the land. This is not a mere technical rule, but is founded on public convenience and policy."

Scope.—The estoppel of a tenant is one of the most noticeable instances of estoppel by conduct (*Cockle Cas.* 53). By this section, a tenant is only precluded, "during the continuance of the tenancy," from denying that the landlord had "at the beginning of the tenancy" a title to the property, the subject of the tenancy. The words of the section leave it open to the tenant to show that his landlord's title has subsequently expired. 11 Bom. L. R. 1093. So the tenant is not estopped from showing that the title of his landlord has expired since the tenancy commenced, or that the land in question is not comprised in the lease. There is no inconsistency in holding the land and at the same time proving such matters. (*Cockle Cas.* 53). A licensee also is not permitted under this section to deny that the licensor had a title to the possession of the property at the time when the license was given to him to enter, though there was no relationship of licensor and licensee subsisting between the parties during the period sued for. 13 Ind. Cas. 512. This section does not debar one, who has once been a tenant, from contending that the title of his landlord has lost or that his tenancy has determined. 2 M. 226. The words "at the beginning of the tenancy" in this section can only apply to cases, in which the tenants are put into possession of the tenancy by the person to whom they have attorned, and not to a case where the tenants have previously been in possesion. 11 C. 519 ; 73 Ind. Cas. 450. A tenant is not precluded by an admission of tenancy from showing that the nature of the tenancy asserted by him to the knowledge of the landlord has been, for a period, prescribed by the Limitation Act, *pro tanto* adverse to the right to evict either at will or on notice given. 27 B. 515=5 Bom. L. R. 274. Persons not claiming posession of land under the tenant are not estopped from denying the title of the lessor. 44 A. 671=20 A. L. J. 615.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it ; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1)—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2)—If a baliee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

Scope.—This is another instance of estoppel by conduct. A bailee is estopped from denying that the bailor had, at the time, the bailment was made, authority to make it. (*Gosling* v. *Birmic* 7 Bing. 339). But when the bailee is evicted by title paramount, he can set up that title against the bailor with the consent of the person whose title is set up. (*Biddle* v. *Bond*, 6 B. and S. 225 ; *Rogers* v. *Lambert*, 24 Q. B.D. 573), cited in *Powell*, 474. The acceptance of a bill is also deemed a conclusive

admission as against the acceptor, of the existence of the drawer and the genuineness of his signature, and of his capacity to draw (*Sanderson* v. *Collman*, 1842, 11, L. J. C. P. 270) ; and if the bill be payable to the order of the drawer, of his capacity to endorse. (*Taylor* v. *Croker*, 1803, 4 Esp. 127) ; and if it be drawn by procuration of the authority of the agent to draw in the name of the principal. (*Taylor*, 595). This section is in accordance with English Law. Sections 115, 116 and 117 of the Evidence Act are not exhaustive as regards the doctrine of estoppel by agreement. 10 C. W. N. 747=33 C. 915.

Forged endorsement.—No body is entitled to any thing through a forged negotiable instrument, in as much as the forged endorsement is a nullity in itself. 36 C. 229.

CHAPTER IX.

OF WITNESSES.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rationol answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Who may testify.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Comment.—Evidence must be given by legally competent witnesses. The normal man is competent, and presumed to be so. The law of competency is therefore practically the law of incompetency, consisting of rules of exclusion.

Formerly there were several grounds of exclusion of witnesses, the Chief being (1) incompetency from interest, and (2) incompetency from mental incapacity. On the former ground, not only were parties themselves and their husbands and wives excluded, but also all persons who were in *pari jure* with either party, or otherwise substantially interested in the proceedings. Successive Statutes have abolished this kind of incompetency, leaving the fact of interest in the proceedings to affect credibility only—*Cockle Cas. 243*.

Scope.—Under this section all persons are competent to testify unless the Court considers that they are incapable of giving evidence or understanding the questions put to them by reason of tender years, extreme old age, disease whether of body or mind or any others cause of the same kind. Even a lunatic, if he is capable of understanding the questions, put to him and giving rational answers is a competent witness. The competency of a person to testify as a witness is a condition precedent to the administration to him of an oath or affirmation, and is a question distinct from that of his credibility when he has been sworn or has affirmed. In determining the question of competency the Court under this section, has not to enter into inquiries as to witness's religious belief, or as to the knowledge of the consequence of falsehood in this world or the next. It has to ascertain, in the best ways it can, whether, from the extent of his intellectual capacity and understanding, he is able to give a rational account of what he has seen or heard or done on a particular occasion. If a person of tender years or of very advanced age can satisfy these requirements, his competency as a witness is established. *Queen Empress* v. *Lal Sahai*, 11 A. 183. According to English law every sane person is a competent witness in both civil and criminal cases, except a child who does not understand the nature of an oath. *Powell Ev.* 197. But in India, where a person is competent to testify according to the provisions of this section, but is unable owing to his tender age, to comprehend the nature of an oath or affirmation, s. 13 of the Oaths Act relieves the Court of the necessity of administering an oath or affirmation to him ; and the evidence of such a person recorded without oath or affirmation may be admitted. 10 O. C. 373=7 Cr. L. J. 89. See also 16 B. 359 ; 14 B. L. R. 204 (F. B.). 11 C. P. L. R. C. 16 ; *contra* 16 M. 105 10 A. 207 ; 21 A. 183.

How to ascertain competency.—By this section, the Legislature has not prescribed an inflexible rule of universal application to the effect that, before a child of tender years is questioned, the Court must by preliminary examination test his

capacity to understand and to give rational answers and must form an opinion as to the competency of the witness before the actual examination commences. 18 C. W. N. 147=41 C. 406 ; *contra*, 11 C. W. N. 51 ; 20. Bom. L. R. 365.

Tender years.—There is no fixed period of legal discretion under which an infant is an incompetent witness. The rule by which an infant under seven years of age cannot commit a crime, because the law presumes him conclusively not to have sufficient intelligence for the act, has no analogy in the law of evidence (*Per Patteson.* J. in *R.* v. *Williams*, 7 C & P, 320). Age is immaterial ; and the question is entirely one of intelligence, which, whenever a doubt arises, the Court will ascertain to its own satisfaction by examining the infant as regards his understanding. (*Powell Ev.* 215). A Judge can act on the evidence of a child of tender years if he is impressed by its intelligence and demeanour and the evidence given bears no marks of tutorage. 6 Lah. L. J. 474. A Court should ascertain first of all by some simple questions whether a child is competent to understand and answer questions. 1923 P. 91.

Idiot.—An idiot is one that hath no understanding from his nativity, and therefore is by law presumed never likely to attain any ; and such a person is incapable of giving evidence. The presumption is always in favour of sanity ; hence the onus of proving the unsoundness of mind of any person tendered as a witness rests on those who dispute his sanity. *Harrod* v. *Harrod* 1 K. & J. at p. 9, *Powell Ev. 213.*

Deaf and Dumb.—Deaf and dumb persons were formerly regarded as idiots, and therefore incompetent to testify, but the modern doctrine is that if they are of sufficient understanding, they may give evidence either by signs or through an interpreter or in writing. (*Powell Ev. 214*).

Explanation.—A lunatic is one that had understanding but by disease, grief, or other accident has lost the use of his reason. As long as the suspension of the intelligence continues, the lunatic is incompetent to testify ; but his competency is restored during a lucid interval. Moreover, the disability does not extend to cases of monomania as to some immaterial matter, nor where the hallucination permits the witness to understand the nature of the duty which is expected from him. (*R.* v. *Hill*, 2 Den. 254). But where a person is tendered as a witness who is believed to be suffering from monomania, a preliminary inquiry as to his capacity to give evidence must be instituted and he himself must be examined. (*Powell Ev. 214*).

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs ; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Deaf and Dumb Witness.—The same rule would no doubt, be applicable in the case of deaf, or deaf and dumb witnesses, who might be communicated with by special signs, provided the Court was satisfied as to the reality ane accuracy of such communication. Competence to understand the questions put to him and to give rational answers is under section 118 the one essential qualification for a witness. Deaf and dumb persons were formerly excluded as witnesses on the presumption of their idiocy. It is now ascertained how groundless this presumption is (*Cunningham 349*). If the witness can write, it is a safe practice to receive his testimony in this form than through the medium of signs. *Morrison* v. *Lennard*, 3 C. & P., 127. Persons deaf and dumb from birth were formerly excluded and classed with idiots. Education has now opened their ears, and metaphorically loosened their tongues. (*Norton Ev.* 306).

Deemed to be oral evidence.—Presumably to exclude the effect of putting in writing which would give the opposite side the right of a reply. (*Norton Ev. 336*).

Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.

120. In all Civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

English law.—At common law, a husband or wife of a party to the proceedings, civil or criminal, is incompetent to give evidence either for or against such party. *Bentley* v. *Cooke*, 3 Doug. 422. The wife of a person charged with against upon her is a competent witness against him,, at common law. *R.* v. *Azir*, 1 Strag. 633. Now by Statute, they are made competent witnesses as regards certain offences. But a distinction must be drawn between competency and compellability of witnesses. A wife, though rendered competent by statute to give evidence against her husband in certain criminal proceedings, is not thereby made compellable to give such evidence, unless there is a clear and specific enactment to that effect. *Leach* v. *Rex*. L. R. (1912) H. C. 305. In civil cases there appear to have been no exceptions at all.

Scope of this section.—Under this section there is no exception either in civil or criminal cases. Such witnesses are always competent. See also 6 W. R. Cr. 21. It appears that this section was only enacted to nullify the effect of the English law on the subject. The ground is covered by s. 118. This section provides that parties to the suit shall be competent witnesses. 49 C. 345.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate ; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B, cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(*c*) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Session Judge. B may be examined as to what occurred.

Scope.—The privilege given by this section is the privilege of the witness, *i. e.* of the Judge of whom the question is asked. If he waives that privilege, it does not lie in the mouth of any other person to assert it. 3 A. 573=A. W. N. 4881, 37. But Judicial officers are not exempted from giving evidence upon matters which they saw, when sitting as Judges unless they arrive at such knowledge by virtue of an investigation which they were making as Judges. 2 Weir. 777.

Communications during marriage.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by and person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Principle.—This enactment rests on the obvious ground that the admission of such testimony would have a powerful tendency to disturb the peace of families, to promote domestic broils, and to weaken if not to destroy that feeling of mutual confidence, which is the most endearing solace of married life. The protection is not confined to cases where the communications sought to be given in evidence is of a strictly confidential character, but the seal of the law is placed upon all communications of whatever nature which pass between husband and wife. *O'conner* v. *Majori banks*, (1842. 11 L. J. C. P. 267). It extends also to cases in which the interests of strangers are solely involved, as well as to those in which the husband or wife is a party on the record. It is, however, limited to such matters as has been communicated during marriage. (*Taylor* § *909 A*),

Scope.—This section protects the individuals, and not the communication if it can be proved without putting into the box for that purpose the husband or the wife

to whom the communication was made. 22 M. 1=2 Weir 778. Under this section no communication between the husband and wife can be disclosed by the one against the other without the consent of the party concerned. The consent can not be implied. It is incumbent upon the Court to ask the party, against whom the evidence is to be given, whether he or she would consent to the evidence being given and not to admit it unless such consent is given. 244 P. L. R. 1913; see also 218 P. L. R. 1913; 40 C. 891; 10 P. R. 1914 Cr.; 1923 Lah. 40.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permissson as he thinks fit.

Scope.—Statements made before the Income tax Collector do not relate to affairs of State and so are not governed by this section. 32 M. 62=19 M. L. J. 263; 4 M. L. T. 317. Any officer having the custody of records, not being records of which the production may on special grounds be refused, is bound to produce them on receiving a summons to that effect. 2 Weir 781. Statements made by witnesses as in the course of a departmental enquiry into the conduct of Public Officers, who were subsequently put upon their trial on charges of taking illegal gratification are not privileged under ss. 123, 124 or 125, 16 C. W. N. 431=13 Cr. L. J. 445=15 Ind. Cas. 77. The question whether a communication is privileged or not is determined by the occasion on which and the circumstances in which it is made, and not by the possibility of the persons receiving it making further communication to others in circumstances that would not be privileged. The privilege attaching to an official publication (*e. g.*, a Government resolution) is not absolute, but is subject to the condition that it is without malice actual, express and in fact. 6 Bom. L. R. 131 (on appeal from 27 B. 189.)

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Scope.—This siction follows the English law and makes the public officer the Judge as to whether a communication made to him in official confidence should or should not be disclosed. If he thinks that the public interest would suffer by such disclosure, he is entitled to refuse to disclose the communication. The mere fect that the publication of the communication might cause a scandal in the office will not justify a refusal to disclose it. 7 C. W. N. 246. See also, 2 M. W. N. 369. The words "communication in official confidence" import no especial degree of secrecy and no pledge or discretion for its maintenance, but include generally all matters communicated by one officer to another in the performance of duties. The words have the same meaning as "professional confidence" used in s, 126. In English law the privilege as to production of public documents before Courts of law extends even to those which pass from hand to hand, in a publice office, in the usual course of business with no special mark of secrecy upon them and the ground on which the privilege rests is that it woutd be detrimental to the public interests, to produce them. 26 Ind. Cas. 723. An officer's refusal to disclose a document on grounds of public policy is final. It is not comptent to the Court to call for and examine the secret archives of the State in order to satisfy itself of their confidential nature. 47 Ind. Cas. 225. But a Custom officer cannot claim a privilege as to the admission, made to him by the Inspector although what took place between the two Superintendents might probably be privileged. 22 C. W. N. 451. No objection can be taken in appeal. 44 M. L. J. 132. A Court should decide whether the document is privileged or not. 44 A. 360=20 A. L. J. 140.

Information as to commission of offences.

125. No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenues.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenues.

Legislative changes.—This section has been substituted by Act 3 of 1887.

Scope.—The words "information as to the commission of any offence" in this section only enact the rule which as said by *Eyre C. J. in Hardy's Case* (*24 How St. Tr. 808*) has universally obtained, on account of its importance to the public for the detection of crimes, that those persons, who are the channels by means of which the detection it made, should not be unnecessarily disclosed. Rat. Un. Cr. C. 937= Cr. Rg. 47 of 1897. *Eyre, C. J.* observed. "It is perfectly right that all opportunities should be given to discuss the truth of the evidence given against the prisoner ; but there is a rule, which has universally obtained on account of its importance to the public for the detection of crimes, that those persons who are the channels by means of which that detection in made, should not be unnecessarily disclosed ; if it can be made to appear that really and truly it is necessary for the investigation of the truth of the case that the name of person should be disclosed, I should be very unwilling to stop it ; but it does not appear to me that it is within the ordinary course to do it, or that there is any necessity for it in this particular case." Even when no objection is taken the Court should exclude such evidence. 40 C. 898. Statements made in the course of judicial proceedings are absolutely privileged, but police report does not enjoy such absolute privilege. 22 A. L. J. 597=46 A. 471. So the defence cannot elicit from individual prosecution witnesses whether he was a shy or an informer also cannot discover from police officials the names of persons from whom they had received information. 19 C. W. N. 676=42 C. 957. Having regard to the distinction drawn throughout Act VII of 1873 (Bombay) between a police officer and an officer of the salt department, the latter cannot be considered a Police officer within the meaning, s. 125 Evidence Act and may therefore be compelled to say whence he obtained an information as to the commission of an offence, Rat. Un. Cr. C. 183. So also Superintendent of the Post office is not privileged under this section. 2 Bom. L. R. 329 followed in 16 C. W. N. 431=15 Ind. Cas. 77. A distinction should be drawn between questions which a witness can not be compelled to answer and those which he cannot be permitted to answer. The later class of questions might properly be forbidden, but questions of the former class are in no way barred ; a witness has merely the right of refusing to answer such questions, without any hostile inference being drawn from his refusal. 10 Ind. Cas. 917=12 Cr. L. J. 277.

Professional communication.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by on behalf of his client, or on to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any [illegal] purpose ;

(2) any fact observed by any barrister, pleader, attorney and vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*) A, a client, says to B, an attorney ;—"I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*) A, a client, says to B, an attorney ;—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose is not protected from disclosure.

(*c*) A, being charged with embezzlement, retains B, an attorney to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Legislative changes.—The words within brackets have been added by Act 18 of 1872.

Principle.—This rule is established for the protection of the client, not of the lawyer ; and is founded on the impossibility of conducting legal business without professional assistance and on the necessity, in order to render that assistance effectual, or securing full and unreserved intercourse between the two. The privilege may be waived by the client, therefore, but not by the adviser. (*Phipson Ev.* 170).

Scope.—A legal adviser, (whether, barrister, attorney, pleader or vakil) will not be allowed without the express consent of his client, to disclose oral or documentry communications made or obtained in professional confidence. (*Phipson Ev. 169*) The law in India relating to professional communications between a solicitor and a client is the same as in England, and in interpreting this section, the High Court may rightly refer to English cases. The use of the word "disclose" in this section shows that the communication to be privileged must be of a confidential character between the solicitor and the client. It is not everything that the solicitor learns in the course of his dealings with the client that is privileged from a disclosure. It must be a matter communicted to him confidently for the purpose of obtaining his professional advice. The solicitor claims the privilege as that of his client. He must, then, state the name of the person for whom he claims the privilege. Where one client mentions the name of another client in a communication made to the solicitor in the course and for the purpose of professional employment by him, and the latter consults the solicitor afterwards on business relating to his own affairs, then, unless the name of the latter is communicated to the solicitor confidentially for the purpose of being advised by him, on the express understanding that it should not be communicated to the rest of the world, the solicitor is bound to disclose the name of the client. A solicitor is not at liberty to disclose the matter of employment, without his client's consent. This section protests from publicity not merely the details of the business, but also its general purport, unless it be showm *aliundi* that such business or the communication made in respect of it, falls within the proviso (1) or (2). Where in an interview between a solicitor and his client, a third person of his client's company makes a statement to him in the course and for the purpose of his professional employment the solicitor is not privileged from disclosing the name of the person making the statement, unless the name was made the subject of a special confidence, and it was stipulated by or on behalf of his client that it was not to be disclosed. 18 B. 263 ; See also L. B. R. (1893-1900) 358. 26 Bom. L. R. 1887. This section must be construed as applying to all persons who came in within the category of "pleader" as defined in s. 4 (a) of Cr. P. Code and includes therefore a muktear. 25 C. 736=2 C. W. N. 484. The consent required by this section should be given on each occasion when a communication of the kind described is sought to be made admissible in evidence. A. W. N. 1890, 172. The communication must be of a confidential or private nature. 3 B. 91. The communication must be made to him in the course and for the purpose of his employment as a pleader. 4 Bom. L. R. 469 ; 5 Bom. L R. 122. A Court has no power to order the production of a document which is privileged. 7 Bom. L. R. 709. See also 16 C. W. N. 742. Neither a formal retainer, nor payment of fees is necessary to constitute the relationship of solicitor or client ; it is enough if the solicitor is consulted in any way in his professional character. The sale, purchase, and conveyance of estates or negotiations for a loan are within the scope. According to English Law communications in furtherance of a fraud or crime are not protected. But according to this section communication made in furtherance of any illegal purpose are not protected. (*Vide Phipson Ev.* 172). Trade secrets communicated to a vakil in course of the professional advice is also protected. 16 A. L. J. 987.

Section 126 to apply to interpreters etc.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Scope.—Where a communication is made to a pleader's clerk he is not at liberty to disclose the communication. 26 C. 53=2 C. W. N. 649; U. B. R. (1897-1901) Vol. II, 368. The communications must have been confidentially made for the purpose of employment or the knowledge confidentially obtained solely in consequence of it, to be privileged (*Garder* v. *Irvin*, 4 Ex. D. 49; *O' Shea* v. *Wood*, 1861, P. 286)—*Phipson Ev.* 172.

Privilege not waived by volunteering evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any party to a suit or proceeding calls any such barrister, [pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question he would not be at liberty to disclose.

Legislative changes.—The word within brackets has been inserted by Act 18 of 1872.

Scope.—This privilege may however be waived by the client either expressly or impliedly—e. g., by the client examining the solicitor as to the privileged matter; though, if only examined as to part, he cannot be cross-examined to the residue; or, by sending the opponent a copy of the privileged document. But such privilege cannot be waived by the solicitor (*Phipson Ev.* 179). By the old law, a party, who gave evidence in a suit at his own instance was deemed to have waived his privilege, and to have consented to disclosure by his professional adviser of any relevent matter, which the professional adviser would but for such privilege, be bound to disclose. Under the present Act the mere fact of the party's giving such evidence himself does not imply such consent; and if he calls the barrister, etc., as a witness and questions him, he is deemed to consent to disclosure by the barrister, etc., only if he questions him on matters which, but for such question he would be bound not to disclose; and by giving evidence he does not expose himself to be questioned about professional communications except so far as is necessary to explain his evidence. (*Cunningham Ev. 361*).

Condifidential communications with legal advisers.

129. No one shall be compelled to disclose the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given but no others.

Season for the rule.—Under the old law (Act II of 1855), section 22, a party to a suit, who offered himself as witness, was bound to produce any confidential writing or correspondence that had passed between himself and his legal adviser. The reason for this rule is not very clear; and the present section abrogates it so far that such correspondence need be produced only if it is necessary to explain the witness's evidence. It will be observed that the doubts which were at one time felt in the English Courts as to whether the protection extends to communication made by a client to his solicitor before any dispute has arisen, cannot arise under this section. (*Taylor.* 924). The English law at present is identical with the rule here laid down. *Minet* v. *Morgan*, L. R. 8 Ch. App. 361—(*Cunningham Ev.* 362).

Scope.—Statements of witness recorded for the special purpose of being shown to a legal adviser with a view to ascertaining whether it is a good case for the Court to decide are privileged. 43 Ind. Cas. 71.

Production of title deeds of witness not a party.

130. No witness who is not a party to a suit shall be compelled to produce his title deeds to any property or any document in virtue of which he holds any propery as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

English Law.—A witness, if a stranger, cannot be compelled to produce his title deeds or documents in the nature of title deeds on account, it is said, of the mischief which in the present complicated state of the law of real property, might result if title to estates where subject to compulsory disclosure. *Mr. Best* suggest the reason to be the mischief which might ensue from an erroneous decision of the Judge as to the nature of the documents. (*Phipson Ev. 179*). A person who is not a party to the action cannot be compelled to produce his title deeds, or other documents referring to his title to any property. If one person wants to see another person's title deeds or documents he should himself bring an action against such person for discovery. *Cockle Cas 393* ; *Pickering* v. *Noyes*, 1 L. J. K. B. (O. S.) 110. A mortgagee also cannot be compelled to produce his security including title deeds deposited with him except on payment of his principal and interests. *Chichester* v. *Marquis of Donegull*, L. R. 5 Ch. 502. A witness is not bound to produce any document which he swears will tend to criminate him. *Roe* v. *New York Press*, 75 L. T. Jo. 31.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

Producton of documents which another person having possession could refuse to produce.

Notes.—By section 65, secondary evidence can be given when a document is in the custody of a person who is legally bound to produce it and who refuses to do so. In the case, therefore of a document protected under this or the preceding section, secondary evidence of its contents could not be given. (*Cun. Ev.* 336).

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such quesion will criminate, or may tend directly or indirctly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penatly or forfeiture of any kind.

Witness not excused from answering on ground that answer will criminate.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Proviso.

English Law.—No man is bound to criminate himself ; *nemo tentur seipsum prodere.* Hence, a witness, whether a party to a suit or not, cannot be compelled to answer any question, whether put *viva voce* or in the form of a written interrogatory, the answer to which may expose, or tend to expose him, to a criminal charge penalty, or forfeiture of any kind. If the witness, after claiming privilege is compelled to answer his evidence will not be admitted against him at a subsequent trial for the criminal offence. (*R. v. Garbet.* 1 Den. 236), *Powell Ev. 222.*

Scope.—It seems that the Indian Legislature while departing from the rule laid down in English cases have accepted the principle laid down in *R.* v. *Garbet* cited above. A witness has, been made compellable to answer relevant questions but he is given the protection mentioned in that case. Where a person is charged with an offence with which he is alleged to have incriminated himself in his deposition in a case, the fact that he was the person who gave the deposition should be proved. 2 Weir 794.

Relevant to the matter in issue.—This section does not in terms deal with all criminating questions which may be addressed to a witness but only with questions as to matters relevant to the matter in issue. Irrelevant questions should not be allowed and it may be implied by the limitation in this section, that a witness should be excused from answering questions tending to criminate him as to matters which are irrelevant. The terms of section 132, especially when read with the rest of the Act, lead to the conclusion that the protection is only afforded to answers to which a witness has objected or has been constrained by the Court to give. 3 M. 271 12 B. 440 ; 23 B. 213. Taking a thumb impression of witness by the Court is

not equivalent to asking a question and receiving an answer within the purview of the proviso to s. 132 and therefore such a thumb impression may be proved against the person giving it in a criminal trial. 16 C. W. N. 500=15 C. L. J. 399.

Claim of privilege.—A witness must claim the benefit of the protection afforded by this section before he makes the statement in respect of which a question is subsequentiy raised. 40 A. 271=16 A. L. J. 201.

Proviso.—A statement containing defamatory matter against another, made by a witness in a judical proceeding, is a privileged statement under this section of the Act, for which such witness could not be proceeded against criminally. If the statement were false, he might be prosecuted for giving false evidence. 3 O. C. 80; 18 A. L. J. 940. Where, on the evidence given by certain witnesses in a murder case to she effect that they assisted the accused in concealing the dead body after murder, they were prosecuted under s 201, the only evidence being their deposition, *held* that their conviction was not illegal, as they, had omitted to object, perhaps owing to the want of legal advice, to answer the questions on the ground that the answers would criminate them. 2 Weir. 792. The proviso does not apply to voluntary statements. 32 C. W. N. 756=9 C. W. N. 911; Rat, Un. Cr. C, 360; 12 B. 440; 16 A. 88; 43 A 92; 37 C. 878. If a person makes a statement voluntarily without any compulsion, it may be, if relevant, used against him in his trial on a criminal charge. 21 C. 392; 32 C. 756. A defamatory statement which is not protected under s. 490 is punishable. 14 C. L. J. 31; 33 A. 163; 29 A. 685; 23 C. 563; 11 M 477; 17 B. 127; 15 C. 264; 10 A. 425; 23 C. 867; *contra*, 11 B. L. R. 321; 22 A. 234; 9 C. W. N. 911.

133. An accomplice shall be a competant witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplices.

Scope.—So long-established a rule of practice as that which makes it prudent as a general rule, to require corroboration of accomplices, cannot, without great danger to society, be ignored by the Magistrates and Sessions Judges, simply because this section declares that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The Courts, should give proper effect to the provision of s. 114, illustration (*b*). The rule in s. 114 illus. (*b*) and that in s. 133 are parts of one subject and both are found in most of the general judgments; and neither section is to be ignored in the exercise of judicial discretion. The illustration (*b*) to s. 114 is the rule, and when it is departed from, the Court should show, or it should appear that the circumstances justify the exceptional treatment of the case. 14 B. 331. The illustration (*b*) to s. 114 directs attention to the general principle that it is unsafe to convict on the evidence of accomplices, unless corroborated in material particulars. But along with this principle must be borne in mind the qualifications contained in the further illustrations which the Court is directed to consider while determining whether the general maxim does or does not apply to a particular case. They show that all persons coming technically within the category of accomplices cannot be treated as on precisely the same footing; and no general rule can be laid down. 26 B. 193=7 Bom. L. R. 694. The testimony of one accomplice should not be taken as corroborated by the testimony of another accomplice. 114 Ind. Cas. 457=30. Cr. L, J. 311.

Corroboration.—It is generally unsafe to convict an accused person on the testimony of his accomplices, unless they are corroborated in material particulars connecting the accused with the crime. But this rule does not apply to all persons who technically come within the category of accomplices. The particular circumstances of each case will affect its application and no general rule can be laid down on this point. 33 C. 649=10 C. W. N. 669. The rule as to corroboration being necessary to evidence of an accomplice being one of practice a Court of revision will not, unless under exceptional circumstances, interfere in cases where the rule has not been adhered to. 17 Ind. Cas. 19=13 Cr. L. J. 767. 11 Bom. L R. 858; 7 A. 160; 27 P. R. 1869. By the law both of India and England, the evidence of an accomplice is admissible and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. 14 B. 115.

The corroboration required of the testimony of an accomplice should go to some circumstances affecting the identity of the accused as participating in the transaction.

Such corroboration ought to be that which is derived from unimpeachable or independent evidence as distinguished from that derived from the earlier statements of the same accomplice or the statements of other accomplices. 6 Bom. L. R. 481, The kind of corroboration that is required in respect of an approver's evidence is corroboration that affects the approver's fellow criminals, not, in fact connects him and them together in relation to the crime. 1929 M. W. N. 794. In cases where a judge combines the functions of a judge and jury, he is bound under law to scrutinise the accomplice's evidence with the same degree of care and caution which is required of him in a trial by Jury and just as he is bound to give warning to the Jury, he must warn himself that it is unsafe to convict a person on accomplice evidence in the absence of substantial corroboration by independent evidence. 114 Ind. Cas. 457= 30 Cr. L. J. 311. The amount of criminality is a matter for consideration, and when a person is only an accomplice by implication or in a secondary sense, this evidence does not require the same amount of corroboration as that of a person who is an actual perpetrator with the principal offender. In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the Court must exercise careful discrimination and consider all the surrounding circumstances in order to arrive at a conclusion whether the facts deposed to by the person alleged to be an accomplice are borne out by those circumstances, or whether the circumstances are of such a nature that the evidence purporting to be given by an alleged accomplice are supported in essential and material particulars by evidence *aliundi*, as to the facts deposed to by that accomplice. 28 C. 339=5 C. W. N. 517 ; see also 15 Bom. L. R. 288 ; Rat. Un. Cr. C. 750 ; 2 Weir 809 N. To justify the Court in setting aside the conviction, it is necessary to show not only that there is no corroboration, but that the Judge, taking all the evidence together was wrong in acting on it. 16 C. W. N. 669. It is the invariable practice of Courts to require corroboration by an independent witness of so much of the evidence of an accomplice as goes to identify the accused person as the offender. 4 Bom. L. R. 401. See also 2 C. W. N. 55 ; 57 P. L. R. 1902=5 P. R. 1902 Cr. L. B. R. 1872—1892) 322 ; 6 L. B. R. 4 ; Rat. Un. Cr. C. 102 ; 25 M. 143 ; 5 C. P. L. R. 1 Cr. Prior to the Evidence Act, the rule, not of law but of practice was that a conviction could not be based on the unsupported evidence of an accomplice. 31 P. R. 1866 Cr. 125 P. R. 1866 Cr. ; 124 P. R. 1866 Cr. ; 27 P. R. 1867 Cr. ; Rat. Un. Cr. C. 844 ; 74 P. R. 1866 Cr. 11 P. R, 1867 Cr ; U. B. R. (1893-96.) Vol. 1 103 ; 2 C. W. N. 55 ; 5 P. R. 1902 ; 17 P. L. R. 1912 ; 10 B. 819 ; 24 Ind. Cas. 158 ; U. B. R. (1897-1901) Vol. 1 173 ; 9 A 528 ; Rat Un. Cr. C 102 ; L. B. R. (1872-1892) 54 ; 8 A. 306 ; 33 C. 1353 ; 8 A 120 ; 1 M. 394 ; 1 L. B.R. 29 ; 16 P. R. 1896 Cr.

Contra, 1 M. 394 ; 35 M. 247 ; 35 M. 397 ; 1 M. L. J. 397 (F. B.)

There must be independent corroboration with respect to the identification of the persons whom accomplices charge and with respect to the facts they state. 21 P. R. 1866 Cr. ; I.P.R. 1866 Cr. Rat. Un. Cr. C. 840 ; see also 1 M.L.J. 367 ; Rat. Un. Cr.C. 844 ; 18 C. W. N. 850 ; 11 B. H. C. A.C. 196 ; see also 7 Bom. L. R. 969 for nature of corroboration. Where there is nothing in the case outside the confession of a co-accused, the accused must be acquitted. 48 A. 409=A. I. R. 1926 All. 377.

Cases.—Where corroboration was found necessary, vide 4 P. R. 1903 Cr. ; 23 C. 351 ; 21 C. 328 ; 2 Lah. 296 ; 73 Ind. Cas. 506 ; 1923 Lah. 153 ; 9 O. & A. H. R. 947 ; 1923 Lah. 666 ; 1923 Lah. 335 ; 69 Ind. Cas. 462 ; 4 Pat. L. T. 381 ; 5 Lah 429.

Principle.—Accomplice evidence is held untrustworthy for these reasons ; (1) because an accomplice is likely to swear falsely in order to shift the guilt from himself ; (2) because an accomplice, as a participator in crime, and consequently as an immoral person, is likely to disregard the sanction of an oath, and (3) because he gives his evidence, under promise of a pardon, or in the expectation of an implied pardon, if he discloses all he knows against those with whom he acted criminally ; and this hope will lead him to favour the prosecution. There is offen danger that, for the purpose of saving themselves rather than stating the truth, the accomplices will make out a stronger case against the prisoner and more favourable to themselves than the real truth will warrant. 14 B. 115.

Accomplice.—The term accomplice signifies a guilty associate in a crime or, when the witness sustained such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice. 27 M. 271. Where an accomplice is an involuntary one his statement is not tainted. 2 Weir 809 N. A spy is not an accomplice. 19 B. 363 ; Rat. Un. Cr. C. 428. A person charged with an offence by

the police but subsequently discharged by the Magistrate is not an accomplice. 7 W. R. Cr. 44 ; L. R. B. (1893-1900), 467. A person offering bribe to the police is an accomplice. 14 B. 115 ; 14 B. 331 ; 26 B. 193 ; 26 M. 1 ; 2 C. W. N. 672. Witnesses to payment of bribes are not accomplices, unless they co-operate in the payment of the bribes. 83 C. 659 ; 27 C. 144. No man ought to be treated as an accomplice on mere suspicion. 11 Bom. L. R. 1153. Involuntary payment of bribe does not make one an accomplice. 27 C. 925. See also 31 C. L. J. 30.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof any fact.

Scope.—The general rule is that the Court can act upon the uncorroborated evidence of a single witness if satisfied with such evidence (*Cockle Cas. 141*). But there are certain cases in which the legislature has required as a matter of law that credence should not be given to the unsupported testimony of one witness (*Powell Ev. 515*). But the *quantum* of evidence permitted upon a given point as distinct uished from the *quantum* of evidence required, rests in the descretion of the Court, which will not permit a trial mischievously to be protracted by evidence or examinations merely cumulative in their nature. (*Best 570*). It is not open to the trying Magistrate to put any arbitrary limit on the witnesses whose evidence the defence desires to adduce. 22 C. W. N. 408.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Scope.—This section deals with the law which regulates the order in which witnesses are to be examined. Before the Court can proceed to hear a case, it is obviously necessary to determine which party shall begin or upon whom the burden of proof of the whole case lies. The general rule is that the party who alleges any matter in issue must prove it. This would be simple enough if there were only one fact in issue, but there may be several facts in issue, the burden of proof of some being on one party and of others on the other party. The position is practically this, that the burden of proof lies at first on the party against whom judgment would be given if no evidence at all were adduced. (*Cockle Cas.* 123). The party who would lose the case if no evidence is given has the right to begin. In criminal cases there is practically no difficulty as all the allegations are invariably made by the prosecution and as such the prosecution has got the right to begin.

Civil Cases.—In civil cases the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin. (*Civil Pro. Code, Order 18, rule 1*). On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case. (Order XVIII, rule 2). Where there are several defendants some of whom support the case of the plaintiff wholly or in part and the others oppose him, the rule is that those who support the case of the plaintiff must address the Court and adduce his evidence in the first place and then the other defendants must address the Court and adduce evidence. 32 B. 599.

Criminal cases.—In criminal cases the prosecution has the right to begin. The witnesses for prosecution are examined in the first place. There are different kinds of procedure in different kinds of cases. Chapter XX of the Criminal Procedure

Code prescribes the procedure to be adopted in summons cases. Chapter XXI lays down the procedure to be adopted in warrant cases and Chapter XXII prescribes the procedure to be followed in summary trial. In all of them the prosecution witnesses are to be examined in the first place.

Judge to decide as to admissibility of evidence.

136. When either party proposes to give evidence of any fact the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possesion is proved or permit the denial of possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

Para (1).—Section 5 lays down: "Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are relevant under the Act and of no others. No party is entitled to adduce evidence of any other fact." This section empowers the Court to satisfy itself as regards the admissibility of any fact—otherwise the object of the law will be frustrated. It has already been hinted that the law of evidence has evolved out of Jury system and as such the law as regards admissibility of evidence is so stringent. The jurors as a rule are laymen and their mind can be easily influenced by improper admission of evidence. The Indian Legislature following the English law has adopted the peculiar rules of that law. In civil cases no great harm is done by improper admission of evidence but in Sessions cases where the jurors are sole judges of facts—improper admission of evidence is extremely detrimental to the interest of the parties. So the Judge is authorised to decide the question of relevancy of a fact by asking question to the party tendering evidence.

Para 2—This para should be read with s. 104. It often happens that an agent, for instance, to carry a message and bring back an answer or do some other act, is put into the box before the agency or authority is proved. Thereupon an objection is taken by the opposing counsel that the evidence is not receivable, because the agency, etc., is not proved. An undertaking is usually then given that evidence to prove the agency will be forthcoming at a later period, whereupon the case proceeds. If the proof of agency should break down, the whole of the evidence of the alleged agent is expunged from the Judge's notes. It would often be highly inconvenient

to interrupt the witness in his story, and call another witness in the middle of his examination to prove agency. It is to meet such a state of things that this clause is provided. (*Norton Ev.* 319).

Para 3—Illustrations (c) and (d) explain the meaning of this para. Where the relevancy of one fact depends upon another fact, which is not proved before the Court, the Court may either permit the first mentioned fact to be proved before the second fact or may require the party to adduce evidence in the first place for proving the second fact.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called him, his re-examination.

Note.—As soon as the witness has taken the oath or affirmed, he will be examined by the counsel for the party who called him as a witness ; this is examination-in-chief. Next, he will probably be cross-examined by the other party. Lastly, he may be re-examined by the party who called him, (*Powell Ev. 525*).

Order of examinations.

138. Witnesses shall be first examined-in-chief, then if the adverse party so desires cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross examination need not be confined to the facts, to which the witness testified on his examination-in-chief.

Direction of re-examination.

The re-examination shall be directed to the explanation of matters referred to in cross-examination ; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Principle.—Long forensic experience has evolved a body of rules of practice which undoubtedly tend to elicit the truth, and thus materially assist the tribunal in ascertaining the weight which should be attached to the evidence of any witness. (*Powell Ev. 525*).

Examination.—The first rule which regulates examination-in-chief is this :— In examination-in-chief only such questions are to be put which are relevant to the issue ; every thing else will be rigorously excluded. The evidence must be admissible under the Act. It is the duty of counsel to bring out clearly and in proper chronological order every relevant fact in support of his client's case to which the witness can depose. This task is more difficult than may at first sight appear. The timid witness must be encouraged ; the talkative witness repressed ; the witness who is too strong a partisan must be kept in check and yet the counsel must not suggest to the witness what he is to say. An honest witness, however, should be left to tell his tale in his own way with as little interruption from counsel as possible. In criminal cases, the duty of counsel for prosecution is wider. It is the practice, and probably the duty, of a prosecuting counsel to ask a witness questions favourable to the prisoner ; for he must lay all the material evidence before the Court, whether it tells in favour of the prisoner or not, and not unduly press for conviction. (*Powell Ev. 526*).

" We may here observe that it is to an affirmative proof that an examination-in-chief is mainly addressed ; and the proof is that of the issue to which the party producing the witness has, by his pleadings in the cause, challenged his antagonist ; and this consists in avoidance of all diverting, and collateral matters. The expression affirmative is used in the sense of something which is affirmed on either one side or the other. In this view a negation by a defendant of the case of the plaintiff would have to be regarded as an affirmation of the former. As the plaintiff, avers that he sold goods to B the defendant while B says that he did not. The examination on

the part of B of his witnesses, and in support of his defence, would be as much an examination-in-chief as that by A of his witness,"—*Goodeve Ev. 194.* A witness when under examination must speak of facts within his knowledge. Except in certain exceptional cases, his opinion or belief could not be admissible. Nor does this rule exclude only that which would ordinarily fall, under the head of belief; such matters, for instance, as one believed because a narrator of credibility had averred their existence. It would extend even to inferences, in the nature of opinion, which the witness might himself draw from the facts before him. Testifying as to facts, the witness can of course only do so according to the extent of his knowledge or recollection. He is not required to speak with such certainty as to exclude all doubt from his mind "If" says *Professor Greenleaf* "the fact is impressed on his memory but his recollection does not rise to positive assurance, it is still admissible, to be weighed by the jury; but if the impression is not derived from the recollection of the fact, and is so slight as to render it probable that it may have been derived from others, or may have been some unwarrantable deduction of witness's own mind, it will be rejected." To use the expression of *Mr. Taylor* in modification of the passage—"He may express it as it lies in his memory." (*Goodeve Ev. 195*). But there are exceptions to the rule, though they will be found limited to the instances where the nature of the case does not admit of more positive evidence. Thus, in a question of identity between persons and handwriting, a witness is allowed to speak upon belief. So, in one requiring for aid in its determination, the experience to be derived from science, art, or trade, witnesses skilled, in such matters, or as they are termed experts are admitted to give, as evidence, the results of their own craft bearing on the issue as in questions of foreign law or usage skilled or competent persons are admitted to pronounce authoritatively, and as matter of evidence, what that law or usage is. So in actions for criminal conversation, or for breach of promise of marriage the terms of attachment on which the parties lived towards each other may be proved upon belief. *Ibid.* p. 196.

In the *case of experts*,—which is the other exception to the rule reguiring witnesses to depose on actual knowledge,—their testimony, with the exception of the case of legal experts, is not so much of the facts themselves at issue (of which, in deed, they might probably be wholly ignorant) as of what science or their peculiar art or calling would pronounce concerning them, under corresponding circumstances. Thus it is every day's experience to receive as evidence the opinions of medical men as to the cause of disease or death,—the probable consequences of wounds,—or the property or effect of any given course of medical treatment. So in the case of ancient handwriting, antiquarians have been allowed to fix its date by conjecture, (*Goodeve Ev. 203*).

Cross-examination—Cross-examination is the examination of a witness by the party opposed to the party who called him, and who examined, or was entitled, to examine him in chief. It is the rule that, if a competent witness is intentionally called and sworn for the purpose of giving evidence, the right of cross-examination exists, although no testimony is actually given. According to the English rule where a witness is called to despose to a particular fact, he becomes a witness for all purposes, and may be fully cross-examined upon all matters material to the issue, the examination not being confied to the matters inquired about in the direct examination. *Rex* v. *Brooke*, 2 Stark, 472; *Phillips* v. *Middlesex*, 1 Esp. 357; *Fletcher* v. *Corsbil*, 2 Ma. and R. 417. The objects of cross-examination are to impeach the accuracy, credibility, and general value of the evidence given in chief; to sift the facts already stated by the witness, to detect and a expose discrepancies, or to elicit suppressed facts which will support the case of the cross-examining party. Great latitude is permitted in cross-examination, and cross-examiner will not be stopped by the Court unless the question is manifestly irrelevant and calculated neither to weaken the examination-in-chief nor to impeach the credit of the witness. In order to affect the credit of a witness even irrelevant questions may be asked in cross-examination. He may be asked questions which affect his veracity, such as, whether he has been convicted of a crime; whether he is a relative, or intimate friend, or under any special obligation, to the party who calls him; whether he is not identified or connected with him in interest; whether he is not been on terms of enmity with the adverse party; whether his memory is not defective generally, or as to the particular transaction; and whether he has been bribed, or paid to give evidence. But irrelevant-questions which neither contradict or qualify the result of the examination-in-chief, nor impeach the credit of the witness, are not allowed even in cross-examination.

Where a question asked in cross-examination appears to be irrelevant, it will not be excluded if the cross-examiner undertakes to show that it is really material. (*Powell Ev. pp.* 53—533).

"Cross-examination, though very powerful, is also a very dangerous engine. It is double-edged weapon, and as often wounds him who wields it, as him at whom it is aimed. To wield it to advantage, requires great practice and natural fact. In the hands of the raw and unexperienced advocate, we frequently see it do more injury than good to the cause. Yet it is this branch of forensic practice that the youthful advocate is most eager to display. The old and weavy pleader remembers that the witness is hostile to him, and is, perhaps, on the watch to inflict damage on his cause. Every question is likely to give such a witness an opportunity of clenching the nails he has driven before if not of starting new matter, which the examination-in-chief may not have elicited, but which may be further pursued in re-examination. Therefore, unless there is some very good ground for believing that the witness can be broken down, or convicted of falsehood, it is rarely good policy to submit him to a severe cross-examination. Sometimes a cross-examination is little more than affectation, in order that the pleader may not seem to let the witness go without question, as if he were totally impregnable, and a few questions are asked to shake his credit or show the weakness of his memory. Sometimes, too, a cross-examination may have the fishing objects of eliciting some haphazard reply, which open up matters favourable to the examiner on further persuit. But, generally speaking, cross-examination is to be warily approached, and the way carefully felt." (*Norton Ev.* 322).

When the examination-in-chief has resulted in clear, conclusive, or unimpeachable evidence it may be prudent for the adverse party not to cross-examine ; for, in such a case, he may by so doing, instead of weakening the evidence, merely strengthen and confirm it. So, too, he will generally not cross-examine a witness, whose evidence he admits, or which possibly can not injure his case. Reckless cross-examination, moreover, often less in evidence which before was not admissible. (*Powell Ev.* 531).

How long right to cross-examination continues.—As a right cross-examination and its concommittant privileges of asking leading questions ceases where the cross-examination of the witness following the examination-in-chief is apparently concluded, and the attendance of the witness is either dispensed with from the stand or the re-examination if any has begun. After that it is a privillege only, resting in favour of the Court. The ordinary rules of procedure made to the end that the truth may be elicited by the expeditious as well as orderly examination of witnesses require that parties must exhaust their cross-examination of a witness when entered into (*Burr Jones Ev.* § 825).

Re-examination.—The object of re-examination is to explain the meaning of the expressions used by the witness in cross-examination. The re-examination is subject to the same rules as the examination-in-chief. No leading questions may be asked for the witness is the witness of the party who examined him in chief. As to the introduction of new matter, see the end of the section. The Court always may and often does, examine a witness at the close of the examination. The Court is not bound by the same rules as counsels as to leading questions, etc. See post, section 142. The Court may put what questions it pleases, and in what form it pleases, see post, section 145 ; and most usefully so, especially where the examination has not been scientifically or skilfully conducted. (*Norton Ev.* 323).

Cases.—An accused person must be allowed to cross-examine witnesses called by another co-accused for his defence, if the case of the latter is adverse to that of the former. 21 C. 401, but see 12 W. R. Cr. 75, which was decided before this Act. But the view expressed in 21 C. 401 is in accordance with English law ; vide *Lord* v. *Colvin*, (1855) 24 L. J. Ch. 517 ; *R.* v. *Burdett*, Dears C. C. 431. One defendant can also cross-examine another co-defendant's witness if his defence is adverse. 1 M. H. C. R. 546. In criminal cases an accused has the right to cross-examine the prosecution witness when the charge is framed. If he waives that right he cannot after-wards claim that right. 7 C. 28=8 C. L. R. 328 ; 20 C. 469 ; *contra*, 2 A. 253 ; 32 C. 292. In the latter two cases it was laid down that the right continued till the end of the case. After a refusal of an application by the accused for re-summoning the prosecution witnesses, for further cross-examination, the accused applied for summoning some of those witnesses as witnesses on his behalf. On their appearing

the Magistrate refused to allow the accused to cross-examine them, and the accused thereupon declined to examine them as his witnesses. *Held,* that the refusal by the Court to allow the accused to cross-examine the witnesses, who were in attendance in Court, has resulted in a mistrial of the case. 1. C. W. N. 19 ; see also 5 C. W. N. 447.

No hard and fast rule can be laid down as to the right of counsel to demand in cross-examination that a witness should repeat the story which he has told in the examination in chief. 85 P. L. R. 1914=22 Ind. Cas. 724. A Magistrate is not entitled to refuse the application of the accused, made after the framing of the charge, to re-call the witnesses for the prosecution, on the ground that they have already been cross-examined before the framing of the charge in the understanding that they would not be required for further cross-examination after the charge. 6 C. W. N. 424 ; see 41 C. 299. Where a witness has not been asked a single question in examination-in-chief, there even the opposite party has the right to cross-examine. 6 B. L. R. App. 88. In a criminal case it must be proved that either the accused cross-examined the prosecution witnesses or was given sufficient opportunity to cross-examine them : 19 B. 759 see also 9 W. R. 587 : 6 W. R. 181 ; 12 C. L. J. 124 (F. B). Generally it is not the province of the Court to exam ne witnesses and as a rule the Court should leave the witnesses to the pleaders to be dealt with as is provided for in this section. 11 O L. J. 333=82 Ind. Cas. 154 (1) This section deals not with the rights of the party but only provides the order in which the proceedings are to be conducted A. I. R. 1929 Cal. 822.

It is certainly implied by this section that a party must have had an opportunity to cross-examine and does not mean that mean that merely a right to cross-examine a witness without an opportunity being offered for cross-examination is sufficient compliance with the requirements of the law. 73 Ind. Cas. 339=24 Cr. L. I. 595.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Scope.—It is the rule that, if a competent witness is intentionally called and sworn for the purpose of giving evidence, the right of cross-examination exists although no testimony is actually given. *Rex,* v, *Brooke,* 2 Stark, 472 ; *Phillips* v. *Eamer,* 1 Esp. 355 ; 6 B. L. R. App. 88. But there are certain exceptions to the general rule. The rule does, however, extend to a witness who is simply subpœnaed to produce a document to be identified or proved by another witness. In such a case he need not be sworn. (*Summers* v. *Moreley,* 2 Cromp. and M. 477 ; *Perry* v. *Gibson,* 1 A. and E. 48 ; *Rush* v. *Smith,* 1 C. M. and R. 94 ; *Davis* v. *Dale,* 4 Car. and p. 335 ; *Griffith* v. *Ricketts,* 7 Hare, 300 ; *Read* v. *James,* 1 Stark, 1327.

Until he is called as a witness.—*i. e.,* until he is sworn intentionally. If he is unnecessarily sworn he cannot be cross-examined. (*Rush* v. *Smith,* 1 C. M. and R. 94) ; nor where is sworn by mistake (*Wood* v. *Mackinson,* 2 M. and R. 273 ; *Clifford* v. *Hunter,* 3 C. and P. 16 ; *Red.* v. *James,* 1 Stark, 1327).

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Scope.—According to English practice it is not usual to cross-examine, except under special circumstances. witnesses called merely to speak to the character of a prisoner : but there is no rule which forbids the cross-examination of such witnesses. (*Woodroffe 863*). The Indian rule is also the same as the use of the word "may" suggests that it is not the usual practice, though the right exists. (*Norton Ev.* 323.)

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Leading questions.—"A question" says *Bentham* "is a leading one, when it indicates to the witness the real or supposed fact which the examiner expects and desires to have confirmed by the answer. Is not your name so and so ? Do you reside in such a place ? Are you not in the service of such and such person ? Have you not lived so many years with him ? It is clear that under this form every sort of information may be conveyed to the witness in disguise.

It may be used to prepare him to give the desired answers to the questions about to be put to him; the examiner, while he pretends ignorance and is asking for information is in reality giving instead of receiving it." A leading question is one which suggests to the witness the anwer desired, or which embodying a material fact, admits of a conclusive answer by a simple negative or affirmative. (*Taylor* § *1404*). "It is very clear that a question is leading which suggests to the witness the answers which he is to make, or which puts into his mouth words which he is to echo back. But if it merely suggest a subject, without suggesting an answer or a specific thing, it is not leading. It has often been declared that a question is objectionable, as leading, which embodies a material fact and admits of answer by a simple affirmative or negative. While it is true that a question which may be answered by yes or no is generally, leading there may be such questions which in no way suggest the answer desired, and to which there is no real objection. On the other hand, leading questions are by no means limited to those which may be answered by yes or no (*Burr. Jones* § *816*).

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an exmination-in-chief, or in a re-exmination, except with the permission of the Court,

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

Principle.—There is no rule of evidence more familiar to the practitioner than the one which forbids leading questions on direct examination of witness. Leading questions may be used to prepare a witness to give the desired answer to the questions about to be put to him; the examiner, where he pretends ignorance as in asking for information, is in reality giving insted of receiving it. This is one of the reasons of excluding a leading question in the exmination-in-chief or in re-examination. But the further consideration may be added that a witness may often be presumed to have some bias in favour of the party producing him; and that leading or suggestive questions, as they are sometimes called, would allow the party to extract only so much of the knowledge of the witness as would be favourable or even put a false gloss on the whole (*Burr Jones* § 816).

Scope—Counsel when examining-in-chief must not ask leading questions. But the rule is not an inflexible one. In the first place, a question is not objectionable as leading when it is only introductory to what is material, or relates to matters as to which there is no dispute. In most cases it is necessary to prove a certain number of unconnected facts, in order that Judge or Jury may understand the position of the parties and the circumstances surrounding the case.—As to these matters, leading questions are often put with the permission of counsel on the other side, and such questions should then be put in the shortest and most direct manner. But when the real issue is approached the witness must be asked such questions merely as "What did you see?" "What did you hear?" "What happened next?" This rule prevents, at least in some measure, the possibility of any collusion between a prosecutor or a party, and his witness. Leading questions may also be put to contradict evidence already given by a witness on the other side; *e. g.*, if the plaintiff has sworn that the defendant said, "The goods need not all, be equal to sample," the defendant can, and should, be asked, "Did you ever say to the plaintiff that the goods need not all be equal to the sample, or any words to that effect?" And there are other occasions on which leading questions may be put by permission of the presiding Judge, who has a general discretion over the conduct of all *vive voca* examinations. For instance, when a question from its nature cannot be put except in a leading form, the Judge may allow it to be put. (*Powell. Ev.* 528).

If objected to etc.—If the objection is not taken at the time, the answer will be taken in the Judge's notes; and it will be too late to object to the evidence afterwards on the score of its having been elicited by a leading question. Sometimes the Judge himself will interfere to permit a leading question or a series of leading questions being put; but it is the duty of the opposing Counsel to take objection; and it is only through want of practical skill that the omission occurs. At the same time, it is to be observed that if evidence is elicited by a series of leading questions unobjected to, the effect of the evidence so obtained is very much weakened, for it can scarcely escape the notice of the Judge. It is advisable, therefore,

for a counsel, examining-in-chief or on re-examination, not to put leading questions, except of course as to those points on which they they are expressly permitted by the Act. (*Norton Ev.* 325).

When they may be asked.

143. Leading questions may be asked in cross-exmination.

Comment.—If any presumption is to be entertained as to the bias of witness, it is that the witness is unfavourable rather than favourable to the cross-examiner; hence, the reasons for the rule excluding leading questions do not apply to cross-examinations. But although it is the undoubted rule that leading questions may be asked in cross-examination, the rule is subject to the qualification that the Court, in its discretion, may restrict the right, where the witness shows a *bias* in favour of the cross-examiner. If the privilege were not thus subject to the control of the Court, serious injustice might result, as one secretly hostile might conceal his bias in order to be called as a witness, and would only need an intimation from the cross-examining Counsel to say, whatever might be most favourable to him. The privilege of submitting leading questions on cross-examination is always, therefore, subject to the sound discretion of the Court (*Burr Jones* § 824). Thus, on *Hardy's trial*, a witness for the prosecution, on evincing a favourable disposition towards the prisoner, was asked a leading question by the counsel for the defence, but *Buller J.* refused to allow the question to be put, saying:—"You may lead a witness upon a cross-examination to bring him directly to the point as to the answer; but yon can not go the length of putting into the witness's mouth the very words which he is to echo back again. *R v. Hardy*, 24 How. St Tr. p. 639 cited in *Powell Ev.* 532. But in a latter case, *Alderson, B.* observed: "But you may always put a leading question in cross-examination whether a witness be unwilling or not" *Parkin* v *Moon*, 7 C. & P. 408.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant of other disposition of property, as to which he is giving evidence was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witnesses to give secondary evidence of it.

Explanation—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Scope.—This section merely points out the manner in which the provisions of sections 91 and 92 as to the exclusion of oral by documentary evidence may be enforced by the parties to the suit. "Documents which in the opinion of the Court ought to be produced" would of course, include the cases referred to in section 91, where the law requires a matter, to be reduced to the form of a document. (*Cunninghum. Ev.* 376.)

Cross-examination as to previous statements in writing.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of which are to be used for the purpose of contradicting him.

English law.—A witness may be cross-examined as to previous statements made by him in writing,—or reduced into writing, relating to the subject matter of

the indictment or proceedings without such being shown to him, but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given be called to those parts of the writing which are to be used for the purpose of so contradicting him. Provided always, that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purpose of the trial as he may think fit. Criminal Pro. Act, 1865 (28 Vict. C. 18) s. 5 ; see also. *Darby* v. *Ouseley*, 1 H & N. 1.

Principle.—A witness may be questioned as to his previous written statements for two purposes : it may be to test his memory ; and here the very object would be defeated if the writing were placed in his hands before the questions were asked ; or it may be to contradict him. *R.* v. *Nobokristo*, 8 W.R. Cr. p. 87. And here it would be obviously unfair not to give him every opportunity of seeing how the matter really stands (*Norton Ev. 327*. This course of proceeding" says Mr. Philips (though addressing himself more especially to verbal statements) "is indispensable from principle of justice due to the witness : for as the direct tendency of the evidence is to impeach his veracity by contradicting his present statement with that supposed to have been made by him to some other person, common justice requires, that before his credit is attacked, he should have an opportunity of declaring whether he ever made such statement to that person, and of explaining, in the re-examination, the nature and particulars of the conversation, under what circumstances it was made, from that motives, and with what designs. The former account, given by him in conversation, may have been partially heard, or misunderstood, or partly forgotten, or intentionally misrepresented." *Philips and Arnold* Vol. 11 p. 505.

Scope.—There is a hardly any more familiar practice in judicial procedure than that of impeaching witnesses by proof of their former statements which are inconsistent with their present testimoney. Since such an attempt is a direct attack upon the testimony of the witness, and may result in serious consequences, it is important that the practice should be so regular that the witness may have full opportunity to admit, deny or explain any statement which is thus assailed. It has frequently been declared that, in order to designate sufficiently the circumstances of the statement, the witness should be asked as to the time, place and persons involved in the contradiction, Although the conduct of the witness as to matters having no connection with the case is generally irrelevant, it is allowable to ask the witness on cross-examination, not only concerning his contradictory statements, but concerning his actions if they have been inconsistent with his statements on the witness stand. (*Burr. Jones* § 845.)

Cases.—19 A. 399 ; 7 A. 862 ; 8 W. R. 87 ; 4 B. 576 ; 31 C. 142 ; 13 W. R. Cr. 18 ; 15 W. R. Cr, 23 ; 11 B. H. C. R. 120 ; 17 Bom. L. R. 590 ; 45 M. L. J. 438, 1929 M. W. N. 789 ; 115 Ind. Cas. 450.

Police diaries.—Police diaries are not evidence. But they can be used for contradicting the person who made the diary. 19 A. 390 ; see also 19 Bom.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity ;
(2) to discover who he is and what is his position in life, or
(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

English law.—This section differs from the law of England where a witness is still not bound to answer questions which criminate, or have a tendency to criminate him. (*Norton* 328). "When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to be asked any questions which tend—

(1) To test his accuracy, veracity, or credibility ; or
(2) To shake his credit, by injuring his character.

Witnesses have been compelled to answer such questions, though the matter suggested was irrelevant to the matter in issue, and though the answer was disgraceful to the witness ; but it is submitted that the Court has the right to exercise a discretion in such cases, and to refuse to compel such questions to be answered when

the truth of the matter suggested would not in the opinion of the Court affect the credibility of the witness as to the matter to which he is required to testify." (*Steph Ev. Art.* 129).

Scope.—This does not mean that a witness may be asked questions on irrelevant topics for the mere purpose of contradicting him or of proving contradictory statements. For, unless they come within the exceptions mentioned in s. 153, his answers to questions tending to shake his credit cannot be contradicted ; nor by section 155 can former contradictory statements be proved, unless that part of the witness's evidence, which they counteract, was itself liable to be contradicted. (*Cun. Ev.* 378).

Cases.—1923 Cal. 315 (2).

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Scope.—The word "such," it is presumed refers to the last clause of the preceding section, and not to the word "any" in earlier part of that section. None but relevant questions can be asked in cross-examination, *ante*. section 138, clause 2. But relevancy is of two-fold character ; it may be directly relevant in its bearing on elucidating or disproving, the very merits of the points in issue. In such a case, the witness is not protected from answering, notwithstanding the answer may criminate him. For section 132 is made applicable to this case. There is another kind of relevancy which is collateral to the issue. Such is the character of the witness. which is always relevant ; because if he is dishonest on faith can be put in the story he utters. Where questions are put to a witness, not for proving or disproving the the point in issue, but exclusively and merely to show what is the character of the witness, the Court is to decide whether the question is to be answered or not. (*Norton Ev.* 328).

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence ;

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Scope.—Witnesses may be cross-examined as to specific facts though not pertinent to the issue, which tend to descredit the witness or impeach his moral character and credit, when there is reason to believe that such examination will tend to the ends of justice ; but that a cross-examination of this character ought not to be allowed when it seems unjust to the witness and uncalled for by the circumstances of the case. According to this view it may as a rule, be safely left to the trial Judge to control the inquiry ; while it is proper for him to permit questions tending to disgrace the witness, if in an important way this affects his credibility, yet on the other hand, he should protect the witness from insult add indiscriminate attacks or those which are evidently caused by mere caprice or resentment and that it is his duty to

exclude inquiry as to transactions too remote to affect credibility. This discretion of the trial Judge is to be exercised in view of the evidence already introduced and the testimony of the witness in the direct examination and all the circumstances of the case. It often happens that the appearance and deportment of an adverse witness—his prevarication, reluctance, or apparent bias, the intrinsic improbability of his testimony or its incongruity with known facts—make it the plain duty of the Court to permit searching and disparaging inquiries on matters irrelevant to the issue, for the purpose of aiding the jury in a collateral inquiry as to his credit. (*Burr Jones* § 834).

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a*) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(*b*) A pleader is informed by a person in Court that an important witness is a dakait; the informant, on being questioned by the pleader gives satisfactory reasons for his statement. This is reasonable ground for asking the witness whether he is a dakait.

(*c*) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

Reasonable Ground.—"The illustrations show that the "reasonable grounds" which justify such questions, may be such slighter than could justify a man in making an imputation under other circumstances. A barrister who is told a discrediting fact by an attorney or vakil, or a pleader who hears such a fact from a person who appears to know about it, is justified in so far assuming its truth as to question a witness about it; and he may even do so with no other justification than the witness's unsatisfactory replies. (*Cun. Ev.* 381).

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Object.—The object of these sections is to lay down, in the most distinct manner, the duty of counsel of all grades is examining witnesses with a view to shaking their credit by damaging their character. I trust that this explicit statement of the principles, according to which such questions ought or ought not to be asked, will be found sufficient to prevent the growth, in this country, of that which in England has on many occasions been a grave scandal. I think that the sections so far as their substance is concerned, speak for themselves, and that they will be admitted to be sound by all honourable advocates and by the public." Proceedings of the Legislative Council of India pp. 237—238 of the Supplementary to the Gazette of India of the 30th March, 1872.

Scope.—When a question in cross-examination reflects not on the witness but on a third party, this section, which must be referred back to s. 146 can have no application. The instructions to the counsel are a privileged document belonging to the client and the counsel is prohibited from disclosing what is contained in those instructions as being of a confidential nature. The question whether a counsel has exceeded the license given him for the purpose of conducting his client's case, is one which can only be dealt with by a Full Bench. 9 Ind. Cas. 509.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Indecent and scandalous questions.

Object.—It is recognized that from the necessity of the case, the method and extent of the cross-examination must depend very largely upon the discretion of the trial Judge : and this is expecially true where the object is to test the accuracy and credibility of the witness. If the cross-examination is proceeding beyond those bounds which are proper to test the accuracy and credibility of the witness, or is being needlessly protracted, or is being conducted in a manner which is unfair to the witness, or if it is inconsistent with the decorum of the court-room the Court is not bound to wait for objections from counsel, but may interfere of its own motion. Every Court having original jurisdiction is authorized to reject evidence on immaterial issues, though objected to by neither party ; and if it were otherwise, it would be a reproach to the administration of justice. (*Burr Jones S.* 842). "Justice to the witness demands that all the Courts to which he appeals for present protection shall have power to shield him from indignity, unless the circumstances of the case are such that cannot fairly invoke that protection. If the range of irrelevant inquisition be committed to the discretion of adverse counsel, it will be no reparation of the wrong to the witness that the judgment, in which he has no concern, may be afterwards reverted by appellate tribunal." *Great Western Trunpike Road Co.* v. *Loomis*, 32 N. Y. 127. It is almost needless to add that cross-examination on matters either directly in issue or directly relevant to the issue is a matter of right, and its exclusion is error. It is only after right has been substantially and fairly exercised that the allowance of cross-examination becomes discretionary with the trial Court.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Question intended to insult or annoy.

Object.—Counsels have no right to inject into the cross-examination unfair insinuations upon the conduct of the witness or comment upon his testimony, and Court should not wait for objections before interfering with such a practice. It goes without saying that questions tending to insult, abuse or intimidate the witness should not be permitted and the Court is not required to wait for objections to such mode of interrogation. (*Burr Jones.* S. 843).

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him ; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exclusion of evidence to contradict answer to questions testing veracity.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested he may be contradicted.

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Object.—The object of this section is to prevent trial being spun out to an unreasonable length. (*Markby Ev.* 108). The reason of the rule, which restricts the right as regards giving evidence to contradict a witness is that it is an object of great importance to confine the attention of the jury to the specific issues as much as possible. 6 B. H. C. R. 93 (96).

Scope.—This section is based upon the rule of English law that, if questions put to a witness for the purpose of testing his credit relate to relevant facts, they can be contradicted by independent evidence; if, to irrelevant, they cannot. It is obvious that, but for such a rule, a suit might easily digress into various collateral issues and become practically interminable. The exceptions refer to two matters which are easily susceptible of proof and strike at the very root of the witnesses' trustworthiness. It is very important to know whether a witness has been previously convicted or has received a bribe from the other party. On the other hand no great expenditure of time need be involved in ascertaining how the facts stand. (*Cun Ev.* 383). Where a fact which has a direct bearing on the issue is denied by a witness, it may of course, be proved *aliunde*. See illustration (c), but where the fact inquired after is collateral to the issue—as, for instance, the character of a witness.—Counsel must be content with the answer which the witness chooses to give him. If he denies the imputation, the answer is conclusive for purposes of the suit. See illustrations (a) (b): the matter cannot be carried further at the trial, except the two cases provided for by this section. The only redress which a party has, is to charge the witness with perjury and try him for it. To this rule there are however, two exceptions. *Exception(i)*—When a witness denies that he has been previously convicted, his previous conviction may always be put in to refute him. (*Norton Ev.* 332). *Exception* (2)—The exception is based on *Attorney General* v. *Hitchcock*, 16 L. J. Ex. 259. Whether this can be done has been the subject of much doubt in England. In the above case, *Pollock. C. B.* observed: "A witness may be asked how he stands affected towards one of the parties; and if his relation towards them is such as to prejudice his mind, and fill him with sentiments of revenge or other feelings of a similar kind, and if he denies the fact evidence may be given to show the state of his mind and feelings." In the same case, *Alderson B.* observed: "The offer of a bribe by a witness to another, or the fact of a bribe having been accepted by him, tends to show that he is not impartial.'

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Principle.—As a party cannot put leading questions to his own witness, it is apparent that injustice would ensue if the party, discovering that he had been mistaken in his witness in that the witness was adverse, was against and not for him, were tied down by any hard and first rule as to leading the witness. The rule is correctly indicated by *Greenleaf* when he says: "But the weight of authority seems in favour of admitting the party to show that the evidence has taken him by surprise, and is contrary to the examination of the witness preparatory to the trial, or to what the party had reason to believe he would testify, or that the witness has recently been brought under the influences of the other pary and had deceived the party calling him. For, it is said that this course is necesssary for his protection against the contrivance of an artful witness and that the danger of its being regarded by the

jury as substantive evidence is no greater in such cases than it is where the contradictory allegations are proved by the adverse party." Hence a well-recognised exception to the general rule which is under discussion permits leading questions to a witness who is hostile to the party calling him, or who for any reason, may be deemed an unwilling witness. If it is apparent that the witness is attempting to promote the interest of the adverse party, or if the witness is in fact the adverse party, the Court will be justified in permitting the direct examination to take the character of a cross-examination ; and, in the latter case, leading questions may be asked as a matter of right. (*Burr Jones, Ev.* § 817).

In its discretion.—The unwillingness or other state of mind of the witness, is to be decided by the Judge from his demeanour upon the stand and from such facts in evidence as may show that the witness, because of his relationship to a party, interest in the cause or for other reason, has some bias against the one calling him or some disinclination to testify. (*Burr Jones, Ev.*§ 817).

Scope—As a general rule a party has no right to discredit his own witness, or to call any evidence to contradict him, for he has voluntarily placed the witness before the Court as worthy of belief. But it some times happens that a witness proves unexpectedly adverse to the party who calls him, and then this rule and the rule that no leading questions can be put in examination-in-chief are relaxed, and the counsels are allowed by the Court to put leading questions in examination-in-chief and may attack the character and dispute the veracity of the witness in fact, to cross-examine him. The foundation of the rule against leading questions is that the witness is favourable to the party who calls him ; and when that is not the case, the reason for insisting on the rule is gone. The mere fact that a party is driven to call his opponent as his witness does not entitle him to treat that opponent as hostile and cross-examine him without the leave of the Court. *Scott* v. *Sampson*, 8 Q. B. D. 491. But whenever the Judge is satisfied that a witness is hostile to the party who called him, he will, upon application, declare him so to be ; and this will entitle a counsel for that party to treat him as a witness called by the other side. *Price* v. *Manning*, 42 Ch. D. 372—*Powell Ev.* 529. As regards Indian cases vide, 6 C. W. N. 513 P. C. ; 28 C. 594. It is not open to the prosecution in a criminal trial to cross-examine their own witness unless the Court declares him to be a hostile witness ; unless this is done the answer to questions would not be admissible in evidence and the Court should not allow such questions. 1 Pat. 758=4 Pat. L. T. 232. There is no distinction for the purposes of this section between attesting witnesses whom a party is obliged to call and other witnesses whom a party cites of his own choices. 47 C. 1043=24 C. W. N. 860. A witness who is unfavourable is not necessarily hostile for a hostile witness is one who from the manner in which he gives his evidence, shows that he is not desirous of telling the truth to the Court. 34 C. L. J. 107.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

(1) by the evidence of persons who testify, that they, from their knowledge of the witness, believe him to be unworthy of credit ;

(2) by proof that the witness has been bribed, or has "accepted" the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of a generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicated, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) A sues B for the price of goods sold and delivered to B, C says that A delivered the goods to B.

Evidence is offered to show that on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Legislative changes.—The word "accepted" in para (2) was substituted for the original word "had" by Act 18 of 1872.

Scope.—"In addition to counter proofs and cross-examination, there are three ways of throwing discredit on the testimony of an adversary's witness. (1) By giving evidence of his general bad character for veracity *i. e*, the evidence of persons who depose that he is in their judgment unworthy of belief, even though he made the statement on his oath. And here the enquiry must be limited to what they know of his general character, on which alone judgment should be founded : particular facts cannot be gone into ; (2) By showing that he has on former occasions made statements inconsistent with the evidence he has given : (3) By proving misconduct connected with proceedings, or other circumstances showing that he does not stand indifferent between the contending parties. Thus it may be proved that a witness has been bribed to give the evidence or has offered bribes to others to give evidence for the party whom he favours, or that he has used expressions of animosity and revenge towards the party against whom he bears testimony etc. (*Best* § 644). The Indian Legislators have accepted the first two instances *in toto* and has taken only that part of misconduct which consists in taking bribery. It is always admissible to prove that a witness has taken bribe to give his evidence. *Langhorn's Case*, 7 How. St. Tr, 446 ; *Attorney General* v. *Hitchcock* 1 Ex. Ch. 91=11 Jur. 478. The last instance is also taken from the English law but it is only applicable in a case of rape and when the prosecutrix is examined.

Clause (1).—Here the enquiry must be limited to what they know of his general character, on which alone the judgment should be founded ; particular facts cannot be gone into. So a party may call witnesses to swear that, in their opinion, based on their knowledge of the general character and reputation of a witness on the other side, he is not to be believed on his oath. *R.* v. *Brown*, L. R. 1 C. C. R. 70 ; *Cockle Case* 283.

Clause (2).—In *Att. General* v. *Hitchcock*, 1 Ex. 91=11 Jur. 498; *Pollock C. B.* observed : "The offer of a bribe is a matter of no importance if it be not accepted, for it does not disparage the party to whom it is offered". In the same case *Alderson B.* observed : "The offer of a bribe by a witness to another, or the fact of a bribe having been accepted by him, tends to show that he is nor impartial." This is an example of misconduct connected with the proceeding.

Clause (3).—See illustrations (*a*) and (*b*). Any statement, verbal as well as written, may be used for this purpose. The witness must be specifically asked whether he made such and such statements, before he can be contradicted by them through another witness. Where the statement is in writing ; see *ante*, Section 146, Proviso (4). (*Norton Ev.* 334). As regards statements made before police *vide* 11 B. H. C. 120 ; 11 B. 657 ; 15 A. 25 ; 27 A. 469 ; 17 P. R. 1886 Cr. 16 C. 610 ; 33 C. 1023 ; 17 A. 57 ; A. W. N 1905, 54 ; 16 C. 612 N ; 20 C. 8 C. W. N. 218 ; 26 M. 191. The expression "which is liable to be contradicted" means "which is relevant to the issue." 17 C. 344 ; 14 L. W. 612.

Clause (4).—"On indictments for rape or an attempt to commit that crime, while evidence of general bad character is admissible to show that the prosecutrix, like any other witness, ought not to be believed upon her oath, proof that she is a reputed prostitute would go far towards raising an inference she has yielded willingly to the prisoners' embraces. General evidence, therefore, of this kind will be received, though the woman be not called as a witness and though, if called she be

not asked, on cross-examination, any question tending to impeach her character for chastity" *Norton.* Ev. 334..

Question tending to corroborate evidence of relevant fact admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice. gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Corroborative evidence.—This is additional evidence proving similar facts or facts calculated to produce the same results as facts already given in evidence. The distinction between corroborative and cumulative evidence is clearly marked, although ordinarily corroborative evidence simply means fortifying evidence, whether it is evidence of different or similar facts, or additional evidence of the same fact. (*Burr. Jones s 87.*)

Scope.—This section provides for the admission of evidence given for the purposes not of proving a relevant fact, but of testing the witness's truthfulness. There is often no better way of doing this than by asertaining the accuracy of his evidence as to surrounding circumstances, though they are not so immediately connected with the facts of the case as to be themselves irrelevant. While, on the one hand, important corroboration may be given in the case of a truthful witness, a valuable field for cross-examination and exposure is offered in the case of a false witness. In order to prepare the ground of their corroboration, it is necessary to elicit these surrounding circumstances in the first instance from the witness himself, and for this, the section makes provision (*Cun Ev. 388.*) This section, in effect, declares evidence of certain facts to be admissible ; and if it had not been inserted the Judge would have had to determine the relevancy of those facts by reference to secs 7 and 11, and he might perhaps have been influenced by the practice in England which has been against the admission of such evidence. (*Markby Ev. 110.*)

Former statements of witness may be proved to corroborate latter testimoney as to same fact.

157. In order to coroborate the testimony of a witness, any former, statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

English law.—Facts which tend to render more probable the truth of a witness's testimony on any material point are admissible in corroboration thereof, although otherwise irrelevant to the issue and although happening before the date of the fact to be corroborated. (*Wilcox* v. *Godfrey*, 26 L. T. N. S. 481). But facts which are not more consistent with the truth of such testimony than the reverse, are inadmissible. Whenever the testimony of a witness is challenged by cross-examination or otherwise, corroboration thereof is allowable ; and in certain case no verdict can be obtained without the production of such evidence. The corroborative facts and evidence must, however, be proved otherwise than by the testimony of the witness to be corroborated. Formerly the fact that a witness had made a previous statement similar to his testimony in Court could always be proved to confirm his testimony. But afterwards the rule was changed, and such evidence in now generally inadmissible either on direct examination to confirm his testimony, or on re-examination to re-establish his credit when impeached by proof of a previous contradictory statement (*Phipson Ev. 149*).

Scope.—Before corroborative evidence is admissible, the evidence sought to be corroborated must have been given. 5 C. W. N. XVI. A statement made by a witness to a chief constable can only be used under this section to corroborate the

evidence of the first witness at the trial. Rat. Un. Cr. C. 508 The force of any corroboration by means of previous consistent statements must evidently depend upon the truth of the propostion that he who is consistent desires to be believed. 11 B. H. C. R. 197 (198).

Cases—16 C. W. N. 145 ; M. 210 , 10 C. 970 ; 4 Bom. L. R. 434 ; 7 W. R. Cr. 31 ; 12 W. R. Cr. 3 ; 2 C. W. N. 712 ; 6 M. L. T. 17 ; 12 C. W. N. 266 ; 3 L. B. R. 250 : 3 P. R. 1904 C. R ; 26 Ind. Cas. 138 ; 22 B. 596 ; 13 C. W. N. 197 ; 4 Ind. Cas. 700 ; 13 O. C. 7 ; 1923 Mad. 20 ; 5 Lah. 324 ; 82 Ind. Cas. 142 ; 19 A. L. J. 947. ; 61 Ind. Cas. 650 ; 6 Pat. L. J. 241 ; (1919) Pat. 352 ; (1919) M. W. N. 199 ; 55 Ind. Cas. 273. 58 Ind. Cas. 344 ; 49 C. 732=26 C. W. N. 589 ; 45 M, 766 ; 2 Pat. L, J. 42 ; 27 A. 615 ; 10 Pat. L.T. 177 ; 29 P. L.R. 793 ; 53 B. 699 P.C. ; 32 C. W. N. 616 ; 110 Ind. Cas. 521.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Scope—The statements admissible under sections 32 and 33 are exceptional cases, and the evidence is only admitted from the improbability or great inconvenience of producing the authors of the statements. It is only just therefore, that all the same safeguards fot veracity should be provided as if the authors of the statements were themselves before the Court, and subjected to oath and cross-examination. (*Norton Ev.* 336). The present section has the effect of exposing any such statement, when admitted, so far as may be, to all the scrutiny and giving the advantage of all the corroboration, which it would have had on the cross-examination of the person making it. (*Cun Ev.* 390). See also 23 C. 441.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards, that the Court considers it likely that the transaction was at the time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document :

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Principle.—It is a well-settled and undisputed principle of the law of evidence that a witness, under certain legal restrictions, may refer to written or printed memoranda, documents, papers or letters, for the purpose of refreshing, assisting or stimulating his recollection and memory with regard to the facts about which he is testifying. The rule requires that a witness should testify only to such facts as are within his own knowledge and recollection ; but this requirement is not violated by permitting him to refresh his memory in the manner above indicated. Bentham has pointed out the advantages and disadvantages of allowing a witness on the stand to consult notes or memoranda for the purpose of refeshing the memory. "On the one hand, what you want is a prompt and unpremeditated answer. If you allow him time to consult notes, you partly lose the advantage of that lively and quick examination which does not give bad faith time to think". On the other hand, if this assistance is denied, the witness will often be unable to give accurate and complete testimony, and the whole object of the judicial investigation may be defeated. It

is universally agreed that the balance between the two inconvenience is by no means equal and that, under proper limitation witnesses may resort to memoranda or writings in aid of memory. Such is the ordinary human memory that very few witnesses would be able to testify as to particular dates, numbers, quantities and sums, after a lapse of a few years, if they were not permitted to refer to papers and writings which they knew to be correct at the time they were made. (*Burr Jones Ev.* 874).

Cases.—The writing need not be admissible in evidence. 8 C. 211 ; 9 C. 455 ; 16 C. P. L. R. 122 ; 55 I. A. 107 P. C. Under this section it is not necessary that the witness must be sure that what was reduced to writing by him is a correct record. It is enough if, on reading it, the true facts are recalled to his memory. If the words are not recalled to his memory, the notes may be admitted under s. 160, if he is sure that the facts were correctly recorded in the notes. 5 M. L. T. 393=9 Cr. L. J. 456=32 M. 384. A police-officer is not bound to refresh his memory. 8 C. 154 (156) ; see also 8 C. 745.

Statement made to police.—9 C. 455 ; 16 C. 610 ; 20 C. 242 ; 31 C. 1050 ; 11 B. 657 ; 4 S. L. R. 38 Cr. But see 10 C. W. N. 890.

Special diary.—19 A. 390 (F. B.) ; 19 A. L. J. 76.

Collection papers.—10 C. 248 ; 11 C. 407.

Postmortem examination report.—9 C. 455.

Dying declaration.—8. C. 211.

Other cases.—72 Ind. Cas. 985.

Zeminder's register.=5 C. 353.

Confession.—16 C. P. L. R. 122.

Arbitration proceedings.—5 C. W. N. XVI.

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Scope.—In order that a document may be used to refresh the memory, it is by no means necessary, that the witness after having seen it should have any independent recollection of the facts mentioned therein or connected therewith, but it will suffice if he remembers that he has seen the paper before, and that when he saw it, he knew its contents to be correct, or even if, entirely forgetting the instances themselves, and the fact of his having seen the paper, he can still, in consequence of recognising his signature or writing upon it, vouch for the accuracy of the memorandum, or swear to the particular fact in question. Thus where an agent who made a parol lease, and entered a memorandum of the terms in a book states that he has no memory of the transaction save from the book, though on reading the entry he entertains no doubt that the fact really happened, it was held sufficient." *Taylor* § 1412. See 49 C. 573. The question whether secondary evidence has in any given case been rightly admitted is one which is proper to be decided by the Judge of first instance and is treated as depending very much on his discretion. 5 Bom. L. R. 708=28 B. 94.

Right of adverse party as to writing used to refresh memory.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it ; such party may, if he pleases, cross-examine the witness thereupon.

Scope.—In all cases where documents are used for the purpose of refreshing the memory of a witness, it is usual and reasonable,—and if the witness has no independent recollection of the fact, it is necessary,—that they should be produced at the trial and that the opposite counsel should have an opportunity of inspecting them, in order that the cross or re-examination, he may have the benefit of the witness's refreshing his memory by every part. Neither is the adverse party bound to put the document in, as part of his evidence merely because he has looked at it, or examined the witness respecting such entries as have been previously referred to ; but if he goes further than this, and asks questions as to other parts of the memorandum, it seems, that he thereby makes it his own evidence. (*Taylor* § 1413). The grounds upon which the opposite party is permitted to inspect a writing are : (1) to secure the full benefit of the witness's recollection as to the whole of the facts ; (2) to check the use of improper documents and (3) to compare his oral testimony with the written statement. The opposite party may look at the writing to see what kind of writing it is in order to check the use of improper document:; but it is doubtful whether he is entitled, except for his particular purpose, to question the witness as to other and independent matters contained in the same series of writing. 8 C. 739 (745).

Case.—2 Ind. Cas. 535.

Production of documents.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit direct the translator to keep the contents secret unless the document is to be given in evidence ; and if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Comment.—If a person served with a *subpœna* admits that he has the documents required, with him, he must produce them. He may be asked what documents he has with him, and he is bound to answer the question without being sworn, and produce the documents. The witness produces the document to the Court and not to the parties, and the Court decides whether it is to be used or not. The witness can, of course take any legal objection to producing the document. If a witness attends on a *subpœna tecum*, with a document which he properly refuses to produce on the ground of privilege, secondary evidence will be admissible. if he does not attend on such a *subpœna* or attends and refuses to produce the writing on any other ground but that of privilege, secondary evidence will not be admissible, but the witness will be punishable for contempt. A person cannot, of course be compelled by *subpœna* to produce documents which are not in his possession or under his control. (*Powell Ev.* 653). If the Court decides to summon a Government official for the production of certain documents, it should only do so after careful consideration and once the summons had been issued, production should ordinarily be insisted on if the party who obtained the summons so desires. 45 Ind. Cas. 898.

Giving as evidence, of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Scope.—The production of papers upon notice does not make them evidence in the cause, unless the party calling for them inspects them, so as to become

acquainted with their contents; in which case he is obliged to use them as his evidence, at least if they be in any way material to the issue. The reason for this rule is, that it would give an unconscionable advantage to a party, enable him to pry into the affairs of his adversary, without at the same time subjecting him to the risk of making whatever he inspects evidence for both parties. (*Taylor* § 1817). "If a party gives notice to produce, and at the trial calls for the document and inspects it, he is bound to put it in as evidence if the other party requires it. The law will not allow him to compel its production, and see its contents, and then make use of it or not, according as it strengthens and impairs his cause." (*Cun. Introduction to Ev.* § 117). Where a party to a case calls for a document from the other party and inspects the same under this section, he takes the risk of making it evidence for both the parties. 5 Bom. L. R. 380; 106 Ind. Cas. 305. It is doubtful whether this section is applicable to accounts produced under the procedure for discovery or only to accounts produced after the trial has begun. 72 Ind. Cas. 459.

Case—57 Ind. Cas. 973.

Using, as evidence, of document production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustrations.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents.

B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Scope.—If a party, after a notice, declines to produce a document, when formally called upon to do so, he will not afterwards be allowed to change his mind; and therefore, if he once refuses, he can not, when his opponent has proved a copy, and is about to have it read, produce the original, and object to its admissibility without the evidence of an attending witness. Neither after such refusal, will he be permitted to put the document into the hands of his opponents' witness for the purpose of cross-examination, or to produce and prove it as part of his own case. (*Taylor* § 1818). A party who, after notice, declines to produce his document, cannot afterwards change his mind and produce if as part of his own case; or put it in the hands of his opponents' witnesses, for the purpose of cross-examination. If his adversary, being entitled to give secondary evidence, prove a copy, he is bound by it. (*Norton Ev.* 341.)

Judge's power to put questions or order production.

165. The Judge may in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without leave of the Court to cross-examine any witness upon any answer given in reply to any such question.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved;

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Scope.—The object of the questions which the Judge is here empowered to put is either to discover a relevant fact or to obtain proper proof of it, There is accordingly no relaxation of the rules previously laid down as to relevancy. The section merely authorizes questions, the object of which is to ascertain whether the case is or is not proved in accordance with this rule (*Cun.. Ev. 396*). Under this section, a Judge has power to ask any question he pleases about relevant facts, if he does so in order to discover or obtain proper proof of relevant facts. 10 B. 185. See also 11 B. H. C. R. 166 ; Cr. Reg. 14—10—1885.

The words "any witness" in the section include a Court witness. 9 O. & A. L. R. 549. Even though a document is not produced at the first hearing of a case the Court can call for the document under this section. 70 Ind. Cas. 278. The Court's decision must rest, not upon suspicion but upon legal ground established by legal testimony. 34 C. L. J. 107. Where the trial Court exceeded the bounds of the provisions of this section the appellate Court can interfere. 47 C. 1043.

Cases.—34 M. L. J. 526 ; 45 Ind. Cas. 734 ; 44 Ind. Cas. 433 ; 66 Ind. Cas. 15.

166. In cases tried by jury or with assssors, the jury or assessors, may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Power of jury or assessors to put questions.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence.

Scope.—This section is applicable to criminal as well as civil cases. 1 C. 207 : 2 B. 61. It is applicable to all judicial proceedings, 9 B. H. C. 358. It is also applicable to criminal trials by jury. 19 B. 749. Though this section implies that improper reception of evidence is not generally to be made a ground for the reversal of a judgment, unless it is objected to by the party prejudiced by such rejection, yet s. 256 of Cr. Pro. Code, lays down that it is the duty of the judge in his discretion to prevent the production of inadmissible evidence whether it is objected to by the parties or not. 11 B. H. C. R. 44. Where no objection was raised in the lower Court as regards the reception of improper evidence and the appellate Court finds that there is sufficient evidence discarding the improper evidence admitted to sustain a conviction, *held* that the Appellate Court should not interfere with the conviction. 11 B. H. C. R. 90. See also, 6 B. L. R. 495 ; 10 A. 207 ; 9 B. L. R. 371 ; 16 W. R. (P. C.) 11 ; 20 W. R. 384 ; 20 W. R. 458 ; 19 B. 749 ; 7 C. 293 ; 8 C. 739 ; 21 C. 955 ; 82 Ind. Cas. 283 ; 23 C. W. N. 661. The decision of a Court must rest upon the legal grounds established by legal testimony and not upon mere suspicious circumstances. 25 C. W. N. 409.

SCHEDULE.

ENACTMENTS REPEALED.

(*See section* 2.)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo, III, Cap. 57.*	For the further regulation of the trial of persons accused of certain offences committed in the East Indies ; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty intituled "(An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies)," as requires the servants of the East India Company to deliver inventories of their estates and effects for rendering the law more effectual against persons unlawfully resorting to the East Indies ; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38 so far as it relates to Courts of Justice in the East Indies.
Sat. 14 & 15 Vict., Cap. 99 †‡	To amend the Law of Evidence.	Section 11 and so much of section 19 and as relates to British India.

* The East India Company Act, 1786.

† Short title, The Evidence Act, 1851—*see* the Short Titles Act, 1896 (59 & 69 Vict., c 14).

‡ After this certain entries have been repealed by Act 12 of 1927.

SUPPLEMENT TO N. D. BASU'S INDIAN EVIDENCE ACT.

Amendments to the Indian Evidence Act, 1872

The Government of India (Adaptation of Indian Laws) Order, 1937.

AT THE COURT AT BUCKINGHAM PALACE.

THE 18TH DAY OF MARCH, 1937.

Present :

The King's Most Excellent Majesty in Council.

WHEREAS by section two hundred and ninety-three of the Government of India Act, 1935, (hereinafter in the recitals to this Order referred to as 'the Act') His Majesty is empowered by Order in Council to provide that as from such date as may be specified in the Order any law in force in British India or in any part of British India shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the Act :

And whereas a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order :

Now, therefore, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:—

1. This Order may be cited as the Government of India (Adaptation of Indian Laws) Order, 1937, and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. (1) In this Order the expression 'Indian Law' means a law as defined in section two hundred and ninety-three of the Act.

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The Indian laws mentioned in the Schedule to this Order shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to the adaptations and modifications directed by those Schedules to be made therein or, if it is so directed, shall cease to have effect.

4. (1) Whenever an expression mentioned in the first column of the Table hereinunder printed occurs (otherwise than in a title or preamble or in a citation or description of an enactment), in a Central or Provincial Act or Regulation, whether an Act or Regulation mentioned in the Schedules to this Order or not, then, unless that expression is by this Order expressly directed to be otherwise adapted or modified, or to stand unmodified or to be omitted, there shall be substituted therefor the expression set opposite to it in column two of the said table.

Table of General Adaptations.

Governor-General of India in Council : Governor-General of India : Governor-General in Council : Governor-General : Government of India.	Central Government.

Governor in Council : Governor (except in the expression "Governor's Province) : Lieutenant Governor in Council : Lieutenant Governor : Chief Commissioner (except in the expression "Chief Commissioner's Province") : Local Government : Local Administration.	Provincial Government.
Gazette of India : local official Gazette : local Gazette : any other expression denoting a Gazette in which official notices of a government are published, not being the Gazette of a district or other sub-division of a Province.	Official Gazette.

Any reference to the Governor (or Lieutenant-Governor) of a named Province in Council shall be treated for the purposes of this paragraph as if it were a reference to the Governor (or Lieutenant Governor) in Council of that Province.

(2) A direction in the Schedules to this Order that a specified Indian law, or section or portion of an Indian law shall stand unmodified shall be construed merely as a direction that it is not to be modified or adapted in accordance with the foregoing provisions of this paragraph.

5. (1) Where this Order requires that in any specified Indian law, or in any section or other portion of an Indian law, certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that law or, as the case may be, in that section or portion.

(2) Where this Order requires that in any Indian law a plural noun shall be substituted for a singular noun and *vice versa*, or a masculine noun for a neuter noun or *vice versa*, there shall be made also in any verb or pronoun in the sentence in question such consequential amendment as the rules of Grammar may require.

6. (1) The following provisions shall have effect where any Indian law which under this Order is to be adapted or modified has before the commencement of this Order been amended, either generally or in relation to any particular area, by the insertion or omission of words, or the substitution of words for other words :—

(*a*) effect shall first be given in the amending law to any adaptation or modification required by paragraphs three and five of this order to be made therein ;

(*b*) the original law shall then be amended, either generally or, as the case may be, in its application to the particular area, so as to give effect to the directions contained in the amending law or, where any adaptation or modification has fallen to be made under sub-paragraph (a), in that law as so adapted or modified ; and

(*c*) all adaptations or modifications required by this Order to be made in the original law shall then be made in that law as so amended, except so far as in the case of any particular area they may be inapplicable.

(2) In this paragraph references to the amendment of a law by the insertion or omission of words or the substitution of words do not include references to an amendment which is effected merely by directing that certain words shall be construed in a particular manner.

7. Subject to the foregoing provisions of this Order, any reference by whatever form of words in any Indian law in force immediately before the commencement of this Order to an authority competent at the date of the passing of that law to exercise any powers or authorities, or discharge any functions, in any part of British India shall, where a corresponding

new authority has been constituted by or under any Part of the Government of India Act, 1935, for the time being in force, have effect until duly repealed or amended as if it where a reference to that new authority.

8. In any Indian law in force immediately before the commencement of this Order any reference by name or description to any territory shall, unless the contrary intention appears or unless it has been, or is by this Order, otherwise expressly provided, be construed as a reference to the territory which bore that name or answered to that description at the date when the enactment containing that name or description came into operation :

Provided that in the application of any enactment to Madras, Bombay, Bihar or the Central Provinces, references in that enactment to Madras, Bombay, Bihar or the Central Provinces, as the case may be, shall be construed as exclusive of so much of those Provinces respectively as was separated therefrom on the constitution of the Provinces of Orissa and Sind.

9. The provisions of this Order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this Order ; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this Order by the competent authority and under and in accordance with the provisions therein applicable to such a case.

10. Save as provided by this Order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question.

11. Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any Indian law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

12. For the avoidance of doubt it is hereby declared that—

(*a*) nothing in this Order transferring or assigning any functions to the Central Government shall be construed as excluding those functions from the operation of section one hundred and twenty-three or section one hundred and twenty-four of the Government of India Act, 1935 ;

(*b*) the transfer by this Order to a Provincial Government of any jurisdiction theretofore exercisable by the Local Government of the Province shall not be construed as excluding that jurisdiction from the operation of sub-section (2) of section two hundred and ninety-six of the said Act ;

(*c*) nothing in this Order shall affect the provisions of any Order in Council for the time being in force made under section one hundred and fifty-eight, section one hundred and fifty-nine or section one hundred and sixty of the said Act (which empower Orders to be made regulating the relations of India and Burma as to their monetary systems, relief from double taxation, customs, and ancillary and related matters), or under any corresponding provisions in the Government of Burma Act, 1935 ; and

(*d*) no repeal effected by this Order shall affect the operation of sub-paragraph (2) of paragraph fifteen of the Government of India (Commencement and Transitory Provisions) Order, 1936.

(Sd.) M. P. A. Hankey.

1. The Indian Evidence Act, 1872.

(1 of 1872.)

Section 26.—In the explanation, omit "or in Burma".

Section 36.—For "Government" substitute "any Government in British India".

Section 37.—For "Act of the Governor-General of India in Council" substitute "Act of the Central Legislature" and for the words from "for the time being" to the end of the section substitute "by any laws for the time being in force or in a Government notification or notification by the Crown representative appearing in the official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, Colony or possession of His Majesty is a relevant fact."

Section 57.—Substitute for paragraph (1) :—

"(1) all Indian laws."

In paragraph (4) for the words from "of the Councils" to "relating thereto" substitute" of the legislatures established under any laws for the time being in force in British India."

In paragraph (6) for "the Governor-General or any Local Government in Council" substitute "the Central Government or the Crown representative."

In paragraph (7) for "the *Gazette of India* or in the official Gazette of any Local Government" substitute "any official Gazette."

Section 78.—In sub-section (1) for "the Executive Government of British India substitute "the Central Government" ; after the first "departments" insert "or of the Crown representative", and at the end of the sub-section add "or, as the case may be, of the Crown representative"; in sub-section (2) for "by order of Government" substitute "by order of the Government concerned" ; and in sub-section (4) for "public act of the Governor-General of India in Council" substitute "Central Act."

Section 79.—For "Native State in alliance with Her Majesty" substitute "Indian State" and for "the Governor-General in Council" substitute "the Central Government or the Crown representative."

Section 81.—For "the *Gazette of India*, or the Government Gazette of any Local Government, or" substitute "any official Gazette, or the Government Gazette."

Section 83.—For "Government" substitute "any Government in British India."

Section 113.—After "any portion of British territory has" insert "before the commencement of Part III of the Government of India Act, 1935".

2. The Banker's Books Evidence Act, 1891.

(XVIII of 1891)

Section 2.—For sub-section (1) sebstitute—

"(1) 'Company' means a company registered under any of the enactments relating to companies for the time being in force in any part of His Majesty's dominions or incorporated by an Act of Parliament or by an Indian law or by Royal Charter or by Letters Patent."

THE GOVERNMENT OF BURMA (ADAPTATION OF LAWS) ORDER, 1937.

WHEREAS by section one hundred and forty-nine of the Government of Burma Act, 1935, His Majesty is empowered by order in Council to provide that, as from such date as may be specified in the order, any law in force in Burma shall, until repealed or amended by the Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be consiquential on the separation of India and Burma :

And whereas a draft of this order has been laid before Parliament in accordance with the provisions of sub-section (1) of section one hundred and fifty-seven of the said Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in this terms of this order :

Now, therefore, His Majesty, in the exercise of power conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. This Order may be cited as the Government of Burma (Adaptation of Laws) Order, 1937.

2. This Order shall come into operation on the separation of Burma and India.

3. (1) In this Order, 'Burman law' means a law as defined in section one hundred and forty-nine of the Government of Burma Act, 1935.

(2) The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

4. (1) The enactments mentioned in the Schedule to this order shall, until repealed or amended by the Legislature or other competent authority, have effect subject to the adaptations and modifications directed by that Schedule to be made therein or, where so directed, shall cease to have effect.

(2) Save as otherwise provided in that or in any other Burman law, every Burman law shall be deemed to have effect throughout the whole of British Burma.

5. (1) Whenever an expression mentioned in the first column of the Table here-in-under printed occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in any Burman law then, unless that expression is under the last preceding paragraph expressly directed to be otherwise adapted or modified or to stand unmodified or to be omitted, there shall be substituted therefor the expression set opposite to it in the second column of the said Table.

Table of General Adaptations.

Governor-General of India : Governor-General : Governor-General of India in Council : Governor-General in Council : Chief Commissioner of British Burma : Chief Commissioner : Lieutenant-Governor of Burma : Lieutenant-Governor : Local Government of Burma ; Local Government.	Governor.

Gazette of India, Gazette of British Burma, Burma Gazette, Local official Gazette, Official Gazette,	Gazette.

(2) Any words contained in any Burman law, otherwise than in a title or preamble, which require the consent, assent, approval, sanction or control of the Governor-General or the Governor-General in Council in relation to anything done by the Local Government or the Governor shall be omitted.

(3) A direction in the Schedule to this order that a specified Burman law or section or portion of a Burman law shall stand unmodified shall be construed merely as a direction that it is not to be modified or adapted in accordance with the foregoing provisions of this paragraph.

6. Where this Order requires that in any specified Burman law or portion of a Burman law certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall unless the contrary intention appears, be made wherever the words referred to occur in that law or that portion.

7. (1) Where any Burman law has before the commencement of this order been amended by the insertion or omission of words, or the substitution of words for other words, the adaptations and modifications directed to be made therein by this order shall be made in the enactment is in force at the commencement of this order, that is to say, as so amended :

Provided that nothing in this paragraph shall be construed as extending the operation of any temporary amending enactment.

(2) In this paragraph references to the amendment of law by the insertion or omission of words, or the substitution of words, do not include references to an amendment which is effected merely by directing that certain words shall be construed in a particular manner.

8. Where this order requires the substitution in any enactment of a plural noun for a singular noun or *vice versa*, or of a masculine noun for a neuter noun, or *vice versa*, or of a noun or adjective beginning with a consonant for a noun or adjective beginning with a vowel, or *vice versa*, there shall also be made in any verb, pronoun or article in the sentence in question such consequential amendment as the rules of Grammar may require.

9. The provisions of this order which adapt or modify any enactment so as to alter the manner in which, the authority by which, or the law in or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything done before the commencement of this order ; and any such notification of order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case.

10. Nothing in this order shall affect the previous operation of, or anything duly done or suffered under, any Burman law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

11. Save as provided in this order, all powers which under any law in force in Burma or in any part of Burma were at the commencement of this order vested in or exercisable by any person or authority shall continue to be so

vested or exercisable until other provision is made by the Legislature or by some authority empowered to regulate the matter in question.

12. (1) References in any Burman law to that or any other Burman law, or to any section or portion thereof, shall, except in so far as the contrary intention appears, be construed—

(*a*) as respects any period before the separation of India and Burma, as references to that law, section or portion as in force in all places to which it then extended, whether within or without Burma:

(*b*) as respects any period after the said separation as referencee to that law, section or portion as in force in Burma.

(2) The foregoing provisions of this paragraph extend to references to, or to any section or portion of, any Burman law by means of the short-title of the law, notwithstanding that the Schedule to this Order alters that short-title and notwithstanding that no consequential alteration is made in the reference.

13. For the avoidance of doubt it it is hereby declared that nothing in this order shall affect the operation of sub-paragragh (2) of paragraph eleven of the Government of Burma (Commencement and Transitory Provisions) Order, 1935, or of any order in Council made under Part XI of the Government of Burma Act, 1935.

———

THE SCHEDULE.

The Indian Evidence Act, 1872.

(I of 1872.)

In the short-title omit "Indian" and "1872".

Section 1.—Omit "extends to the whole of British India, and".

Sections 23, 126, 128 and 150.—For "barrister, pleader, attorney or vakil", and "barrister, attorney or vakil" substitute "legal practitioner."

Section 57.—In clause (12) and in section 127 for "advocates, attorneys, proctors, vakils, pleaders" and "barristers, pleaders, attorneys and vakils" substitute "legal practitioners."

Section 26.—Omit "In the Presidency of Fort St. George or in Burma or elsewhere."

Section 37.—For "Act of the Governor-General of India in Council, or of any other legislative authority in British India constituted for the time being under the Indian Council Act, 1861, the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909" substitute "enactment in force at any time in British Burma or British India"; for "Gazette of India, or in the Gazette of any Local Government" substitute "Gazette."

Section 57.—In clause (1) for "British India" substitute "British Burma or British India".

For clause (4) substitute—

"(4) the course of proceeding of Parliament and of the Burma Legislature".

In clause (6) for "British India, and of all Courts out of British India established by the authority of the Governor-General or any Local Government in Council" substitute "British Burma", and for "Act or Regulation having the force of law in British India" substitute "enactment in force in British Burma".

In clause (7) for "British India" substitute "British Burma" and for "*Gazette of India* or in the official Gazette of any Local Government" substitute "Gazette."

Section 65.—In clause (*f*) for "British India" substitute "British Burma."

Section 66.—For "attorney" substitute "advocate."

Section 74.—For "British India" substitute "British Burma."

Section 78.—For "Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government" substitute "Government" and for "any such Government" substitute "the Governor".

For "public Act of the Governor-General of India in Council" substitute "enactment in force in British Burma."

For "British India" substitute "British Burma."

Section 79.—For "British India" substitute "British Burma" and for "Native State in alliance with Her Majesty" substitute "other part of Burma."

Section 81.—For "*Gazette of India*, or the Government Gazette of any Local Government ; or" substitute "Gazette of Burma or the Government Gazette".

Sections 85 and 86.—Omit "or of the Government of India."

Section 86.—Omit the words from "An officer" to "territory or place".

Section 91.—For Exception 2 substitute.—"Exception 2—Wills may be proved by any probate thereof having effect in British Burma."

Omit section 113.

The Bankers' Books Evidence Act, 1891.

(XVIII of 1891.)

Section 1.—Omit sub-section (2).

Section 2.—For clause (1) substitute the following :—

"(1) 'Company' means a company incorporated or registered by or under the law of the United Kingdom, British Burma, British India or any British possession";

In clause (6) for "a High Court" substitute "the High Court."

The Indian Penal Code.

ACT NO. XLV OF 1860.

RECEIVED THE G.-G'S ASSENT ON THE 6TH OCTOBER, 1860.

CHAPTER I.

INTRODUCTION.

WHEREAS it is expedient to provide a general Penal Code for British India; It is enacted as follows :—

Preamble.

Notes.—All offences under the Penal Code are to be enquired into and tried according to the provisions of the Criminal Procedure Code (Act V. of 1898).—*See* ss. 5 and 28 of Act V of 1898.

Interpretation of Statutes.—It is the fundamental principle of the interpretation of statutes that their language must be understood in its most ordinary and popular acceptation. 7 A. 385 (398) F. B. We are bound to adhere to the grammatical and ordinary sense of the words ; as *Lord Wenslaydale* observed in *Gray* v. *Pearson*, 6 H. L. C. 61, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the statute, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further. Vide, *Vacher* v. *London Society*, (1913) A. C. 107 ; *Inland Revenue* v. *Herbet*, (1913) A. C. 326 ; *Kalimuddin* v. *Sahibuddin*, 24 C. W. N. 4 (11) F. B, ; see also *Phipott* v. *St. George's Hospital*, 6 H. L. Cas. 338=3 Jur. N. S. 1269 ; *Fordyce* v. *Bridges*, 1 H. L. Cas. 1=11 Jur. 157 ; *Logan* v. *Courtown* (Earl), 13 Beav. 22=20 L. J. Chanc. 347 ; *Nank Ram* v. *Mohin Lal* 1 A 487 ; *Modhusudan* v. *Shyama Charan*, 1 Hyde, 100 ; *Madhusudhan* v. *Mohesh*, 3 B. L. R. A. C. 202 ; *Jogodishury* v. *Kailash*, 24 C. 725 (F. B.)=1. C. W. N. 374 ; *Gureebulla* v. *Mohem Lal* 8 C. L. R. 409=7 C. 127 ; *Kuar Nagshar* v. *Kuar Mathurh*, 25 O. C. 189=9 O. L. J. 235 ; *Collector of Rangoon* v. *Abdul*, (1922) L. B. 27=67 Ind. Cas. 640 ; *Hornesy* v. *Moncarh*, 24 Q. B. D. 1=59 L. J. Q. B. 105 ; *Ai Yasamier* v. *Venkata C. aleh Mudali* 40 M. 989=31=M. L. J. 513=(1916) 2 M. W. N. 296=20 M. L. T. 391=4 L. W. 507 ; *Rajib* v. *Lakhan*, 27 C. 11=3 C. W. N. 660 ; *Bank of England* v. *Vagliono*, L. R. App. Cas. (1891) 145 ; *St. John Hamstead* v. *Cotton*, 12 App. Cas. 6 ; *Alfred Witkinson*, 47 B. 843. In construing an Act the proceedings in the Legislative Council cannot be referred to. *Sarat* v. *Uma*, 31 C. 628=8. C. W. N. 578 ; see also 22 C. 788 (P. C) ; 22 B. 112. It is a mistake to refer to the debates on the Bill, when before the Legislative Council for the purpose of construing an Act. 18 B. 133 ; 20 C. 1017 (F. B.) ; 14 A. 145=A. W. N. 1892, 5 ; 27 C. W. N. 115 ; 43 M. 550=38 M. L. J. 444=47 I. A. 33 P. C. ; 13 S. L. R. 23=52 Ind. Cas. 139. The Statement of Objects and Reasons cannot be referred to in the Court. 10 C. 166 (F. B.)=13 C. L. R. 342 ; see also 19 C. 544 ; 22 C. 788 (P. C.) The Court is not entitled to look to the report of the select committee. 14 A. 145=A. W. N. 1892, 5 ; 5 A. 121 (F. B.) ; (1922) Lah. 211 ; 43 M. 675=39 M. L. J. 203=58 Ind. Cas. 871.

Illustrations.—The Law Commissioners in submitting their report to the Right Hon'ble *George Lord Auckland*, Governor-General of India in Council said : "The definitions and enacting clauses contain the whole law. The illustrations make nothing law which would not be law without them. They only exhibit the law in full action, and show what its effects will be on the events of common life. Thus the Code will be at once a statute book and a collection of decided cases. The decided cases in the Code will differ from the decided cases in the English law books into most important points. In the first place, our illustrations are never intended to supply any omission in the written law, nor do they ever, in our opinion, put a strain on the written law. They are merely instances of the practical application of the written law to the affairs of mankind. Secondly, they are cases decided not by the Judges but by the Legislature, by those who make the law, and who must know more certainly than any Judge can know what the law is which they mean to make.....The decisions

on particular cases which we have annexed to the provisions of the Code resemble the imperial rescripts in this, that they proceed from the same authority from which the provisions themselves proceed. They differ from the imperial rescripts in this most important circumstance, that they are not made *expost facto*, that they cannot therefore be made to serve any particular turn, that the persons condemned or absolved by them are purely imaginary persons, and that, therefore, whatever may be thought of the wisdom of any judgment which we have passed there can be no doubt of its impartiality. The publication of this collection of cases decided by legislative authority will, we hope, greatly limit the power which the Courts of Justice possess of putting their own sense on the laws. But we are sensible that neither this collection nor any other can be sufficiently extensive to settle every question which may be raised as to the construction of the Code." In *Mohomed Syedol Ariffan* v. *Ycoh Ovi Gark*, (1916) A. C. 575=43 I. A. 256=21 C. W. N. 257 P. C. *Lord Shaw* observed: "On the second point their Lordships are of opinion that in the construction of the Evidence Act, it is the duty of a Court of Law to accept—if that can be done—the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although no part of the sections, been expressly furnished by the legislature as helpful in the working and application of the statute, should not be thus impaired." "They are to be taken as part of the statute." *Lalla Balla Mall* v. *Ahad Sha*, 35 M. L. J. 614=16 A. L. J. 905=29 C. L. J. 165=23 C. W. N. 233 (P. C.) at p. 237.; 23 B. 103 (112). But the illustrations do not bind the Courts to place a meaning on the section which is inconsistent with its language. 32 C. L. J. 94=24 C. W. N. 982, (986, 987). See also 7 C. 132; 1 A 34; 15 B. 491; 85 Ind. Cas. 722=(1925) All. 220; 28 M. 57; 34 C. 950; 45 Ind. Cas. 942=23 M. L. T. 320; 46 Ind. Cas. 497; 16 Ind. Cas. 753=30 Cr. L. J. 721; 30 Bom. L. R. 380; 19 Bom. L. R. 157 P. C.; A. I. R. 1933 Bom. 313=35 Bom. L. R. 576; A. I. R. 1933 Mad. 795=65 M. L. J. 588.

Penal Code—how interpreted.—In *Barindra Kumar Ghose* v. *King Emperor*, 29 C. W. N. 181 at p. 191=52 I. A. 40=52 C. 197=41 C. L. J. 240=27 Bom. L. R. 148 (P. C.) In delivering the judgment *Lord Summar* observed: "Their Lordships do not think it useful to go at length into the history of the preparation and enactment of the provisions of the Indian Penal Code, which played no inconsiderable part in the discussion of this subject in India. That the criminal law of India is prescribed by and, so far as it goes is contained in the Indian Penal Code, that accordingly (as the Code itself shows) the criminal law of India and that of England differ in sundry respects, and that the Code has first of all to be construed in accordance with its natural meaning and irrespective of any assumed intention on the part of its framers to leave unaltered the law as it existed before, are, though common places considerations which it is important never to forget. It is however, equally true that the Code must not be assumed to have sought to introduce difference from the prior law. It continues to employ some of the older technical terms without even defining them, as in the case of abetment. It abandons others such as principal in the first or the second degree, but it must not be supposed that because it ceases to use the terms, it does not intend to provide for the ideas which those terms, however imperfectly, expressed." In construing the Penal Code and ascertaining the intention of the Legislature, reference may be made to the notes to the Penal Code prepared by the Indian Law Commissioners. 17 C. 852; 17 A. 44; 8 B. 241; 18 B. 616 (625); *contra*, 19 W. R. 48 (53). Penal Code is a complete Code. Matter outside it can be invoked only for construing its provisions. A. I. R. 1926 Mad. 909=46 M. 728=51 M. L. J. 112. The Code must be interpreted according to its natural meaning only. A. I. R. 1925 P. C. 1=29 C. W. N. 181=23 A. L. J. 314 (P. C.) Policy of Legislature is immaterial. A. I. R, 1933 Bom. 417=57 B. 537=35 Bom. L. R. 886.

How to construe a penal statute.—A penal statute, when its language is ambiguous, should be construed in the manner most favourable to the liberties of the subject, and this is more especially so, when the enactment is of an exceptional character. 1 B. 308 (F. B.) A penal statute must be construed strictly, and Magistrates ought to be very careful before they proceed to inflict imprisonment

in a summary manner. They must avoid all appearance of oppression. 13 B. 600. A penal statute must be construed strictly, that is, nothing is to be regarded as within the meaning of the statute which is not within the letter—which is not clearly and intelligibly described in the very words of the statute itself. 8 C. 214 (F. B.) ; 10 C. L. R. 155 ; 13 B. 681 ; 4 P. L. J. 74. Penal provisions have to be strictly construed, nor can the liability to punishment for the neglect of a statutory obligation be extended by inferential reasoning. 28 C. 504=5 C. W. N. 711 ; see also 27 N. L. R. 270=A. I. R. 1931 Nag. 177=32 Cr. L. J. 1266 ; A. I. R. 1932 Pat. 281=33 Cr. L. J. 775=13 P. L T. 461. In construing a statute which affects the liberty of the subject, the Court should not only adopt the natural and ordinary construction, but should construe strictly expressions occurring therein. 5 C. W. N. 108 ; see also L. B. R. (1893-1900). 121. No cases shall be deemed to fall within the provisions of a penal statute which did not fall within the reasonable meaning of their terms and within their spirit and scope. The same rules of interpretation apply to notifications issued under a penal statute. 96 P. L. R. 1901=24 P. R. 1901 Cr. In interpreting a penal statute, it is important to see that the powers conferred upon the Magistrates are duly exercised with reference to the rendering unlawful acts that would otherwise be lawful. 10 A. 115=A. W. N. 1888. 25 ; see also L. B. R. (1893-1900), 284 ; L. B. R. (1872-1892), 279 ; 14 Bom. L. R. 954=17 Ind. Cas. 789 ; L. B. R. (1897-1901) Vol. I. 291 ; 14 Bom. L. R. 954=17 Ind. Cas. 789 ; 7 B. H. C. R. 39 ; 42 M. L. J. 149. The general principle is to construe an Act strictly and when there is any doubt such doubt should be given in favour of the subject. 8 Lah. 320=100 Ind. Cas. 716=28 Cr. L. J. 332=78 Punj. L. R. 521=A. I. R. 1927 Lah. 338 ; see also 25 A. L. J. 515=102 Ind. Cas. 490=8 L. R. 108 Cr.=28 Cr. L. J. 554=A. I. R. 1927 All. 536 ; 28 Cr. L. J. 913=105 Ind. Cas. 433 (F. B.) ; 5 Rang. 244 ; 28 Punj. L. R. 225=101 Ind. Cas. 747=A. I. R. 1927 Lah. 276 ; 25 A. L. J. 661=102 Ind. Cas. 633 ; 29 Bom. L. R. 494=A. I. R. 1927 Bom 369 ; 1928 Nag. 219 ; 32 P. L. R. 493=A. I. R. 1931 Lah. 476 ; A. I. R. 1932 Nag. 174=28 N. L. R. 302. The person charged has a right to say that the thing charged although within the words is not within the spririt of the enactment. 53 C. 492=97 Ind. Cas. 376=A I. R. 1926 Cal. 627. Where a penal Act is ambiguous and there are two possible interpretations, one of which would mitigate the penalty and the other would aggravate it, the former should prevail. 96 Ind. Cas. 113=27 Cr. L. J. 865 ; see also 86 Ind. Cas. 280=1925 Mad. 239. In case of penal Act, the legislation is presumed to act prospectively and not retrospectively. A I. R. 1931 Lah. 145=32 Cr. L. J. 700.

Code is exhaustive.—The essence of a Code is to be exhaustive on the matter in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction. 4 Bom. L. R. 793=29 C. 707=29 I. A. 195=6 C. W. N. 825 ; but see 33 C. 927.

Retrospective operation of statutes.—Every statute which takes away or impairs vested rights must be presumed not to have a retrospective operation. unless the language clearly supports a contrary construction. 36 C. L. J. 132 ; 18 N. L. R. 85=(1922) Nag. 227 ; 5 N. L. R. 251 ; 47 C. 1198=31 C. L. J. 463=24 C. W. N. 1011=58 Ind. Cas. 327 ; A. I. R. (1925) Nag. 447=8N. L. J. 175 ; 83 Ind. Cas. 752=A. I. R. (1925) Nag. 249.

Consolidating Act.—In construing an Act of Parliament which is a consolidating Act which does not profess to amend or alter the provisions of the Acts consolidated, *prima facie*, the same effect ought to be given to its provisions as was given to those of the Acts for which it was substituted. 25 Q. B. D. 183=59 L. J. Q. B. 355=63 L. T. 403=55 J. P. 36. In construing a consolidating and amending Act as distinguished from a codifying Act, the Court is entitled to have regard to previous decision. (1892) 2 Ch. 557=71 L. T. 72.

Codification Act.—In *Vagliono* v. *Bank of England* 60 L. J. Q. B. 145=64 L. T. 353=39 W. R. 657=55 J. P. 676=(1891) A. C. 102 at p. 107, *Lord Halsbury L. C.* said : "I am wholly unable to adopt the view that where a statute is expressly said to codify the law, you are at liberty to go outside the code, so created, because before the existence of that code another law prevailed." In the same case at p. 144, *Lord Harschell* also observed : " The proper course is in the first instance to examine the language of the statute and to ask what its natural meaning is, uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then

assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a Statute, intended to embody in a code a particular branch of the law is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which, it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate, or, again, if in a Code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or have been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the Code. I give these as examples merely ; they of course do not exhaust the category. What, however, I am venturing to insist upon is, that the first step should be to interpret the language of the statute, and then an appeal to earlier decisions can only be justified on some special ground."

Title.—If there is in the provisions of an Act anything admitting of a doubt, the title of an Act is a matter proper to be considered in the interpretation of the Act. *Fielden* v. *Morley Corporation* (1899) 1 Ch. 1 ; *Shaw* v. *Ruddin*, 9 Ir. C. L. R. 214 ; *Reg.* v. *Mellow Union*, 12 Ir, C. L. R. 35 ; *Fenton* v. *Thorley* (1903) A. C. 447 ; *Ampler* v. *Bradford Corporation*, (1902) 2 Ch. C. A. 594 ; *A. G.* v. *Morgate Pier Co*, 69 L. J. Ch. 331 ; *Vacher & Sons Ltd* v. *London Society of Compositors*,. (1913) A. C. 107, 128, 129 ; *Sage* v. *Eichzo* (1919) 2 K. B. 171, 176 ; *Harrochunder* v. *Shoorodhone* 9 W. R. (F. B.) 402; *Uda* v. *Imamuddin* ; 2 A. 90.

Preamble.—The preamble is undoubtedly a part of the Act, and may be used to explain, but not to control, the enacting part, which goes often beyond the preamble, if the words to be found in the former are strong enough for the purpose. 2 M. H. C. R. 322 ; see also 1930 A. L. J. 941=A. I. R. 1932 All. 617 ; 32 P. L. R. 598=14 Lah. 203 ; A. I. R. 1933 Mad. 120=140 Ind. Cas. 926. But the preamble cannot either restrict or extend the enacting part when the language and the object and the scope of the Act are not open to doubt. A preamble in a statute cannot govern clear expressions in the enacting part thereof. 18 C. L J. 187 ; 11 A. 266 ; 14 A. 145 ; 45 C. 343. The preamble of an Act does not control any plain question of doubt which arises when the construction of a particular provision and consideration relating to the scope of the Act are involved. 12 A. 409=A. W. N. 1890 (F. B.) 145 ; 14 C. 176. It may be referred to clearing ambiguity in the enacting portion of the Act. 30 Bom. L. R. 1494 (1498). The preamble shows that the object of the Legislature was to provide a general Penal Code for British India. 48 C. 388=24 C. W. N. 982. It contains no specified repeal of penal laws then in force and that omission is intentional. 41 C. 173 (211)=17 C. W. N. 1253.

Headings of Sections.—The heading to a group of sections in a Statute ought not to be pressed into a constructive limitation upon the exercise of the powers given by the express words of the Act. 42 B. 462=20 Bom. L. R. 937=23 C. W. N. 110=45 I. A. 125 (P. C.) In construing a statute headings should be ignored and it is only the sections which the Courts are called upon to interpret as being the substantive part of the enactment. 47 A. 756=23 A. L. J. 725=89 Ind. Cas. 122=A. I. R. 1925 All. 787 ; 48 M. 395.

English Cases.—English Cases on construction of English Statutes are of great assistance, sometimes in construing Acts of the Indian Legislature ; but of course, it is always necessary to see that the Indian Statute and the English statute resemble one another in their purposes, and not only in a portion of a section which, for convenience of drafting, has been adopted by the draftsman of the Indian Act. 22 C. 77. Where an Indian Act was passed for the purpose of extending to India the provisions of the English Act, English decisions may be referred to as a guide to construe the Act. 26 A. 299=31 I. A. 116=8 C. W. N. 521=14 M. L. J. 190=6 Bom. L. R. 505 ; 4 S.L.R. 26=7 Ind. Cas. 595 ; 1 B. 23 but see 12 O. L. J. 1. Unless the English Statute, and the Act of the Indian Legislature are in *pari materia*, references to English decisions, instead of affording any

help, will only tend to confuse the consideration of the matter in issue. 30 C. 36=7 C. W. N. 249. In construing a section of the Indian Act, cases bearing upon the construction of similar provisions of an English Act, different in its language, can be of little or no assistance. 25 C. 346 ; see also 24 C. W. N. 454=31 C. L. J. 283= 56 Ind. Cas. 541 ; 5 B. 338 ; 46 C. 515 ; 46 C. 607=24 C. W. N. 1045. "In construing a section of an Indian Act which is professedly based on English enactment, which in fact reproduces almost word by word the language of the English enactment, we are in practice, if not in theory, bound by the decisions of English Court." *Per Mookerjee J.* in 21 C. W. N. 794=41 Ind. Cas 944 ; see also *Per White C J.* in 39 M. 250=35 Ind. Cas. 942 ; 12 Q. B. D. 724 ; 1933 A. L. J. 1203=A. I. R. 1933 All. 789 (F. B) ; A. I. R. 1932 Sind. 50=25 S. L. R. 521.

Whereas it is expedient to provide a general Penal Code etc.—The Indian Law Commissioners, of whom Lord Macaulay was the President, submitted the draft of Indian Penal Code on the 14th October, 1837, to the Right Honourable *George Lord Auckland*, G. C. B. Governor-General of India in Council. That draft Code was further revised by Barnes Peacock and others and found place in the Statute Book in 1860. The difficulty of enacting Penal Law for British India is thus described by the Law Commissioners : "Your Lordship in council will perceive that the system of penal law which we propose is not a digest of any existing system and that no existing system has furnished us even with a ground work. We trust that your Lordship in council will not hence infer that we have neglected to inquire, as we are commanded to do by Parliament, into the present state of that part of the law, or that in other parts of our labours we are likely to recommend unsparing innovation, and the entire sweeping away of ancient usages. We are perfectly aware of the value of that sanction which long prescription and national feeling give to institutions. We are perfectly aware that law givers ought not to disregard even that unreasonable prejudices of those for whom they legislate. So sensible are we of the importance of these considerations, that, though there are not the same objections to innovation in penal legislation as to innovation affecting vested rights of property, yet, if we had found India in possession of a system of criminal law which the people regarded with partiality, we should have been inclined rather to ascertain it, to digest it, and moderately to correct it, than to propose a system fundamentally different."

The law Commissioners continued : "But it appears to us that none of the systems of penal law established in British India has any claim to our attention except what it may derive from its own intrinsic excellence. All those systems are foreign. All were introduced by conquerors differing in race, manners, language and religion from the great mass of the people. The Criminal Law of the Hindus was long ago superseded, throughout the greater part of the territories now subject to the Company, by that of the Mahomedans, and is certainly the last system of criminal law which an enlightened and humane Government would be disposed to receive. The Mahomedan Criminal Law has in its turn been superseded, to a great extent, by the British Regulations. Indeed, in the territories subject to the Presidency of Bombay, the Criminal Law of the Mahomedans, as well as that of the Hindus, has been altogether discarded except in one particular class of cases ; .....Thus widely do the systems of penal law now established in British India differ from each other, nor can we recommend any one of the three systems as furnishing even the rudiments of a good Code. The penal law of Bengal and of the Madras Presidency is, in fact, Mahomedan law which has gradually been distorted to such an extent as to deprive it of all title to the religious veneration of Mahomedans, yet which retains enough of its original peculiarities to perplex and encumber the administration of Justice. In substance it now differs at least as widely from the Mahomedan penal law, as the penal law of England differs from the penal law of France. Yet the technical terms and nice distinctions borrowed from the Mahomedan law are still retained..... Such is the state of law in the Moffussil. In the meantime the population which lives within the local jurisdiction of the Courts established by Royal Charters is subject to the English Criminal Law, that is to say, to a very artificial and complicated system,—to a foreign system,—to a system which was framed without the smallest reference to India,—to a system which even in the country for which it was framed is generally considered as requiring extensive reform,—to a system finally, which has just been pronounced by a Commission composed of able and learned English lawyers to be so defective that it can be reformed only by being entirely taken to pieces and reconstructed. Under these circumstances we have not thought it desirable to

take as the ground work of the Code of any of the system of law now in force in any part of India. We have, indeed, to the best of our ability, compared the Code with all those systems ; and we have taken suggestions from all ; but we have not adopted a single provision merely because it formed a part of any of those systems. We have also compared our work with the most celebrated system of Western jurisprudence, as far as the very scanty means of information which were accessible to us in this country enabled us to do so. We have derived much valuable assistence from the French Code, and from the divisions of the French Courts of Justice on questions touching the construction of that Code. We have derived assistance still more valueable from the Code of Louisiana, prepared by the late Mr. Leingston. We are the more desirous to acknowledge our obligations to that eminent jurist, because we have found ourselves under the necessity of combating his opinion on some important questions."

Title and extent of operation of the Code.

1. This Act shall be called "The Indian Penal Code," and shall take effect throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better Government of India."

Amendments.—The words and figures "on and from the first day of May, 1861" repealed by the Repealing and Amending Act (XII of 1891), Sch. I, have here been omitted. The Indian Penal Code came into force on the 1st day of January, 1862.

The words "except the settlement of Prince of Wales Island, Singapur and Malacca," repealed by the Repealing and Amending Act (XII of 1891 Sch. I, have here been omitted.

Operation of the Act.—There is no provision of law by which parties of any sect have a right to be exempted from the operation of the Criminal law applicable to all the subjects of the King. 25 A. 31=A. W. N. 1902, 173.

Territories, etc.—Mysore is not a part of such territories. I Weir 43. As to the extention of the Act to *Perim*, *vide* 10 B. 258, to *Laccadive Islands*, *vide* 13 M. and to *Aden*, *vide* Act II of 1874. But a person charged with having committed the offence of kidnapping in *Mourbhunj* which is outside British India cannot be tried by a Court in British India within the local limits of which the person kidnapped may be conveyed, c ncealed or detained. 20 C. W. N. 62 ; 8 C. 985 (F. B.) ; see also 7 C. 523 ; 16 C. 0667. Neither the Act is applicable to the civil station at *Rajkote*. 10 186. The Code has been declared in force—

(1) in the Sonthal Parganas, by Reg. III of 1872, s. 3 as amended by Reg. III of 1899 ;

(2) in the Arakan Hill District, by Reg. IX of 1874, s. 3 and Reg. (1 of 1916) ;

(3) in Upper Burma generally (except the Shan States) by Burma Laws Act (XIII of 1898) s. 4 (1) and Sch. 1 ;

(4) in British Baluchistan, by Reg. 1 of 1890, s. 3 and Reg. II of 1913 ;

(5) in Angul and Kondmals, by Reg. I of 1894, s. 3, and Reg. 3 of 1913.

(6) in the Kochin Hill Tracts as regards hill tribes (with modifications) by Reg. I of 1895, s. 3.

(7) in Chin Hills—as regards hill tribes (with modifications) by Reg. V 1896 s. 3,

(8) in the Chittagong Hill tracts, by Reg. I of 1900, s. 4.

The Code has been declared by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV of 1874) to be in force in the following scheduled districts namely :—

(1) the N. W. P. Tarai districts (see *Gazette of the India*, 1876, Pt. I. 505) and

(2) the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Colhan in the district of Singbhum (see *Gazetta of India*, 1801 Pt. I. p. 504.

By notification under ss. 3 and 5 A. of the same Act, it has been declared in force in the Pargana of Manpur, in Central India (see *Gazette of India* Pt. II p. 419) It has been extended under s. 5 of the same Act to Lushai Hills (vide, Notification No. 923—Gazette of India, 1898, Pt, II p. 345).

Punishment of offences committed within the said territories.

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or ommission contrary to the provisions thereof, of which he shall be guilty within the said territories.

Amendment.—The words and figures "on and from the first day of may, 1861," repealed by the Repealing and Amending Act (XII of 1891), Sch. I have here been omitted.

Every person.—As to persons of high rank, the Indian Law Commissioners said: "Your Lordship in Council will see that we have not proposed to except from the operation of the Code any of the ancient sovereign houses of India residing within the Company's territories. Whether any such exception ought to be made, is a question which, without more accurate knowledge than we possess, we could not venture to decide. We will only beg permission most respectfully to observe that every such exception is an evil: that it is an evil that any man should be above the law—that it is still a greater evil that the public should be taught to regard as a high and enviable distinction the privilege of being above the law—that the longer such privileges are suffered to last, the more difficult it is to take them away; —and we greatly doubt whether any consideration, except that of public faith solemnly pledged, deserves to be weighed against the advantages of equal justice."

"The peculiar state of public feeling in this country may tender it advisable to frame the law of procedure in such a manner that families of high rank may be dispensed, as far as possible from the necessity of performing acts which are here regarded, however unreasonable, as humiliating. But though it may be proper to make wide distinctions as respects form, there ought in our opinion, to be, as respects substance, no distinction except those which the Government is bound by express engagements to make. That a man of rank should be examined with particular ceremonies, or in a particular place, may in the present state of Indian society be highly expedient. But that a man of any rank should be allowed to commit crimes with impunity must, in every state of society, be most pernicious." It will perhaps be found that the position of those persons who are privileged by treaty or otherwise differs from that of other persons rather in regard to form of procedure than in actual liability. *Vide* Acts XXVII of 1854, XXXVII of 1858.

Corporation.—A corporation cannot in its corporate capacity commit a crime by an act in the fullest sense. *Ultra vires*, and contrary to its nature. But within the sphere of its corporate capacity, and to an undefined extent beyond, whenever it assumes to act as a corporation it has the same capabilities of criminal intent and of act in other words, of crime—as an individual who has the like relations. Some have stumbled over the apparent impossibility of an artificial and soulless being, called a corporation, having an evil mind or criminal intent. In this view it was said in an old case that a corporation is not indictable, yet its individual members are *Anon.* 12 Moo. 559. But since a corporation acts by its officers and agents, their purposes, motives and intent are just as much those of the 'corporation' as are the things done. The ordinary crimes, wherein only general evil, or the mere purpose to do the forbidden thing, suffices for the intent, are plainly within doctrine. But, to present a sharp contrast, the intent essential to murder in the first degree, and the thing itself, would palpably be so far, *Ultra vires* as to be beyond the competency of the corporation, even if it could be hung in punishment. *Bishop Cr. Law* § [417, 418. In *Reg* v. *Great North of England Ry.* 9 Q. B. 315, 326, *Denman C. J.* said: "Some dicta occur in old cases, 'A corporation cannot be guilty of treason or of felony.' It might be added, 'of perjury, or offences against the person.' A corporation which as such has no such duties, connot be guilty as a body corporate, of commanding acts to be "done to the nuisance of the community at large."

Scope of the section.—Section 1 and this section declare the extent of the operation of the Code with respect to time, place, and person. After the 1st May, 1861 all offences contained in this Code will be punishable, whoever the offender may be. Every person is made liable to punishment without distinction of nation, rank, caste or creed, provided only the offence with which he is charged has been committed in some part of British India.—*Morgan and Macpherson* p. 4. Another statute cannot take away by implicating the right to prosecute under the Penal Code. A. I. R. 1928 Mad. 1235=30 Cr. L. J. 432=52 M. 79=55 M. L. J. 715=115 Ind. Cas. 242. Section 2 must be interpreted subject to s. 5. A. I. R. 1929 Lah. 217=30 Cr. L. J. 460=115 Ind. Cas. 428. Offences under the Penal Code and other special and local laws alone are punishable. A. I. R. 1921 Cal. 1=21 C. 388=22 Cr. L. J. 51= 59 Ind. Cas. 143.

To whom this Act is applicable.—The powers of the Indian Legislature extend to certain specified persons and places. The Act of Parliament (3 and 4, Will 4, c. 85) which defines this legislative power, authorizes the Governor-General in

Council "to make laws and regulations for all persons, whether British or native, foreigners or others, and for all Courts of Justice, whether established by His Majesty's charters or otherwise, and the jurisdiction thereof, and for all places and things whatsoever, within and throughout the whole and every part of the said (British) territories.—*Vide* s. 43. These are the defined limits of the legislative power. Accordingly "within and throughout" British India, the Penal Code is applicable to all persons thus made subject to this authority of the Governor-General of India in Council whether such persons are the subjects of Her Majesty or the subjects of a foreign state, they all owe obedience to the law. A foreigner who enters the British territories and thus accepts the protection of our laws, virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation.—*Morgan and Macpherson* p. 5. "Crime is local in its character ; that is it is an offence against the law of the State where it is committed. It may also be and often is, an offence against the law of the State to which the offender owes allegiance. *Macleod* v. *A. G. New for South Wales.* (1891) 60 L. J. P. C. 55." *Foote's Private International Law* p. 505.

And not otherwise.—All existing penal laws whatsoever, except such as are referred to in the last section of this chapter, are superseded by the code to this extent, that persons liable to punishment under any of the provisions of the code cannot be punished by any other law. The words "and not otherwise" seem virtually to repeal all former laws for the punishment of any offence which is made punishable by this law. But if there are acts or omissions made penal by the existing law, and no provision of this code is found to reach them, that law will continue at present in force. Offences committed prior to the 1st May, 1861, will not come under the code, at whatever time the offender may be arrested or tried.—*Morgan and Macpherson.* p. 5. The Commissioners in their Second Report says : "We do not advise the general repeal of the penal law now existing in the Territories for which we have recommended the enactment of the code. We think it will be more expedient to provide only that no man shall be tried or punished (except by a Court-Martial) for any acts which constitute any offence defined in the Code, otherwise than according to its provisions." *Vide* §§ *536-537 of the commissioners' 2nd Report.*

Persons exempted from the operation of this Act.—According to English constitution law the King can do no wrong. (*Rex non potest pecare*). Hence no criminal action can be brought against a sovereign. His ministers are liable for any wrongful act done by him. *Feather* v. *Queen*, 6 B. & S. 258. "There is no exception in favour of aliens from liability for offences committed in England or on British ships either on the ground of want of allegiance, or ignorance of the law of England. But neither the common law nor the statute law extends to acts of aliens outside the King's dominions. [*Mortensen* v. *Peters* (1906) 8 Fracer 93], or outside the jurisdiction of the Admiralty of England, and the diplomatic representatives of foreign states and their suites are for the purposes of Criminal Law of England regarded as resident in the country of which they are accredited, and there is some doubt as to the criminal liability of an alien enemy, *e.g.* a prisoner of war"—*Russells on Crimes* p. 103. As a consequence of the absolute independence of every sovereign authority, and of the international comity which induces every sovereign state to respect the independence of every other sovereign state, each state declines to exercise by means of any of its Courts any of its territorial jurisdiction over the person of any sovereign, or ambassador, or over the public property of any other state which is destined to its public use, or over the property of any ambassador, though such sovereign, ambassador, or property be within its territory, and therefore, but for the common agreement, subject to its jurisdiction. *The Parliament Belge.* 5 P. D. 197=42 L. T. 273. The Indian Princes are not amenable to the jurisdiction of British Courts. 25 C. 20 P. C. But there is no provision of law by which parties of any sect have a right to be exempted from the operation of the Criminal law applicable to all the subjects of the King. *Emperor* v. *Mahabir*, 25 A. 31=A. W N. 1902, 173. Where foreigner in a foreign territory initiates an offence which is completed within British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence is completed. 14 Bom. L. R. 147=14 Ind Cas 970=13 Cr. L. J. 426=36 B. 524. But a foreigner who after stealing the property in a foreign country, conveys it inio British India is not amenable to the jurisdiction of British Courts. 5 P. R. 1881 Cr. So also British Courts have no jurisdiction to try a person, not being a British subject for being in possession of stolen property, when the theft itself was committed in a foreign state. 4 P. R. 1883 Cr. ; see 30 P. R. 1894 Cr. ; 6 M.

H. C. App. 3. Neither a foreigner found in possession in foreign territory of stolen property could be convicted under s. 411, of the, code, unless it was shewn that he was one of the thieves or had possession of property in British India. 16 P. R. 1880 Cr. ; 9 A. 523=A. W. N. 1887, 131. So also the British Criminal Courts have no jurisdiction to try a case when an offence is committed outside British India. Rat. Un. Cr. C. 870 ; see also 30 P. R. 1889. A person, who steals property out of British India and brings it into it, can be convicted of dishonestly retaining stolen property. 6 C. 302=7 C. L. R. 411. Where property stolen in British India is received by foreigners outside British India, British Courts have jurisdiction over the offence of receiving stolen property. 29 P. R. 1867 Cr. ; see also A. I. R. 1927 All 80=41A 687=24 A. L. J. 767 A foreigner committing offence in British India without being personally present there is not liable to be tried by a British Court. 35 P. R. 1880 Cr.

Punishment of offences committed beyond, but which by law may be tried within, the territories.

3. Any person liable, by any law passed by the Governor General of India in Council, to be tried for an offence committed beyond the limits of the said territories shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories,

Scope of the section. This section relates to the extra-territorial operation of the Code. *Morgan and Macpherson*; see also 10 B. H. C. R. 356 ; 30 P. R. 1889. The words "for any act" etc extend also to illegal omissions (vide s. 32). Many offences, such as Forgery, offences relating to coin and Government stamps, offences against the State, etc., may be committed beyond the limits of the British Territories, by persons subject to British laws, and it is necessary to provide for the punishment. It was a principle of the old Regulations to make punishable, by trial within the East India Company's territories, subjects of the Government committing crimes beyond the frontier, whether apprehended within or without the frontier. Those Regulations which were specially confined to native subjects and aliens living for six months within British territories, were repealed by Act I of 1849, which enacts (section 2) that "All subjects of the British Government, and also all persons in the Civil or Military Service of the said Government, while actually in such service, and for six months within the British Territories under the Government of the East India Company, subject to the laws of the said Territories, who shall be apprehended within the said territories, or delivered into the custody of a Magistrate within the said territories wherever apprehended, shall be amenable to the law for all offences committed by them within the territory of any Foreign Prince or State ; and may be bailed or committed for trial as hereafter provided on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British Territories". Persons liable by the law to be tried by British Courts must be "dealt with" according to the provisions of this Code.—*Morgan and Macpherson.* That Act has now been repealed by Act II of 1872, which again has also been repealed. Where the act of kidnapping is complete in British India and there is no concealment or detention in British territory, the British Court has no jurisdiction to try and convict the accused. 121 P. L. R. 1901=1 P. R. 1900. Cr. ; see also 24 Ind. Cas. 599=15 Cr. L. J. 511. A British Court has no jurisdiction where the offence is committed by a foreign subject in a foreign state. 37 P. R. 1881 Cr. ; see also 10 B. N. C. R 356 ; 30 P. R. 1889 ; 7 P. R. 1894.

Legislative powers of Government of India. "The Indian Legislature has power to make laws—

(*a*) for all persons, for all Courts and for all places and things, within British India ; and

(*b*) for all subjects of His Majesty and servants of the Crown within other parts of India ; and

(*c*) for all native Indian subjects of His Majesty, *without and beyond as well as within British India.*

(*d*) for the Government Officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act ; and

(*e*) for all persons employed or serving in or belonging to the Royal Indian Marine Service. (*The Government of India Act s. 65*).

Principle.—"Crime is local in its character ; that is it is an offence against the law of the State where it is committed. It may also be, and often is, an offence against the law of the state to which the offender owes allegiance. *Macleod* v. *Atrill* (1893) A. C. 150, 156. But except in these two cases, crime receives no legal recognition ; and it is for this reason that actions on foreign judgment, for penalties of a public or criminal character are not entertained. It is plainly competent for any State to prescribe the cases in which it will exercise control for criminal purposes over its subjects abroad. And with regard to the high seas, which are not within the limits of any State, the rule as to the locality of crime has no application." *Foote's Private International Law*, p. 505.

Extension of Code to Extra territorial offences.

4. The provisions of this Code apply also to any offence committed by—

(1) any native Indian subject of Her Majesty in any place without and beyond British India ;

(2) any other British subject within the territories of any Native Prince or Chief in India ;

(3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.

Explanation.—In this section the word "offence" includes every act committed outside British India which, if committed in British India, would be punishable under this Code.

Illustrations.

(*a*) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(*b*) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(*c*) C, a foreigner who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(*d*) D, a British subject living in Indore, instigates E to cammit murder in Bombay. D is guilty of abetting murder.

Amendment.—Section 4 has been substituted for the original by the Indian Penal Code Amendment Act, (IV of 1898) s. 2.

Scope.—This section gives certain extra-territorial jurisdiction in respect of acts committed outside British India by certain classes of persons including the Indian subjects of His Majesty ; but it does not affect the nature of the act. The act alleged must amount to an offence punishable under the Code before a British Indian Court can take cognizance of the case. 47 B. 907=25 Bom. L. B. 772. It is possible to give this section a construction which is not inconsistent with the English statue, but in any case it could not affect the specific statute of Parliament. 16 C. W. N. 471=39 C. 487=14 Ind. Cas. 598=13 Cr. L. J. 246. The British Court has jurisdiction to try the accused, in as much as his offence was not wholly committed within a native state, but having been initiated there, was continued and completed within British territory. 14 Bom. L. R. 147=14 Ind. Cas. 970=13 Cr. L. J. 426=36 B. 524. Having regard to ss. 4 and 40 of the Indian Penal Code, the pharse "offence punishable with imprisonment, wherever it may be committed" found in s. 121 Cr. Pro. Code, must cover an offence under s. 411 of the Indian Penal Code, in a Native State. 28 P. R. 1910 Cr.=8 Ind. Cas. 353=11 Cr. L. J. 635. Where the accused, who were subjects of a foreign state, were arrested in that state, for being in possession of stolen property, *held* that they could not be tried in British India for an offence under section 413. 22 P. R. 1888 Cr. The mere fact that a man owns some lands

in British territory and resides occasionally in British India would not constitute him a British Indian subject. 22 P. R. 1883 on appeal 1 P. R. 1885 Cr. The term "Native Indian subject of Her Majesty's means only a native subject *de jure* and not *de facto*. 1 P. R. 1885 Cr. "The term—'Native Indian subject of Her Majesties.'—must I consider, be construed strictly, and cannot be held to include 'servants of Her Majesty,"—*Per Parsons J* in 16 Bom. 178 at p. 182. Place of crime governs the nature of offence. A. I. R. 1933 sind. 333=1933 Cr. C. 1130. Abetment in a Native state of an offence committed in British India, is no offence. 20 Cr. L. J. 65=31 P. R. 1918 Cr.

A subject of Her Majesty, by choosing to reside beyond the limits of British India for ten or twelve years, does not divest himself of his allegiance to Her Majesty or of his liability to be tried as a British subject in the Courts of British India. *In the matter of Ramphul Singh*, 2 J. G. 7. A son born in British India, of an alien, is a British subject of His Majesty, though the father lived in British India without becoming a naturalised British subject. 9. P. R. 1893 Cr.

Principle.—It is plainly competent for any state to prescribe the cases in which it will exercise control for criminal purposes over its subjects abroad. And with regard to the high seas, which are not within the limits of any state, the rule as to the locality of crime has no application. *Foote's Private International Law* p. 505. So section 3 enacts that where a person might, by virtue of any Act of the Legislative Assembly, be tried in British India for an offence committed out of British India, he is to be dealt with according to this Code. Section 4 contains a similar provision as to Native Indian subjects of His Majesty who commit offences in any place without and beyond British India and as to British subjects, and the servants of the King, whether British subjects or not, who commit offences within the dominions of any Native Prince or Chief in India. *Mayne's Criminal Law* § 19. So offences committed beyond the limits of British India may either be tried in India, or the offender may be given up for trial in the country where his crime was committed *Ibid* § 20. In general and *prima facie*, the Government of one country has neither interest nor power to enforce its will within the limits of another country, or outside of its own territorial bounds; therefore, in the absence of anything exceptional neither the written nor the unwritten law has any extra-territorial force. In common law jurisprudence this rule, as to crime is aided by the fact that a common-law Court has jurisdiction only over transactions, within its own territory. The general rule is that no man is to suffer criminally in a particular country for what he does out of the territorial limits of that country. *Bishop's Criminal Law*. § 109.

When the offence is committed outside British India.—It has already been observed that where offences are committed beyond the limits of British India, the offender may be tried in India or he may be given up for trial in the country where his crime was committed. *Mayne* § 20. Cases of the latter class will now be disposed of under the Foreign Jurisdiction Act XXI of 1879. It seems to contemplate two distinct cases. First where the offence has been committed in any of those States especially connected with India, in which the Governor-General in council has a power and jurisdiction which is exercised by a Political Agent. Secondly, where the offence is committed in some State where there is no such Indian, Jurisdiction, or in some other part of His Majesty's dominions. As regards the first class of cases Vide the Indian Extradition Act, XV of 1903, sub-section (1) of section 7 of which enacts: "where an extradition offence has been committed or is supposed to have been committed by a person, not being a European British subject, in the territories of any State not being foreign State and such person escapes into or is in British India and the Political Agent in or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be or if such person is believed to be in any Presidency-town to the Chief Presidency Magistrate of such town, for his arrest and delivery at a place or to a person or authority indicated in the warrant such Magistrate shall act in pursuance of such warrant and may give directions accordingly. The Courts of British India has no power to interfere in respect of a warrant issued by a Political Agent of a Native State under this section, on the ground that there is no *prima facie* case against the accused. 3 P. R. 1909 Cr.; 7 Bom. L. R. 403; 33 C. 1032; 19 C. W. N. 221; 14 Bom. L. R. 377. Under section 10 of the same Act, jurisdiction is distinctly conferred on the Magistrates in British India to make preliminary enquiries and to take evidence on the information given or information laid in regard to extradition offences. 8 Bom. L. R. 507. But section 18 of the Indian Extradition Act (XV of 1903) enacts: "Nothing in this Chapter shall derogate from the

provisions of any treaty for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies and the provisions of the Act shall be modified accordingly." The conspirators of an offence committed outside British India cannot be tried in British India. 1933 Cr. C. 1130=A. I. R. 1930 Sind. 335.

Foreign State.—Surrender of fugitive criminals in case of foreign state is provided in chapter II of the Indian Extradition Act (XV of 1903). Foreign state is defined to be a state to which for the time being the Extradition Acts 1870, (33 & 34 Vict C. 52) and 1873 (36 & 37 Vict. C. 60) apply (Vide s. 2). The East Indian possession of France is not a foreign state. Extradition under any condition is an invasion of the common law right and when there is a treaty followed by a statute recognizing the authority, the procedure is to be in accordance with the treaty and statute and no further condition can be imposed by the Courts. 47 C. 37=30 Cr. L. J. 24, *contra* 48 C. 328. Section 2 of Extradition Act of 1870 provides : Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by order in council, direct that this Act shall apply in the case of such foreign state. So where the Foreign State in question is not of the above description, there is no Act which guides British Indian Administrators, to deal with offenders in such foreign states. In this connection the Protuguese Treaty Act, 1880 (IV of 1880) and the Treaty with France in 1909 are very important. In cases of some foreign Asiatic States, where no treaty exists, British Courts can exercise extra-territorial, jurisdiction. See also 4 O. W. N. 1121.

Extra-territorial Jurisdiction on Land—By the common law of England, English Courts have no jurisdiction over British subjects in respect of crimes committed by them on land out of England. Subsequently various statutes were passed enabling the Courts to try treason, murder, and man-slaughter committed on land by a British subject abroad. These tribunals have received a Parliamentary sanction by the Foreign Jurisdiction Acts of 1843, 1865, 1866, 1878 which are now consolidated by the Foreign Jurisdiction Act, 1890. 53 & 54 Vict. C. 37). In India such jurisdiction is conferred by ss. 3 and 4 of the Indian Penal Code and section 188 of the Criminal Procedure Code. (*Vide Mayne's Criminal Law* § 30).

Admiralty Jurisdiction.—Jurisdiction in regard to offence committed at sea is determined by Admiralty Jurisdiction. Since the Oceans are the common high ways of nations, public and private vessels upon them, outside the limits of any country are deemed to be floating parts of the territory of the several countries to which they respectively belong ; and crime committed on one of them is punishable by the particular government, as within its complete territorial jurisdiction. *Wharton Int. Law* 158, 174 ; *Polson Law of Nations*, 25 ; *Reg* v. *Sena*, 2 C. & K. 53=1 Den. C. C. 104 ; *Reg* v. *Bjornson*, Leigh & C. 545 ; *Marshall* v. *Mer Gatroyd*, 6 Q, B. 31, 33 ; *Rex* v. *Ammaro*, Russ & Ry. 286. A Court in British India has jurisdiction to try a British subject for an offence under the Penal Code committed during voyage on a British Ship. A. I. R. 1927 Mad. 688=28 Cr. L. J. 543=53 M. L. J. 101=102 Ind. Cas. 351. But British Courts have no jurisdiction to an offence for attempt to murder by a subject of Jungabad State on Board a ship eighteen miles off the coast of Bombay. 20 Bom. L. R. 98=19 Cr. L. J. 337 =42 B. 234=44 Ind. Cas. 449. Admiralty jurisdiction only takes cognizance of acts committed on the sea, and, in respect of crimes, only of those which become complete at sea. The admiral has no jurisdiction over murder, where the wounding was at sea but the death happend on shore 1 Hale P. C. 17. In a foreign Port or on a Tidal River, if the vessel is private, all on board are subject to the laws of of foreign country ; but it does not follow that they are not also subject to their own law, criminal and civil, except in particulars directly repugnant to the local law. If this conflicts with theirs, it must evidently prevail ; and it appears clearly to result from the doctrine of necessity that the persons attached to such vessel are excused at home for doing what is thus compelled. This binding effect of the laws of one country upon subjects afloat in her ship and belonging to them, even while within the territorial limits of foreign states, its recognized alike in the legislative Acts and the judicial decisions both of England and United States. *Rex* v. *Allen*, 7 C. & P. 664 ; *Reg Menham*, 1 F. & F. 369, *Reg.* v. *Anderson*, 11 Cox. C. 198. Since the seas are the common high way of nations, it seems to follow that if persons on them and not under the protection of any flag commit an offence there, they may be arrested and punished by any power. *Wharton Int. Law 6th Ed.* 159.

Yet the offence must be disturbing to the common peace of the travelling nations; because it is fundamental in the criminal law that the injury done must precede the punishment inflicted. *Bishop's Cr. Law* § 118.

One subject injuring another abroad. In *Rex* v. *Sawyer* 2 Car.& K. 101, 111, *Lord Ellenborough* said: "The King has an interest in the protection of his subjects in parts beyond the realm; and there is a writ known to the law of England, if subjects have suffered in either persons or goods in foreign parts. And the persons who have maltreated them there, when they come into this country, are called upon by a writ out of Chancery to answer for it; so that the King's subjects are considered as under the protection of the King, even out of the realm." Therefore an indictment at common law was adjudged to lie against a British subject for murdering another British subject in a foreign state, a statute having merely created a tribunal with a jurisdiction adequate to try the case. *Rex* v. *Saywyer supra*; *Rex spoke*, 3 Salk. 358. According to international law, the persons offending must be a subject of the Government whose tribunals call him to account. *Wharton Int. Law*. 6th Ed. 174, 175. A legislative act may well provide for the punishment, at home, of depredations committed by the subject of English Government on those of other Governments abroad, either in or out of their own country (*Reg* v. *Azzopardi*, 1 Car. & K. 203; *Reg*. v. *Zulueta*, 1 Car. & K. 215), if indeed the right is not sufficiently inherent in the common law without the help of any statute. *Bishop's Cr. Law* § 121.

Piracy.—Piracy is usually committed under the flag of some known Government, but by the law of nations its perpetration divests the vessel of its national character. Consequently the persons guilty of it though the subject of recognized power may be apprehended and punished by any other. This rule refers only to piracy as defined in international law, not to offences made such by the local jurisprudence of a particular country. The distinction, therefore, is that a private vessel is not deemed a part of the country of its flag, while one in less unlawful pursuit is. *Bishop's Criminal Law* § 123. In the case of *Attorney Gen.* v. *Kwok-A-Sing*, L. R. 5 P. C. L. 199, the judicial committee cited with approval the following definition of the offence given by *Sir Charles Hedges* in *Rex* v. *Dawson*, 13 St. Tr. 454: "Piracy is only a sea-term for robbery, piracy being a robbery committed within the jurisdiction of the Admiralty. If the mariners of any ship shall violently dispossess the master, and afterwards carry away the ship itself, or or any of the goods, tackle, apparel, or furniture, with a felonious intention, in any place where the admiral hath or pretends to have jurisdiction, this is also robbery and piracy." In *Reg* v. *Terman*, 5 B. & S. 643, *Blackburn J.* said: "When the crime consists in having over-powered the ship, it becomes a crime under the jurisdiction of every civilized nation; but other cases of robbery on board a ship may be cases of piracy by the municipal law of a country, but not *de jure gentium*.

Offences by foreigner.—Where a foreigner is charged with an offence under the Penal Code, it is immaterial whether the accused person is bodily present in British India where the offence was completed, or whether his presence there is derived by process and intendment of law; in either case he is present in British India committing an offence under Penal Code, and that being so his character as foreigner cannot avail him. A. I. R. 1928 Sind. 61; see also 36 B. 524: *Rex* v. *De Marrp*, (1907) K. B. 388; *Rex* v. *Oliphant* (1905) 2 K. B. 67; *Rex* v. *Keyn* (1876) 2 Ex D. 63; *Rex* v. *Regers*, 3 Q. B. D. 28. Where a man is in British India and he is charged before a Magistrate with an offence under the Indian Penal Code it is not competent for him to say that he was brought there illegally from a foreign country. A. I. R. 1928 Sind. 161; 35 B. 225; *Queen* v. *Nelson*, 5 T. L. R. 344. A subject of the Native state, who is guilty of retaining stolen property within the native state is not liable to be punished under the Code. 27 Cr. L. J. 39, The accused, a subject of the state of Jamagabad, was charged with the offence of attempt to murder, on board a ship belonging to him on the high seas some miles off the coast of Kanara District. He was tried for the offence by the First Class Magistrate of Karwar, where he raised the point that the Magistrate had no jurisdiction to try him. *Held*, that the First Class Magistrate at Karwar had no jurisdiction to try the accused 42 B. 234=20 Bom. L. R. 98=49 Ind. Cas. 449.

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV, Chapter 85, or of any Act of Parliament passed after the Statute in any wise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers "sailors"* or airmen, in the service of Her Majesty, or of any special or local law.

Special or local law.—This section declares that no special or local law shall be affected by the enactment of the Code. It by no means renders unpunishable under the Penal Code an act which is an offence within its definition because it is also punishable by some special law. 1 Weir. 26; see also 8 Bom. L. R. 414; 6 M. 249; 22 C. 131. It is ordinarily desirable that when an act or omission is made penal by two Acts, one general and the other special, the sentence should be passed under the special Act. 11 C. W. N. 101. But according to s. 26 of the General Classes Act, (IX of 1897) "when an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of the enactments but shall not be liable to be punished twice for the same offence. Special or local law does not refer to English common law. 92 Ind. Cas. 737=27 Cr. L. J. 321. When an act is an offence punishable under a special law, that law will apply. A. I. R. 1930 Oudh. 497=7. O. W. N. 895=128 Ind. Cas. 221; see also 1932 A. L. J. 519=33 Cr. L. J. 309=1932 Cr. C. 89=A. I. R. 1932 All. 69. If sufficient punishment cannot be given by the special law there is no bar to invoke the aid of the Penal Code, governing the offence. 9 Mys. L. J. 156.

Any of the provisions of the Act etc.—"The law relating to the Army and Navy which are here referred to are the several Acts and Articles of War from time to time passed, to secure discipline and to punish military and other offences. Nothing in this Code affects any of these provisions. For the Native Army the law which is provided by the Indian Army Act, 8 of 1911 is in force. For the British Army the Mutiny Act and Articles of War are the laws which must still guide Courts Martial in the cases in which those Courts are authorized to apply the place of the ordinary Criminal Courts and to try soldiers for crimes."=*Morgan and Macpherson* p. 12. Section 2, which provides that every person shall be liable to punishment "under this code and not otherwise" for every act or omission contrary to the provisions thereof of which he shall be guilty, must be read subject to section 5 which clearly makes reservation with regurd to offences specified therein. 115 Ind. Cas. 428=30 Cr. L. J. 460=A. I. R. 1929 Lah. 217.

CHAPTER II.

General Explanations.

Scope of the Chapter.—It is scarcely necessary to add that this chapter is merely one of explanation. The criminal quality of any act which is described by a word here explained, must depend on the definition in which it occurs. Thus, an effect may be caused "voluntarily" within the meaning of the explanation (section 39), but it must still depend on the particular definition or penal provision in which the word is used, whether any offence has been committed; for the voluntary causing an effect may be made criminal either absolutely or subject to qualifications.—*Morgan and Macpherson.*

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code, every definition of an offence, every penal provisions, and every illustration of every such definition or penal provisions, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provisions, or illustration.

* Inserted by Act. 35 of 1934.

Illustrations.

(*a*) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences ; but the definitions are to be understood subject to the general exception, which provides that nothing shall be an offence which is done by a child under seven years of age."

(*b*) A, police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement ; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that 'nothing is an offence which is done by a person who is bound by law to do it.'

Notes.—The present section obviates the necessity of repeating these exceptions several times in each page.—*Morgan and Macpherson* p. 15.

Sense of expression once explained.

7. Every expression which is explained in any part of this Code is used in every part of this Code, in conformity with the explanation.

Notes.—"As s. 7 of the Code says that every expression explained in any part of it is used in conformity with that explanation in every part of it, I cannot, as the late Advocate-General seems to have done, lay any stress upon the absence of negative words ; for to say that it shall have a particular meaning every where, is to say that it shall have no other meaning any where. The point, therefore, is to ascertain the meaning of that explanation, and if the words taken grammatically, have a definite, certain, and unequivocal meaning, if they constitute a perfectly complete expression susceptible grammatically of that one unequivocal meaning and of that only, then, however absurd and pernicious in consequences, that meaning is to be followed." *Per Holloway J.* 3 M. H. C. R. App. 11.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Notes.—Words importing the masculine gender includes the females. *Maxwell* p. 694. See also section 13 of the General Clauses Act (X of 1897).

Number.

9. Unless the contrary appears from the context words importing the singular number include the plural number, and words importing the plural number include the singular number,

Notes.—"The singular includes the plural and the plural the singular." *Maxwell* p. 604, See also, section 13 of the General Clauses Act (X of 1897).

"Man" "Woman."

10. The word "man" denotes a male human being of any age ; the word "woman" denotes a female human being of any age.

Age—A girl of six years is a woman under this Act. 14 Bom. L. R. 951.

"Person."

11. The word "person" includes any company or association, or body of persons, whether incorporated or not.

Notes.—A person includes an artificial person that is, corporation. 2 Inst. 722 ; *Harrisons Case*, 1 Leach, 180 ; *St. Leonards* v. *Franklin*, 3 C. P. D. 377 ; *Pharmaceutical Society* v. *London and Provincial Supply Association*. 49 L. J. Q. B. 736. As to foreign corporrations : *Ingate* v. *Austrain Lloyd's* 27 L. J. C. P. 323 ; *Scott* v. *Rayal Wax Co*, 1 Q. B. D. 404 ; *Rayal Mail Co.* v. *Braham*, 2 App. Cas. 381 ; *Mousell* v. *L. & N. W. Ry. Co.* (1917) 2 K. B. at p. 842. "That is to say, beside its proper meaning (a single person) this word may also mean many persons, associated together in such a way that in the eye of the law they become, as it were one body. If they are thus united by a Legislative Act or by a Royal Charter, the body is incorporated ; if the union is by articles of partnership, deed of Association etc, the company or association or partnership though not incorporated, has a legal existence. In either case the united body may be understood to be included by the word 'person.' The word frequently occurs in the code in a sense in which it is clear from the context that corporate bodies, etc. are not included." *Morgan and Macpherson* p. 16.

"Public." **12.** The word "public" includes any class of the public or any community.

"Queen" **13.** The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servant of the Queen." **14.** The words "servant of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106, entitled, "An Act for the better Government of India," or by or under the anthority Government of India or any Government.

"British India" **15.** The words "British India" denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106, entitled, "An Act for the better Government of India."*

Amendment.—*In this section the words "except the settlement of the Prince of Wales' Island, Singapore, and Malacca," repealed by the Repealing and Amending Act (XII of 1891) have here been omitted.

Definition in General Clauses Act.—"British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India"—*Vide* s. 3 (6) *of the General Clauses Act*, 1897.

"Government of India." **16.** The words "Government of India" denote the Governor-General of India in Council, or during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

Notes.—"Government of India" shall mean the Governor-General in Council or, during the absence of the Governor-General from his Council, the President in Council, or the Governor-General alone as regards the powers which may be lawfully exercised by them or him respectively.—*Vide* s. 3 (22) *of the General Clauses Act*, (X of 1897).

"Government." **17.** The word "Government" denotes the person or persons authorized by law to administer Executive Government in any part of British India.

Definition of the General Clauses, Act, 1897.—"Government" or "the Government" shall include the Local Government as well as the Government of India—*Vide* s. 3 (21) *of the General Clauses Act* (*X* of 1897). "The Government established by law in British India" means the various Governments constituted by the statutes relating to the Government of India now consolidated into the Government of India Act, 1915, and denotes the person or persons authorised by law to administer Executive Government in part of British India. 39 Ind. Cas. 806=19 Bom. L. R. 211=18 Cr. L. J. 807 ; see also 26 C. 158.

"Presidency." **18.** The word "Presidency" denotes the territories subject to the Government of a Presidency.

"Judge" **19.** The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a*) A Collector exercising jurisdiction in a suit under Act X of 1859 is a Judge.

(*b*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

(*c*) A member of a panchayat which has power, under Reg. VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(*d*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

Judge meaning of.—A Magistrate will be a Judge only when he is exercising jurisdiction in a suit or a proceeding, that is to say, he is a judge only so far as that suit or proceeding is concerned, but he is not a Judge when he has not the session of the case in which he can give a definite judgment. This is clear from s. 4 (2) of Cr. P. Code read with s. 19 of the Penal Code. 5 Pat. 11 C.=7 Pat. L. T. 304=93 Ind. Cas. 963=27 Cr. L. J. 499=A. I. R. 1926 Pat. 214.

Protection of a Judge acting judicially.—Section 1 of the Judicial Officers Protection Act, XVIII of 1850, enacts that "no Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction : provided that he at the time, in good faith believed himself to have jurisdiction to do or order the act complained of and no officer of any Court or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order, who will be bound to execute, if within the jurisdiction of the person issuing the same." Vide also *Alley Kissam* v. *Sandys*, 1 Boulnois. 1 : 12 A. 115 ; 1 A. 280 ; 1 M. 89 ; 9 A. 341=91. A. 152 ; 13 C. 208 ; 9 C. W. N. 495=1 C. L. J. 355 ; 7 Bom. L. R. 951 ; 36 C. 433=13 C. W. N. 458 ; 9 Ind. Cas. 535 ; 39 C. 463 (P. C.) 39 A. 516.

Legal proceedings.—Legal proceeding mean a proceeding regulated or prescribed by law in which a judicial decision may or must be given. 30 Cr. L. J. 365=A. I. R. 1929 Mad. 175.

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

"Court of Justice."

Illustration.

A panchayat acting under Reg. VII, 1816, of the Madras Code having power to try and determine suits is a Court of Justice.

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following namely.

"Public servant."

First.—Every covenanted servant of the Queen ;

Second.—Every commissioned officer in the military naval forces or air forces of the Queen while serving under the Government of India or any Government ;

Third.—Every Judge ;

Fourth,—Every officer of a Court of Justice whose duty it is as such officer to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court ; and every person specially authorized by a Court of Justice to perform any of such duties ;

Fifth,—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant ;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience ;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests or Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty ;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district.

Illustration.

A Municipal Commissioner is a public servant.

Eleventh.—"Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.—The word 'election' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

Amendments.—Clause (11) and explanation (3) have been added by Act 39 of 1920.

Notes.—Any person who takes upon himself the responsibility of a public servant is a public servant, whether he is paid or not. 8A. 201.

The following persons were held to be public servants :—A peon in the service of salt department, 28 C. 344 ; a surveyor of a khas-mahal, 26 C. 158 ; a goods clerk. 9 P. R. 1898 Cr. ; a Zamindari karnam, 21 M. 428 ; 15 M. 127 ; 1 Weir 128 A clerk appointed by a Sub-Registrar and paid out of the allowance given to the Sub-Registrar calculated on the number of documents registered is not public servant within the meaning of this section. 32 C. C. 664=2 Cr. L. J. 512 A malguzar while he is holding an enquiry in the matter of damage done to the Government Forest, is not public servant. 9 Ind. Cas. 669=12 Cr. L. J. 112. An unpaid apprentice of Government is not a public servant. 15 C. W. N. 319=9 Ind. Cas. 698=12 Cr. L. J. 117. A civil surgeon is not a public servant. 21 W. R. Cr. 9. The manager of a village under the Court of Wards is public servant. A. W. N. 1185, 297. A Local Board Sircar is not a public servant. 12 C. W. N. 96=6 Cr. L. J. 393. A receiver appointed under s. 56 of Bengal Act VII of 1876 is not a public servant. 29 C. 236 6 C. W. N. 141. Labourers or menial servants employed to do work or labour on account of the Government are not officers, and do not fall within the definition of public servant. 17 M. 18=1 Weir 27. A Surveyor employed by the Collector in the *Khas Mahal* department

for making a survey of a certain portion of a water course is a public servant. 26 C. 158=3 C. W. N. 115. *A Moharrir* of a police station ordered by the officer in charge to demand the weapons of offence from some accused persons, is a public servant. A. W. N. 1892, 1. A conservancy *Moharrir* who receives salary from the Municipal funds and whose duty is to write and despatch orders as directed by the superintendent of conservancy, is not a public servant. A. W. N. 1885. 175. A *moharrir* appointed under Bengal Act IX of 1862 is a public servant. 20 W. R. Cr. 49. A conservancy overseer of the Calcutta Corporation is public servant. A. I. R. 1930. Cal. 665. Corporation such as Municipal Committee is not public servant though member forming corporation are public servants. A. I. R. 1930 Nag. 33.

Clause (4).—A naib or nazir of Court (2 N. P. 391) and a peon acting under the delegation of a nazir in the execution of warrant of arrests are public servants. 22 C. 759; 2 B L. R, (F. B.) 21; 5 A 385; 22 C. 596. An officer of a Court of Justice, executing judicial process is public servant. 10 W. R. 43. Candidate peon getting no pay or remuneration entrusted with service of warrant is a public servant within clauses (4) and (9). A. I. R. 1933 Pat. 185=14 P. L. T. 379=34 Cr. L. J. 717=1933 Cr. C. 516.

Clause (6)—To bring a case within sub-section 6, there must be some cause or matter existing in dispute or controversy, in regard to which a competent public authority is desirous of a report to enable it to deal with the matter in dispute between the parties. A. W. N. 1886, 295. An arbitrator appointed to put up boundary pillars while proceeding under s. 145 of the Cr. Pro. Code is pending before a Criminal Court is not public servant. 30 C. 1084.

Clause (7)—Convict warders and overseers are public servants. 22 P. R. 1908 Cr. ; see also 7 W. R. 99 Cr.; 30 Cr. L. J. 103; 25 Cr. L. J. 1982=26 Bom. L. R. 267=83 Ind. Cas. 342.

Clause (8)—An agent of the Society for the Prevention of Cruelty to Animals appointed a member of the Civil Police under Act III of 1888 is a public servant. 31 M. L. T. 369=16 L. W, 794=23 Cr. L. J. 736; see also, 3 C. L. J. 475; 46 M. 90=69 Ind. Cas. 464=(1923) Mad. 188. A chaukidar is a public servant. 8 A. 201=A. W. N. 1886, 63; but see 23 Cr. L. J. 709. A vaccinator is a public servant whose duty is to preserve the public health. 1 Weir 37; 6 M. H. C App. 48; see also 1 Weir, 134—1 Weir, 621. Section 21, I. P. Code does not include the villager who assists a headman in arresting and in taking the accused to the police station. 18 Cr. L. J. 351=10 Bur. L. T. 119=38 Ind. Cas. 735.

Clause (9).—The mere fact that a person is in the pay or service of Government is not enough to constitute him a public servant within the meaning of section 21, *ninthly* of the Penal Code. He must also be an "officer" i. e., holder of some office. The office may be of dignity and importance or it may be humble; but whatever be its nature, it is essential that the person holding the office should have in some degree delegated to him certain functions of Government. A Quarter Master's clerk as such is not necessarily a public servant within the meaning of section 21 of the Penal Code but a person who is otherwise an officer in the pay or service of Government, does not lose his status as a public servant if, while still such an officer. he is employed as a Quarter Master's Clerk. 45 Ind. Cas. 150=19 Cr. L. J. 486=18 P. R. 1918 Cr.=26 P. W. R. 1918 Cr.=96 P. L. R. 1918. The word "officer" in s. 21, cl. 9 means a person employed to exercise to some extent a delegated function of Government: he must be either himself armed with some authority or representative character, or his duties must be immediately auxiliarly to those of some one who is so armed. 12 B. H. C. R. 1. A lessee of a village who has undertaken to keep an account for its forest revenues, and pays a certain proportion to the Government, keeping the remainder for himself, is not an officer, and therefore, is not a public servant within the meaning of this section. 12 B. H. C. R, 1. An officer in the service or pay of Government within the terms of s. 21, cl. 9 of the Penal Code, is one who is appointed to some office for the performance of some public duty. 28 C. 344. A peon of a manager of an estate under the Court of Wards is not a public servant. 7 M. 17. But Mr. *Aikman J.* held in 21 A. 127 that a manager of an estate employed under the Court of Wards is a public servant. A person appointed as a stamp vendor under the rules framed under Act X. of 1862, it had been repealed and substituted by Act XVIII of 1869 and not a public servant within the meaning of this clause. Rat. Un. Cr. C. 26=Cr. Reg. 28 of 1870. A villager required to bring an accused person into a Police Station in

arrest is not a public servant, within the meaning of s. 21 of the Indian Penal Code. U. B. R. (1916) 3rd Qr. 122=10 Bur. L. T. 170. An inspector in the finger bureau being in the service and pay of Government is a public servant, even if he is not performing the ordinary duties of a police officer. 69 Ind. Cas. 455=23 Cr. L. J. 717. A school master who is an officer of the education department and is maintained by State Revenue is a public servant. 12 Mys. L. J. 133. A katkun employed by a manager appointed under the Broach Thakurs' Relief Act to execute revenue process and receive rents is a public servant. Rat. Un. Cr. 117. A poddar of a bank is not a public servant. 4 C. 376=2 Shome L. R. Cr. 13. A peon attached to the office of the superintendent of the salt department is a public servant. 28 C. 394=4 C. W. N. 798 ; 7 B. L. R. 446.

Clause (10)—The definition of public servant in this section includes a tax-collector in a Municipality. 1 Pat. 423=3 Pat. L. T. 559=(1922) p. 532. The patwari of a village entitled to collect cesses as if they were land revenue is a public servant. 68 Ind. Cas. 157=23 Cr. L. J. 557 ; 1923 Nag. 146. A. P. W. D. *laskar* is a public servant. 21 L. W. 704=48 M. 867=A. I. R. 1925. Mad. 1093=46 M. L. J. 192. A municipal inspector and a sanitary inspector appointed by a local board are public servants. 13 M. 131 ; 131 ; 21 M. 428. A local board sircar is not a public servant within the meaning of this section. 12 C. W. N. 96=6 Cr. L. J. 893. A clerk in the cess-collection department of a District Municipality, constituted under the Bombay District Municipalities Act is a "public servant." 10 Bom. L. R. 761=33 B. 213=8 Cr. L. J. 269. A municipal servant under the Bombay Municipal Act (33 Ind. Cas. 684) and a Chairman of the Union Punchayat are public servants. 6 Bom. L. R. 54=1 Cr. L. J. 23. An engineer who receives municipal money and pays to the contractors is a public servant. 6 B. H. C. R. 64. A police under suspension is also a public servant. 8 B. L. R. App. 85. Station Superintendent appointed by Municipality is public servant. A. I. R. 1932 Lah. 188=33 P. L. R. 177=33 Cr. L. J. 108. President of Taluk Board is public servant. A. I. R. 1933 Sind. 161=34 Cr. L. J. 191=21 S. L. R. 3=1933 Cr. C. 525. Municipal Councillor was public servant prior to Bombay District Municipalities Act (as amended by Act 26 of 1930). A. I. R. 1932 Sind. 177=34 Cr. L. J. 171=1932 Cr. C. 792. A Chairman of a Union Panchayat founded under the Local Board Act (Madras) is a public servant. 17 Cr. L. J. 168=(1916) 1 M. W. N. 384=33 Ind. Cas. 648. A member of a Taluk Board is a public servant and cannot therefore be prosecuted without the sanction of the Government, A. I. R. 1929 Mad. 8=56 M. L. J. 157=30 Cr. L J, 164=52 M. 446=113 Ind. Cas. 462. Whether a manager of a Municipality is a public servant is a question of fact. A. I. R. 1927 Mad. 1011=51 M. 86=53 M. L. J. 723=28 Cr. L. J. 1005=105 Ind. Cas. 829. A Chairman of a Co-operative Society is not a public servant. 36 Bom. L. R. 1133 ; A. I. R. 1935 Bom. 36. The clause "for any secular common purpose of any village ; town or district", in s. 21 (10) I. P. Code governs the section. 36 Bom. L. R. 1133. A toll contractor appointed under s. 11 of the Bombay Tolls Act is a public servant. 36 Bom. L. R. 1124. A Sub-Inspector of Police serving in Government Finger Print Bureau is a public servant and his evidence on Finger Print Mannual is admissible. A. I. R. 1924 Lah. 355=69 Ind. Cas. 445. The toll contractor as well as his servant employed under s. 11 are public servants as defined in the Penal Code. A. I. R. 1935 Bom. 24.

Explanation (2)—Any person whether receiving any pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those puties, and accepts those responsibilities, and is recognized as filling the position of a public servant, must be regarded as one ; it does not lie in his mouth to say subsequently that, notwithstanding his performance of public duties and the recognition by others of such performance, he is not a public servant. 8 A. 201=A W. N. 1886, 63. A person in actual possession of the situation of a public servant is a public servant. Rat. Un. Cr. C. 388=Cr. Reg. 40 of 1888. A *de facto* public servant in charge of records is a public servant A. W. N. 1891, 206.

22. The words "moveable property" are intended to include corporeal property of every description except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

"Moveable property."

Earth—When "earth" is severed from "the earth" it becomes moveable property. 27 M. 531=14 M. L. J. 155 (F. B.) ; see also, 10 M. 253 ; 4 M. 228 ; 15 B. 702. So also quarried stones are moveable property. 27 M. 531. (F. B.)

Papers—Papers constituting part of the record in a criminal case is property. 1 Weir 28.

Letters.—As regards whether a letter addressed to a person is a moveable property, Vide 40 A. 119.

Standing **trees.**—Standing teak trees are immovable property. A. I. R. 1930 Rang. 158=8 Rang. 13.

Simple mortgage bond.—Simple mortgage bond is moveable property for the purpose of procedure for attachment. A. I. R. 1924 All. 796=46 A. 917=22 A. L. J. 840=80 Ind. Cas. 890.

"Wrongful gain."

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss"

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully. Losing wrongfully.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Causing trouble.—It cannot be said that removing a thing to put the owner to trouble is necessary, and in every case, causing wrongful loss. 25 C. 416.

Wrongful gain.—In 3 Mad. H. C. App. 6, the prisoner, the pledgee of a turban, was convicted of criminal breach of trust for using that turban. The offence consisted of dishonestly using or disposing of property in violation of any direction of law as to the mode in which any trust affecting such property is to be discharged, The conviction was set aside as the High Court were of opinion that the deterioration of the article by use was not such a loss of property to the owner, and the wrongful beneficial use of property by the prisoner is not such a gain to him. For either wrongful loss or gain, the property mnst be lost to the owner, or the owner must be wrongfully kept out of it. Wrongful loss or wrongful gain need not be permanent but might be temporary. 68 Ind. Cas. 157. Where a cow is found trespassing on a field and doing damages to crops it is no offence for the owner of the field to seize the cow and detain it for a period of less than 24 hours with promise to release the cow on payment of compensation not exceeding the pound charges which would have to be paid had the cow been impounded. 23 Cr. L. J. 511=68 Ind. Cas. 47. As to the meaning of wrongful gain or wrongful loss vide, 57 P. L. R. 1914=19 P. W. R. 1914 Cr.=15 Cr. L. J. 522=24 Ind. Cas. 834; 19 Ind. Cas. 134; 19 Ind. Cas. 305=14 Cr. L. J. 209; 12 A. L. J. 12 A. L. J. 1258=16 Cr. L. J. 49=26 Ind. Cas, 641, Removal of lateral support is not causing "wrongful loss" unless the right to support has been acquired by prescription. A. I. R. 1921 Mad. 322=14 M. L. W. 728=68 Ind. Cas. 831. Accused by digging a trench in his own land by the side of the wall of the camplainant who has not acquired a right to lateral support by prescription does not cause wrongful loss. A. I. R. 1921 Mad. 322=23 Cr. L. J. 607=14 L. W. 728=68 Ind. Cas. 831. The word "wrongfully." means no more otherwise than in due course of law. A. I. R. 1925 Bom. 91=27 Bom. L. R. 1353=27 Cr. L. J. 661=94 Ind. Cas. 709.

"Dishonesty."

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person is said to do that thing "dishonestly."

Joint property.—When a co-partner converts the joint possession of a property into separate possession he commits theft. 10 M. 186.

Intention.—"It is a general rule for the interpretation of conduct as indicative of motives or intentions, demanded by social security and founded in substantial justice that every man shall be held to have intended, and, therefore to be legally accountable for, the natural and probable consequences of his actions. *Rex* v. *Farrington*, R. & R. at p. 207; *Rex* v. *Harvey*, 2 B. & C. 257; *Rex* v. *Dixon*, 3 M. & S. II." *Wills on Circumstantial Evidence* p. 64. But in construing the sections, the primary and not the secondary intention of the accused must be looked at. 19 C. 380;

but see 15 A. 210 ; A. I. R. 1925 Rang. 9. So of two probable intentions, the one immediate and more probable and the other remote and less probable, the Court should not attribute to the accused the remoter intention. 8 A. 653=A. W. N. 1886, 264. Where the accused after the execution and registration of a document which was not required by law to be attested, added his name to the document as an attesting witness, *held* that the accused by the insertion of his name an attesting witness cannot be held to have done the act either dishonestly or fraudulently within the meaning of these words as defined in ss. 24 and 25. 14 C. W. N. 1076=12 C. L. J. 277=7 Ind. Cas. 629=11 Cr. L. J. 505=38 C. 75.

Definition, not exhaustive—This section is not an exhaustive definition of the word "dishonestly". The section does not say that the word is applicable only when there is an intention of causing wrongful gain to one person and wrongful loss to another but properly construed it means that cases of intention of causing such wrongful gain or loss are to be considered as causing within the wider class of dishonest actions. The wrongful obtaining of an acquittal is very distinctively the obtaining of an advantage and brings the case within the definition of 'dishonestly' in section 24 I. P. C. and where the accused used a forged document for that purpose he would be convicted under s. 471.9 Pat. L. T. 800. The word "dishonestly" does not necessarily imply wrongful gain to accused himself. A. I. R. 1925 Oudh. 469=28 O. C. 230=26 Cr. L. J. 127=88 Ind. Cas. 833 Intention to cause wrongful loss amounts dishonestly under s, 406, A. I. R. 1924 Lah. 353=69 Ind. Cas. 631. "Dishonestly" applies only to wrongful gain or wrongful loss. 34 Bom. L. R. 1090=56 B. 488=34 Cr. L. J. 357=A. I. R. 1932 Bom. 545 ; see also A. I. R. 1931 Pat. 337=12 P. L. T. 556=36 Cr. L. J. 739. Act whether dishonest is determined by intention. A. I. R. 1932 Sind. 169=34 Cr. L. J. 51. A dishonest intention may be presumed only if an unlawful act is done or if a lawful act is done by unlawful means. 35 Cr. L. J. 1307=1934 A. L. J. 749=A. I. R. 1934 All. 711.

Illustrative cases.—Where the accused forcibly removed an ox and two cows, the property of the complainant (a Mahomedan), in order to prevent the butchery of the cattle which the Hindu religion held to be grossly outrageous act, the accused was not guilty of the offence of dacoity, as there was no element of dishonesty in his conduct. 15 A. 22=A. W. N. 1892, 220 A person, who by falsely pretending to be the winner of a lottery prize, dishonestly induces the lottery officials to pay the prize to him does not cause "wrongful loss" to the rightful winner of the prize but causes a "wrongful gain" to himself by obtaining by false pretence what he is "not legally entitled" to, and, thereby acts "dishonestly" within the meaning of this section. 24 Ind. Cas. 903=15 Cr. L. J. 555. A servant who adulterates liquor and sells at the same price as unadulterated liquor acts dishonestly because he thereby gains by unlawful means money to which he is not legally entitled. Rat. Un. Cr. C. 395=Cr. Reg. 53 of 1888. A tenant cutting trees standing on his own *Jira Tati* land and for which he has executed a *Kadapa*, which gives the landlord only a claim for compensation for trees so cut, cannot be said to be acting "dishonestly" within the meaning of this section. 15 Cr. L. J. 586=25 Ind. Cas. 338=1 Weir 528. Where a dishonest intention, as defined in this section is made out, it makes no difference in the prisoner's guilt for the offence of theft, that his act was not intended to procure any personal benefit to himself. 4 Bom. L. R. 936.

The accused a Patwari, was charged with having made unauthorized entries in the *Khatani Partal* book and *Jama bandi* in regard to the *status* of certain donees of land. The effect of those entries was to show the donees as *malkan qobza*, i. e. as proprietors of their holding merely without any share in *Shamilat* whereas previously they were shown as full proprietors. The deed under which those persons acquired their rights made no mention of the *Shamilat* and it was a moot point of law as to whether a deed of gift not specifying the *Shamilat* rights as going with the area gifted does or does not carry with it the rights in the *Shamilat*. It was also found that the accused acted *bona fide* though in disregard of the Revenue Rules. *Held*, that it was not shown that the making of the entries was likely to deprive the donees of any right to which they were entitled or that he made the entries dishonestly within the meaning of this section. 25 P. R. 1911 Cr.=16 Cr. L. J. 19=26 Ind. Cas. 323=35P. W. R. 1915 Cr.=209 P. L. R. 1915. Where the accused was bound to have used four forged receipts for the payment of rent fabricated in lieu of genuine receipts which had been lost he had not acted dishonestly. 7A. 459=A. W. N. 1885, 85 ; 7 A, 403.

"Gain" must be taken to mean material gain. A. I. R. 1925 Rang. 9.

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

"Fraudulently"

Defraud.—The term 'defraud' is not limited in its meaning to deprivation of property. 25 C. 512=1 C. W. N. 255 (F. B.) The expression "intent to defraud" means intent to deceive in such a manner as to expose any person to loss or the risk of loss means not only a deprivation of property but includes the infringement of any right possessed by a person. 22 Cr. L. J. 61 ; See also A. I. R. 1926 Lah. 385=27 Cr. L. J. 1388=98 Ind. Cas 599 ; 27 Cr. L. J. 994=1926 Mad. 1072. The word "fraudulently" denotes an intention to deceive. 5 C. W. N. 897. The expression "intent to defraud' implies conduct coupled with intention to deceive and thereby to injure ; in other words defraud' involves two conceptions, namely deceit and injury to the person deceived, that is infringement of some legal right possessed by him but not necessarily deprivation of property. This would be so whether we accept the restricted interpretation of 'defraud' given by *Mr. Justice Banerjee* in *Queen Empress* v. *Muhmmad Saeed Khan.* 21 A. 113, and by *Str Vames Stephen* in the History of Criminal Law Vol.11, 121. Vol III, 187 or adopt the wider interpretation laid down in *Queen Empress* v. *Abbas Ali* 25 C. 512, *Abdul Rajah* v. *Queen Empress*, (1895) P. R. 2 Cr. *Reg.* v. *Tashak* (1849) 4 Cox, C. C. 38." *Per Mookerjee* J. in 28 C. 75=12 C.L.J. 277=14 C.W.N. 1076=11 Cr.L.J. 505=7 Ind. Cas. 629· "Defraud" connotes intention to defraud likely to cause injury 60 C. 272=A.I.R. 1933 Cal. 366=1935 Cr. C. 502. In construing this section the primary and not the remote intention of the accused must be looked at. 19 C. 280. The word "fraudulently" must be taken to mean as defined in this section "with intent to defraud." 22 C. 313. When a person uses a *sanad* which is not genuine, his intention cannot be called "an intention to defraud." 10 C. 584. In *Queen Empress* v. *Muhammed Saeed Khan* 11 A, 115 at p. 115 *Mr. Justice Banerjee* observed : "The terms 'fraud' and 'defraud' are not defind In the Indian Penal Code. *Sir James Fit-James Stephens* in his History of Criminal Law of Law of England vol. II p. 121 observes that 'whenever the words "fraud" or "intent to defraud" or "fraudulently" occur in the definition of crime, two elements at least are essential to the commission of the crime, two elements at least are essential to the commission of the crime ; namely, first deceit or, an intention to deceive, or in cases mere secrecy ; and secondly, either actual injury or possible injury, or an intent to expose some person either to actual injury or to risk of possible injury by means of that deceit or secrecy. "This intent", he adds, "is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. A practically conclusive test as to the fraudulent character of a deception for criminal purpose is this : Did the author of the deceit desire any advantage from it which could not have been had if the truth had been known ? If so, it is hardly possble that the advantage should not have had an equivalent loss or risk of loss to some one else, and if so there was fraud." Where, threfore, there is an intention to deceive and by means of the deciet to obtain an advantage there is fraud." See also 15A. 210 ; 12 Bom. L. R. 708 ; 22 C 313. 35 C. 313 ; 35 C. 450. "By fraud is meant an intention to decelve ; whether it be from any expectation of advantage to the party himself or from ill will towards the other is immaterial." *Haycroft* v. *Crasey* 2 2 East 92 (108). Where alterations in a document are made by person who believes in good faith that he might use them to support a *bona fide* claim, such alterations cannot be said to have been made fraudulently or dishonestly so as to constitute the offence of forgery. 41 M. 519=43 Ind. Cas. 593.

The expression "intent to defraud" in this section means an intent to deceive in such a manner as to expose any person to loss or the risk of loss and loss means not only a deprivation of property but covers the infringement of any right possessed by a person. 63 Ind. Cas. 617=22 Cr. L. J. 681 ; see also A. I. R 1926 Lah. 385. The production of a forged bond by a person in a suit with the intent to make the Court believe that he was entitled to recover money upon the basis of the particular document produced, though may not be dishonest within the meaning of s. 24 may yet be fraudulent. 5 C. W. N. 897 ; see also 21 P. R. 1895 ; see also A. I. R. 1933 All. 525=34 Cr. L. J. 1056=1933 A. L. J. 1372. The word "defraud" which not defined in the Code may or may not imply deprivation. actual or intended. 1 C. L. J. 69=32 C. 775 ; see also *Charles Nash* (1852) 1 Den, C. C 493 (499) ; 25 C. 512 (F. B). In the last case *Maclean* C. J. observed at

p. 521 : "The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation, and as it is not defined in the code and is not so far as we are aware, to be found tn the code except in section 25, its meaning must be sought by a consideration of the context in which the word 'fraudulently, is found." In order to do a thing fraudulently, intention to cause wrongful loss is not necessary, 96 Ind. Cas. 850=A. I. R. 1926 Mad. 994. Document can be used fraudulently though for supporting good title 51c. 469=26 Cr. L. J. 24.

Intent to defraud—how proved.—An intent to defraud must always be proved beyond a reasonable doubt. *Sharp* v. *State*, 53 N. J. L. 511 ; 21 All. 1026 ; *Carlisle State* 76 Ala 75 ; *Toll* v. *State*, 31 Ind. Cas. 514 ; 516 *Underhill's Criminal Evidence* p. 426. "The intent to defraud may be inferred from the facts and circumstances of the case, as, for example, from the fact that the representations were false and that the accused knew they were so when he made them. And where the alleged fraudulent transaction is at all complicated, it is competent to prove, not only the facts constituting the transaction itself, but also all facts and circumstances involved in the steps preliminary thereto, and all facts which tend to show the course of dealing between the parties before or after the date of the offence laid in the indictment. The widest latitude is allowed. All available information should be received and no circumstances should be excluded which will throw or tend to throw, any light upon the intent of the parties, or upon the falsity of the representations. An intention upon the part of the defendant to pay for the property obtained, or to return the money procured by false pretences, is immaterial. Hence the defendant cannot prove, to rebut the intent to defraud, that he promised, to repay, or that he was able or willing to repay, wanted to procure work so as to earn money and to repay, or actually did repay, persons from whom money had been obtained. Nor can he prove that, in procuring the money, he was acting under legal advice unless he shows first, that he stated to the attorney who advised him, fully and fairly all the facts, and unless it also appears that he acted in perfect good faith."—*Underhill's Criminal Evidence* s. 437.

Evidence of other similar crimes.—Evidence of similar offences, involving the making of other false representations, is admissible against the prisoner to show that he was aware of the falsity of the statement made by him in the present instance, and that, knowing them to be false, he made them with intent to deceive. *Hutchesion* v. *State*, 35 S. W. 375. *Martin* v. *State*, 36 Tex Cr. 125=35 S. W. 976 ; see also 16 B. 414 ; 43 C. 783=20 C. W. N. 262 : *Reg.* v. *Ollis*, (1900) 2 Q. B. 758. Evidence of similar false pretence is particularly relevant when it appears that the fraudulent act for which the accused is on trial does not stand alone, but is a part of a scheme, not merely to defraud one individual, but to swindle the community at large. *Rafferty* v. *State*, 91 Tenn. 655, 666=16 S. W. 728 ; *Cornell* v. *State*, 85 Md. 1=36 Atl. 117.

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

"Reason to believe."

Notes.—A man may be indicted for perjury in swearing that he believes a fact to be true, which he knows to be false. *Rex* v. *Pedley*, 1 Leach, 327. The words "reason to believe" have been used in ss. 411 to 414. In a case of receiving stolen property the correct test of a person's guilt is whether when the property came into his possession he knew or had reason to believe that it was stolen property. Mere suspicion is not enough. 21 Ind. Cas. 383=1913 M. W. N. 696=14 Cr. L. J. 591 ; see also 6B. 402.

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

'Property in possession of wife, clerk, or servant."

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

Notes.—"The term 'possession' has to be interpreted in the light of s. 27 which by virtue of section 7 is applicable wherever the term is used, in the code. Section 27, abolishes the distinction recognised in English Law between possession and custody." *Per Mookerjee J.* in 21 C. W. N. 33 (51)=24 C. L. J. 400=44 C. 477. So

an accused charged under sections 2 and 3, may be proved to be in possession within the meaning of that section, if he is in possession in either of the two modes, namely (a) he may be in possession of the coin himself, or (b) he may be in possession, because his wife, clerk or servant is in possession of the coin on his account. *Ibid.* But in order to make the master liable, the possession of the servant must be on account of his master. 69 Ind. Cas. 457=20 A. L. J. 855=23 Cr. L. J. 729=A. I. R. 1923 All. 33=9 O & A. L. R. (A) 27. So where a house is in wife's possession on account of her husband, it is the husband's possession within the meaning of this section. 59 Ind. Cas. 550=22 Cr. L. J. 118=8 P. W. R. 1921 Cr. Where a man furnishes a house for his mistress's occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in the possession of his mistress on his behalf. But the inference must be inapplicable to articles of which the mistress is in possession illegally or contrary to the provisions of law, especially when the article in question is such that he might well remain in ignorance that it was in his mistress's possession. To raise the presumption under this section something more than mere possession by the wife or mistress must be proved. 22 Ind. Cas. 748=20 P. R. 1914. Where article found in a house is not in exclusive possession of any one member the presumption is that the possession of the article is with the head of the family. A. I. R. 1928 Lah. 272. Indian law does not authorise distinction between possession and custody. Where the possession is punishable, the possession must be with knowledge. A. I. R. 1928 Lah. 272. The mere fact that illicit liquor is found in room occupied by son for sleeping does not make him guilty. Legal possession remains with father, house master. A. I. R. 1930 Lah. 884. The expression "possession" in this section show that the Indian Law does not recognize the distinction which the English Law makes between possession and custody. In the English Law a moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, when the circumstances are such that he may be presumed to intend to do so in case of need. The word "custody" means such relation towards the thing as would constitute possession if the person having custody had it on his own account. Whether the possession is that of the owner or of another person, it is clear that the person, who is said to possess the thing, must have knowledge of the existence of that thing. In other words possession to be punishable under the criminal law must be possession with knowledge. 9 Lah. 531=29 Cr. L. J. 481=A. I. R. 1928 Lah. 272. Where there is nothing to show that a pistol is a sort of article that one can reasonably expect to be for sale in the shop of the accused, possession by servant of the accused of the pistol is not possession on account of master. 9 O. & A. L. R. 27=69 Ind. Cas. 457.

"Counterfeit."

28. A person is said to "counterfeit" who causes one thing to resemble another thing intending by means of that resemblance to practise deception or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means, of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.

Amendments.—These two explanations have been substituted for the original by the Metal Tokens Act (I of 1889), s. 9.

Counterfeit—Where the resemblance is such that it may deceive the people, it falls within the definition. 19 C. W. N. 957; 30 A. 93. Used stamps caused to resemble genuine one is counterfeiting. A. I. R. 1921 Nag. 86=22 Cr. L. J. 289=60 Ind. Cas. 785. Counterfeiting is not made up of possessing moulds for counterfeiting and the act of counterfeiting. A. I. R. 1931 Cal. 445=32 Cr. L. J. 1171=134 Ind. Cas. 446. The onus is on the accused that he has no fraudulent intention for the presumption will go against him. 134 Ind. Cas. 446=32 Cr. L. J. 1171 =A. I. R. 1931 Cal. 49.

Elements of the crime.—It must be shown to the satisfaction of the jury that the defendant altered the note with the intention to defraud the person receiving it, or some other person through him, and that the note uttered was a counterfeit. The knowledge of the accused that he was passing counterfeit money must be shown. Evidence that the accused was seen several times in company with another person when the latter passed counterfeit bills, and evidence to show that the accused and some third person had conspired to pass counterfeit money, or that a counterfeit had been passed by some person resembling the defendant, or that he had, about the same time, knowingly uttered a counterfeit, or that he had been indicted and convicted at another time for the same offence, is always admissible to show the criminal intent. And the defendants declarations when passing other counterfeit money may be proved against him for the same purpose. But evidence of similar offences is only admissible to prove guilty knowledge, never solely to show that the bill or coin was a counterfeit—*Underhill on Criminal Evidence* s. 432.

"Document."

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance, the letters, figures or marks, are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used as evidence is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures. or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section although the same may not be actually expressed.

Illustrations.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement as explained by mercantile usage is that the bill is to be paid to the holder. The endorsement is a document and must be construed in the same manner as if the words "pay to the holder," or words to that effect had been written over the signature.

Notes.—Where a draft petition was prepared with the intention of being used as evidence of a matter, it was held that it fell within the terms of this section. 10 W. R. Cr. 61=2 B. L. R. 12. A document is made within section 464 I. P. C. even when some only of the intended executants sign it. 41 M. 589=43 Ind. Cas. 593=19 Cr. L. J. 177. Letters or marks imprinted on trees and intended to be used as evidence that the trees had been passed for removal by the ranger are documents within the meaning of this section. 27 Bom. L. R. 599=87 Ind. Cas. 838=26 Cr. L. J. 1014=A. I. R. 1925 Bom. 327. For definition of document, *vide* s. 3. of the Evidence Act. and A. I. R. 1934 All. 1031=1934 Cr. C. 1338.

"Valuable security".

30. The words "valuable security" denote a document which is or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of, if the endorsement is a "valuable security."

Valuable security:—An account stated in which a balance is admitted to be due in the hand-writing of the prisoner is a valuable security. 2 M. H. C. R. 247. An unregistered document where registration is compulsory is a valuable security. 25. C. 207. Even an unstamped document was held to be valuable security in certain cases. 12 M. H. C. App. 26 ; 12 M. 148 ; 7 M. H. C. App. 26 ; Vide II W. R. 15 where a deed of divorce was held to be a valuable security. A document which upon certain evidence being given, may be held to be invalid but on the face of it creates, or purports to create a right in immoveable property, is a valuable security. 90 Ind. Cas. 913=26 Cr. L. J. 1617=23 A. L. J. 990. An incomplete document bearing a forged signature of the executant is a valuable security. 38 A. 430. A decree does not fall within the definition of valuable security. 39 C. L. J. 122. Also a receipt of acknowledgment of an insured parcel is not a valuable security. 1 Pat L. J. 391. Promissory note executed by minor by force is a valuable security. 1933 Cr. C. 1363=A. I. R. 1933 Pat. 601. Administration order of Court is not valuable security. 35 Bom. L. R. 1062=A. I. R. 1933 Bom. 494. Transit pass under s. 40 Assam forest Regulation for transport of forest produce is valuable security. 36. C. W. N. 505=55 C. L J. 349=5 Cr. C 1233=33. Cr. L. J. 685=A. I. R. 1932 Cal. 390. Where a person by fear of injury was induced to place thumb mark on blank paper, such paper is valuable security and conviction under s. 347 is legal. A. I. R. 1932 Pat 335=13 P.L.T. 588=34 Cr. L.J. 81=140 Ind. Cas. 752. Original remaining in Pass Book is valuable security even though only duplicate is meant to be used for actual purpose for which pass was issued- 36. C. W. N. 505=55. C. L. J. 349=59. C. 1233=A. I. R. 1932 Cal. 390=33. Cr. L. J. 685. The title page of a partnership Account Book if duly signed by all the partners is a valuable security. 38 C. 68, A Kabuliat is a valuable security even when its terms have expired. 88 Ind. Cas. 283=26 Cr. L. J. 1151=A. I. R. 1925 Nag. 337. A counterfoil of a paying-in-slip which purports to be an acknowledgment of receipt of a sum of money by the Bank comes within the definition of a "valuable security." 29 C. W. N. 868=89 Ind. Cas. 248=26 Cr. L. J. 1304. A document whereby a person acknowledges himself to be under a legal liability is a valuable security within the meaning of s. 30. 3 Pat. L. J. 386. A document conferring or creating rights is a valuable security though all the intended executants have not signed it. 41 M. 589=43 Ind. Cas. 593=19 Cr. L. J. 177. Promissory note or receipt bearing uncancelled one anna stamp is a valuable security. 14 A. L. J, 643=38 A. 430=17 Cr. L. J. 203=34 Ind. Cas. 315.

"A will".

31. The words "a will" denote any testamentary document.

Notes—The word 'testament' is derived from *testatio mentis* ; it testifies the determination of the mind. "A will" says *Jarman* "is an instrument by which a person makes a disposition of his property to take effect after his decease, and which is in its, own nature ambulatory and revocable during his life.' *Jarman* 1st Edition p. 11. A will is the aggregate of a man's testamentary intentions so far as they are manifested in writing duly executed according to the statue. *Lemage* v. *Goodban* L. R. 1 P. D. 57 ; *Green* v. *Tribe*, 9 Ch. D. 231.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Illegal omission.—This section provides that in every part of the code except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions. 1 Weir 29 ; 20 B. 394.

The expression "gross neglect" finds no place in this Act. The codified criminal law of this country does not render a mere casual inadvertence of duty criminal, but such neglect of duty as either directly results in loss of life or injury to person (ss. 304A. 337 and 338 and in certain special cases) or such neglect as endangers life or property (ss. 979 to 289 I. P. C.) ss 102 and 128 of Indian Railways Act. 18 S. L. R. 199=A. I. R. 199=A. I. R. 1925 Sind. 233=27 Cr. L. J. 257=92 Ind. Cas. 433.

"Act."
"Omission."

33. The word "act" denotes as well a series of acts as a single act ; the word "omission" denotes as well a series of omissions as single omission.

Notes.—Where the words in a statute used in connection with an offence or a civil wrong refer to acts done, they must be held to extend to illegal omissions, 1 P. L. T. 269=(1920) Pat. 193=58 Ind. Cas. 749. "Criminal Act" includes omission to act, for example, an omission to prevent murder before one's very eyes. 5 Bur. L. J. 12=27 Cr. L. J. 827=95 Ind. Cas. 603. Criminal negligence is one of fact in each case. 18 S. L. R. 199=27 Cr. L. J. 257=A. I. R. 1925 Sind. 233=92 Ind. Cas. 433. A mere casual inadvertence of duty is not criminal but such neglect as results in loss of life or injury to person or endangers life or property. *Ibid.*

Acts done by several persons in furtherance of common intention.

34 When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Amendment—The present section has been substituted for the original by Act 27 of 1870, s. 1.

Scope.—This section merely lays down a principle of liability and does not create a distinct offence, 22 Cr. L. J. 394; 24 Cr. L. J. 763, 50 C. 41. In order to justify the application of this section evidence of some distinct act by the accused which can be regarded as part of the criminal act in question must be required (1922) M. W. N. 800. 50 Ind. Cas. 977=20 Cr. L. J. 369. The words "common intention" in this section have however not the same meaning as "common object" in ss. 146 and 149. *Bhondhi* v. *Emperor*, 113 Ind. Cas. 676=30 Cr. L. J. 205; see also 29 C. W. N. 181=A. I. R. 1925 P. C. I.=48 M. L. J. 543 (P.C.)=52 C. 197 The crime of conspiracy is completely committed the moment two or more have agreed that they will do, at once or at some future time certain things. It is not necessary in order to complete the offence that any one thing should be done beyond the agreement. It is complete when they agreed. An offence under s. 34 is committed only when there is a common intention to commit a particular act. 31 Bom. L. R. 515. It can hardly be natural that the common intention of all the persons who took part in the robbery was to murder not persons who resisted them in the execution of the robbery but also to murder the persons who ran away from the scene of the robbery cannot be said to be in furtherance of the common intention of the dacoits A. I. R. 1929 Lah. 338. Where in the course of a commission of dacoity some alone used deadly weapons, section 34 applies to the case and all are liable to conviction under s. 397. 5 L. L. J. 224; see also 18 L. W. 715; 73 Ind. Cas. 932. Where section 34 is sought to be applied, it must be shown that the criminal act for which the accused are to be made responsible was committed in furtherance of their common intention. All the persons charged must have consented to and contemplated the commission of the particular crime committed. 1 Rang. 390. Section 34 applies even if criminal act is act of single individual. Common intention is the sole test of joint responsibility. A. I. R. 1933 All. 528=1933 A. L. J. 1292=1933 Cr. C. 863, see also 139 Ind. Cas. 81=33 Cr. L. J. 193=34 Cr. L. J. 299=60 C. 618=A. I. R. 1933 Cal. 132; A. I. R. 1932 Cal. 815 (F. B.)=33 Cr. L. J. 663=1932 Cr. C. 861. Participation in action to commit offence with common intention is essential element and court must arrive at finding as to part played by each individual accused in furtherance of common intention. 35 C W. N. 463==33 Cr. L. J. 92=A. I. R. 1931 Cal. 643. Persons charged with offence under s. 34 can be convicted of substantive offence. 58 C. 822=32 Cr. L. J. 1004=A. I. R. 1931 Cal. 625. Section 34 has no application to provision of Penal Code. s. 397. A. I. R. 1931 Pat. 49=130 Ind. Cas. 267=1931 Cr. C. 145=32 Cr. L. J. 476; 1934 M. W. N. 241=A. I. R. 1934 Mad. 565=67 M. L. J. 355. In case of sudden quarrel, where there was no consultation, section 34 does not apply. 32 Cr. L. J. 734=A. I. R. 1931 Lah. 523=131 Ind. Cas. 382; see also A. I. R. 1933 Lah. 865=1933 Cr. C. 1112=146 Ind. Cas. 221. The mere presence of the accused at the time of the commission of an offence by his associates does not bring the case under this section if common intention is not proved. A. I. R. 1934 Lah. 813=36 P. L. R. 37 1934 Cr. C. 1127. When the common intention is to cause simple hurt and griveous hurt is caused by one of the accused the other is not guilty under s. 325. 35 Cr. L. J. 410=A. L. R. 1934 Oudh. 74=11 O. W. N. 86. Offence of muderous assault in furtherance of common intention cannot be so graded as to hold some guilty of murder and others of grievous hurt. 134 Ind. Cas. 793=32 Cr. L. J. 1219=32 P. L. R. 925=12 Lah. 442=A. I. R. 1931 Lah. 749. Section 34 has been

enacted to prevent miscarriage of justice in such cases and all are responsible for the death if assualt is made in furtherance of common intention. A. I. R. 1934 Pat. 565=152 Ind. Cas. 591 ; see also A. I. R. 1934 Rang. 98=35 Cr. L. J. 905=1934 Cr. C. 519=6 R. R. 281. Where common intention is to commit robbery and different acts were committed by different accused in furtherance of common intention, each is liable for results of all such acts. A. I. R. 1933 Lah. 819=1933 Cr. C. 1063 ; see also 61 C. 190=A. I. R. 1934 Cal. 10=1934 Cr. C. 26. Where two or more persons set on to another armed with hatchets and daggers, the common intention may be assumed that all are cognisant of the fact that hatchets will be used and very serious injuries are likely to be inflicted, and as such section 34 applies. A. I. R. 1933 Lah. 927=34 Cr. L. J. 911=34 P. L. R. 801=1933 Cr. C. 1386 ; see also A. I. R. 1934 Lah. 11=35 Cr. L. J. 1441. Where all the accused are armed with deadly weapons it cannot be said with regard to any of them that he did not mean to cause serious injuries. 72 Ind. Cas. 513. In the absence of evidence or reasons to the contrary it is permissible to presume that the common object of a riotous mob is that they entertained from the beginning the common object indicated by their conduct throughout their proceedings. 11 Cr. L. J. 30=4 Ind. Cas. 709=6 M. L. T. 17. This section can only come into operation when there is substantive charge. 16 C. W. N. 1077. The only distinction between s. 34 and s. 149 is that the latter section refers to an assembly of five or more persons, while section 34 has no limitation as to the number of persons who may have been citing in pursuance of the common intention. 11 C. W. N. 1085=6 Cr. L. J. 304. It may be a question whether a person constructively guilty of murder under s. 34 could be said to have committed the offence of murder within the meaning of s. 149, so as to make the other prisoners by a double construction guilty of murder. 12 C. L. R. 233. Where one accused struck the deceased with a stick after he had fallen from the blows with the hatchet inflicted by another accused. *Held* that it does not necessarily follow that the former had a common intention with the latter to commit murder. 15 Ind. Cas. 810=13 Cr. L. J. 538. This section applies only to acts done by several persons with a common intention. It has no application to a case of several persons starting with a common ntention to commit an offence where only one of them commits the intended offence. In such a case the rest of the confederates are guilty of abetting the offence committed by one of them. 21 Cr. L. J. 797. The presumption of constructive intention must not be too rapidly applied or pushed too far. The mere fact that a man may think that a thing is likely to happen is vastly different from his intending that that thing should happen. The latter ingredient is necessary under s. 34 of the Penal Code the former by itself is irrelevant to the section. It is only when a Court can with some judicial certitude hold that a particular accused must have preconceived or or premeditated the result which ensued or acted with in concert with others in order to bring about the result that section 34 may be applied, 50 Ind. Cas. 337=20 Cr. L. J. 289. This section is not applicable to the case where the act which caused the death was not done by several persons but only by some. 21 P. R. 1919=52 Ind. Cas, 395 ; see also 52 Ind. Cas. 791. This section deals with the doings of separate acts similar or diverse' by several persons, if all are done 'in furtherance of a common intention each person is liable for the result of them all as if he had done them himself, for "that Act," and "the Act" in the latter part of the section must include the whole action covered by a "Criminal Act" in the first part 10 Lah. L. J. 366=29 Cr. L. J. 474 ; see also 5 Bur L. J. 12=27 Cr. L. J. 827 ; A. I. R. 1925 P. C. 1=29 C. W. N. 181=52 C. 197=23 A. L. J. 314=26 Cr. L. J. 431 (P. C.) This section has no application in the construction of section 398 I. P. Code. 52 B. 168. Where two persons go to a place with the common intention to rob a third person and if necessary to kill him and one of them fires a fatal shot in furtherance of that common intention, then both of them are equally guilty of murder. Section 34 does not create a distinct offence : 28 C. W. N. 170=38 C. L. J. 411. ; see also A.I.R. 1933 Lah. 313=34 P. L.R. 699=34 Cr. L. J. 724 ; A.I.R. 1933 Lah. 315=34 Cr. L. J. 1051. In cases where there is no direct evidence of the actual participation of the accused in a specific act of violence if persons proved at particular points of time to be members of a mob but not shown to have taken part in the specific act are to be found guilty of that act by force of s. 34 it must be clearly found that the act was in furtherance of the common intention of the mob while the accused were in it. 24 Cr. L. J. 531. This section covers the case of a single act done by several persons, L. B. R. (1893-1900), 150. Where the acts of a combination of persons proved are blows causing severe bodily injury sufficient in the ordinary course of nature to cause death, each of the accused persons taking

part in such combination is guilty of murder. 16 O. C. 19=19 Ind. Cas. 497=14 Cr. L. J. 241. For the application of this section, furtherance of a common design is a condition precedent for convicting each of the persons who take part in the commission of a crime, and the mere fact that several persons took part in a crime, in the absence of a common intention is not sufficient to convict any one of that crime. 9 A. L. J. 180=14 Ind. Cas. 649. Section 397 is applicable not only to one of the accused who actually used the deadly weapon by which hurt was caused, but to all the accused whose object was to commit robbery where the hurt is caused in furtherance of the common intention. Rat. Un. Cr. C. 65. Where a criminal act or series of criminal acts is committed by several persons in combination it is necessary to ascertain first the common intention of all, and secondly the individual intention of each of the accused as disclosed by the circumstances of the case. 21 Cr. L. J. 678 ; 1923 Rang. 268. This section deals with the doing of separate acts similar or diverse by several persons ; if all are done in furtherance of a common intention, each person is liable for the result of them all as if he had done them himself. 1925 P. C. 1 ; see also 30 Cr. L. J. 944. Whether criminal act was done by some accused is in furtherance of common intention of all depends on facts of each case. 27 S. L. R. 269=A. I. R. 1933 Sind. 407 ; see also A. I. R. 1931 Rang. 321=33 Cr. L. J. 360=136 Ind. Cas. 836 ; A. I. R. 1931 Rang. 1 (F. B.)=32 Cr. L. J. 495=8 Rang. 603 ; A. I. R. 1933 Rang. 236=11 Rang. 354. Where common intention is to commit robbery and some robbers are armed with deadly weapons, intention to commit murder cannot be ascribed to other robbers. A. I. R. 1933 Rang. 204=1933 Cr. C. 919. There is distinction between sections 114 and 34. Section 114 is evidentiary and not permitory. Presumption raised by section 114 brings case within s. 34. A. I. R. 1934 Rang. 236=11 Rang. 354. In case of pre-arranged murder all participating are guilty of murder. A. I. R. 1935 Pesh. 321. Where only one exceeds common intention. others are not guilty of major offence. A. I. R. 1935 Oudh. 178 ; see also A. I. R. 1935 Lah. 97. Whether act is done in furtherance of common intention is question of fact. Common intention need not be subject of express agreement. It can be inferred from circumstances disclosed. A. I. R. 1935 Rang 89.

The mere circumstances of a person being present on an unlawful occasion does not raise a presumption of that person's complicity in an offence then committed. 14 B. 115. Unpremeditated acts done by a private individual, which go beyond the object and intention of the original offence, should not implicate persons who take no part in that particular act. A. W. N. (1887) 236. It is a necessary condition to make a person liable under this section, that the common intention must cover the act done by all the several persons. 14 Bur. L. R. 264. The essence of this section is common intention. 16 C. L. J. 440 ; 3 P. L. W. 120 ; 10 L. B. R. 117 ; 25 C. W. N. 24. 9 A. L. J. 180. Where persons go with the intention to prosecute a common object, each and every one becomes responsible for the acts of each and every other in execution and furtherance of their common purpose. But a distinction has to be drawn between unpremeditated acts done by a particular individual which go beyond the object and intention of the original offence and premeditated acts of the parties as shown by their conduct during the affair. 19 Ind. Cas. 497. This section refers to cases in which several persons join to do an act and intend to do that act. It does not refer to cases where several persons intend to do one act and some one or more of them do an entirely different act. This section is based on common intention. 86 Ind. Cas. 475=26 Cr. L. J. 827=A. I. R. 1925 Cal. 913. In order to convict a person with the aid of this section, it is not necessary that that person should actually with his own hand commit the criminal act. If several persons have the common intention of doing a particular criminal act and if in furtherance of that common intention all of them join together or aid or abet each other in the commission of the act then although one of these persons may not actually with his own hand do the act. If he helps by his presence or by other acts in the commission of the act he would be held to have done that act within the meaning of this section. 26 Cr. L. J. 1498=90 Ind. Cas. 154. So acts done in furtherance of common intention make all equally liable for the results of all the acts of others. 52 C. 197=85 Ind. Cas. 47=26 Cr. L. J. 431=29 C. W. N. 181=52 I. A. 40 P. C.=23 A. L. J. 314=41 C. L. J. 240=A. I. R. 1925 P. C. 1=48 M. L. J. 543. See also 85 Ind. Cas. 822 ; 89 Ind. Cas. 718 ; 11 Lah. L. J. 20=A. I. R. 1929 Lah. 292 ; 30 Cr. L. J. 167. In case of an attack by several persons all are responsible for results. 83 Ind. Cas. 636=26 Cr. L. J. 76=A. I. R. 1925. Oudh 284 ; see also 88 Ind. Cas. 273=26 Cr. L. J. 1105=A.

I. R. 1925 Lah. 565. In order to bring the accused within the scope of this section it is necessary to come to a definite finding that the accused were acting in furtherance of the common intention of all. 90 Ind. Cas. 705=A. I. R. 1925 Pat. 706. A person is not liable for mere presence. 12 O. L. J. 54=86 Ind. Cas. 150=26 Cr. L. J. 710.

This section has no application to s. 397. 99 Ind. Cas. 49=28 Cr. L. J. 17=A. I. R. 1927 Lah. 149: see also 82 Ind. Cas. 45=25 Cr. L. J. 1181; 96 Ind. Cas. 501 =27 Cr. L. J. 949=8 Lah. L. J. 453=27 Pun. L. R. 627; 28 Cr. L. J. 17; 28 Cr. L. J. 156; 8 L. L. J. 454; 51 C. 265; 81 Ind. Cas. 800; 7 A. I. C. R. 26. Where each of the several persons has got common intention to rob and if necessary to kill, each of them is guilty of the offence committed. 104 Ind. Cas. 630=28 P. L. R. 583=28 Cr. L. J. 854.

This section can apply to a case under s. 304, Part II of the Indian Penal Code. 31 C. W. N. 314=100 Ind. Cas. 718=28 Cr. L. J. 331=45 C. L. J. 131=A. I. R. 1927 Cal. 324. Where four persons take a woman out with the intention of murdering her and when she is murdered by one of them all of them are guilty as principals. 98 Ind. Cas. 113=27 Cr. L. J. 1265=A. I. R. 1927 Sind. 85; A. I. R. 1930 Pat. 515; A. I. R. 1930 Lah. 338. Where several accused acting with one purpose beat the complainants and inflicted several injuries, all of them should be convicted for causing grevious hurt in the absence of any evidence as to who used the weapon. 99 Ind. Cas. 90=28 Cr. L. J. 58; see also 81 Ind. Cas. 48; 85 Ind. Cas. 822. The same principle applies even where death results. 8 L. L. J. 198=95 Ind. Cas. 594= 27 Cr. L. J. 818; 94 Ind. Cas. 363=27 Cr. L. J. 619; 16 O. C. 19; 19 Ind. Cas. 497; 3 O. W. N. 411=95 Ind. Cas. 283=27 Cr. L. J. 763=A. I. R. 1926 Oudh. 367; 99 Ind, Cas. 90; 24 W. R. Cr. 5; 2 P. R. 1889; 16 C. W. N. 909; 28 C. W. N. 170; 89 Ind. Cas. 718; 28 C. W. N. 561; A. I. R. 1924 All. 78; 6 Lah. L. J. 385; 36 C. 659=13 C. W. N. 680; 15 Cr. L. J. 484=24 Ind. Cas. 572.

Three persons coming together with a view to assault armed with dangerous weapons attack a person. They must all be presumed to have the common intention and this section would apply. 27 P. L. R. 244=94 Ind. Cas. 134=8 Lah. L. J. 188= 27 Cr. L. J. 566; see also 6 Lah. L. J. 385=1925 Lah. 117; 6 Pat. 828=106 Ind. Cas. 591.

No distinct offence is created by this section only a principle of liability is laid down by it. 28 C. W. N. 170=38 C. L. J. 411. This section has application only in cases where there is a difficulty in finding out the exact part taken by each member 1 L. B. R. 233. But the accused must be one of the group which committed the illegal Act. 50 C. 41=74 Ind. Cas. 267=1923 Cal. 453=24 Cr. L. J. 763. This section is based on the principle that where the purpose is common, the responsibility should also be such. 3 B. L. R. P. C. 44. So a party who is not cognisant of the intention of his companion is not liable. Where fight results into single combat and results into the death and injuries, principles of joint responsibilities do not apply. A. I. R. 1930 Lah. 485. In cases of joint commission of murder, in the absence of finding of common intention, none can be convicted of murder. A. I. R. 1930 Sind. 99. But where the death of the deceased was the result of the cummulative effect of the injuries caused by all the four assailant conjointly the case is within section 34 of the Penal Code and all of them are liable for murder. 4 Lah. L. J. 277. Where in the course of a commission of a dacoity some alone use deadly weapons, this section applies to the case and all are liable to conviction under s. 397. 68 Ind. Cas. 817=23 Cr. L. J. 590. In order to justify the application of this section evidence of some distinct act by the accused, which can be regarded as part of the criminal act in question, must be required. 17 L. W. 21.

In order to convict a person under this section some distinct act by the accused in furtherance of the common act must be proved. 17 Ind. Cas. 360=A. I. R. 1923 Mad. 187; 1921; M. W. N. 800; 2 Bur. L. J, 142; 90 Ind. Cas. 705=7 Pat. L. T. 388.

Section 34 has no application in the construction of s. 398. A. I. R. 1928 Bom. 52.

Abetment—This section does not involve abetment and therefore does not imply any conspiracy and does not require proof that any particular accused was responsible for the commission of the actual offence. 18 C. W. N. 580.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

Scope. This section makes it clear that, where a number of persons join in an act which is criminal only by reason of its being done with a certain knowledge or intention, each person is liable for the act to the content of his knowledge or intention; in other words, that the Court or jury have to consider what was the knowledge or intention with which the persons joined in the act. 31 C. W. N. 314=10 Ind. Cas. 718=28 Cr. L. J. 334=45 C. L. J. 131=A. I. R. 1927 Cal. 324. "Where A and B unite in assaulting and resisting C, a public servant, in the execution of his duty; A, not knowing C's character, may be guilty only of an assault; but B, if he knowingly resists C. may commit the offence of obstructing a public servant in the discharge of his public functions. If an act which is an offence in itself and without any reference to any criminal knowledge or intention on the part of the doers is done by several persons, as if several commit a nuisance by carrying on an offensive trade, each of such person is liable for the offence."—*Morgan and Macpherson.*

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect, partly by an act, and partly by an omission, is the same offence.

Effect caused partly by act and partly by omission.

Illustrations.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Notes.—When an offence is the effect partly of an act or partly of an omission it is one offence only. 28 C. W. N. 170=38 C. L. J. 41.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

Illustrations.

(*a*) A and B agree to murder Z by severally and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused they are both guilty of the offence, though their acts are separate.

(*b*) A and B are joint jailors, and, as such have the charge of Z, a prisoner, alternately for 6 hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z, with food, knowing that he is likely thereby to causes Z's death. Z dies of hunger. B is guilty of murder, but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Notes.—Where a number of persons, acting in concert with one another, caused death by beating the deceased with *lathis*, and the attack by them was a single and indivisible thing, *held* that all of them must be taken to have intended to cause death

or to have had every reason to know that the probable result of their joint act would be death. 35 A. 506=11 A. L. J. 804 ; 14 C. L. J. 615 ; 21 Ind. Cas. 663 ; 15 Bom. L. R. 303 ; 19 Ind. Cas. 331=14 Cr. L. J. 235 ; 40 A. 686 ; 47 Ind. Cas. 805 ; see also 73 Ind. Cas. 769=24 Cr. L. J. 673=A. I. R. (1924) All 78. By section 37, when an offence is committed by means of several acts, whoever intentionally co-operaets in the commission of that offence by doing any one of these acts, either singly or jointly with any other person, commits that offence. 29 C. W. N. 181 (189)=52 C. 197=41 C. L. J. 240=85 Ind. Cas. 47=26 Cr. L. J. 431 (P. C.) ; see also 28 C. W. N. 170=38 C. L. J. 411.

Persons conce ned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

Notes.—When several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offence by means of that act. 29 C. W. N. 181 (189)=52 C. 197=41 C. L. J. 240=27 Bom. L. R. 148=23 A. L. J. 314 P. C ; see also A. I. R. 1927 Oudh. 313=28 Cr. L. J. 662=103 Ind. Cas. 198. Different punishment for different offence can be given to persons under s. 38. A. I. R. 1931 Lah. 749=32 Cr. L. J. 1219=12 Lah. 442.

Cases.—Where in a quarrel, one accused person hit the deceased with a stick and another with an axe and the latter caused death and there was no proof of common intention, *held*, that the latter was guilty of culpable homicide while the former was guilty only of grievous hurt. A. W. N. 1882, 23.

"Voluntary."

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it or by means which at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustrations.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act ; yet if he knew that he was likely to cause death, he has caused death voluntarily.

Voluntarily.—The English law by means of an artificial presumption viz, that a man is presumed to intend the natural or probable consequences of his own act, gives to the words which denote intention, the meaning here annexed to "voluntarily". —*Morgan and Macpherson* 21. Where A intentionally aided the murderers by calling the deceased and bringing him into their power his action cannot be said to be 'voluntarily' within the meaning of s. 39. 1912 M. W. N. 1108=19 Ind. Cas. 207=14 Cr. L. J. 207.

"Offence."

40. Exeept in the "chapters" and sections mentioned in clauses two and three of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, "Chapter VA" and in the following sections, namely, sections 64, 65, 66, 67, 70, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445 the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 175, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special

or local law is punishable under such law with imprisonment for a term of six months, or upwards, whether with or without fine.

Amendments.—S. 40 has been substituted for the original by Act 17 of 1870 s. 2. The figures 64, 65, 66 and 71, in the second clause have been inserted by Act 8 of 1882, and the figures 67 by Act X of 1886 s 21 (1). The word 'chapters" has been substituted by Act VIII of 1930.

The words "Chapter VA" were inserted by Act 8 of 1913.

S. 114—Section 114 has been intended to apply to special law by this section. 29 C. 496.

Notes.—Section 40 refers to definition of the word "offence" and not to punishment. A. I. R. 1929 Rang. 203=7 Rang. 329=30 Cr. L. J. 961=118 Ind. Cas. 637 (F. B.) "The word 'offence' denotes a thing made punishable by this Code. It is obvious that the word 'punishable' is here used according to a common idiom for 'rendering a person liable to punishment'; for it is obvious that, in the strict and primary usage of the word nothing is punishable, and no person since Xerxes except a child with his doll, has ever supposed otherwise. The expression therefore, is incomplete".—*Per Holloway J.* in 3 Mad. H. C. Rep. App. 11 at p. 12. According to *Innes J.* 'a thing made punishable' means an act or omission which by this Code is constituted one to which a punishment is attached. *Ibid* at p. 21; see also 5 B. 338; 7 A. 67. The abetment of an offence is an offence. 49 P. R. 1887; see also 24 C. W. N. 196=54 Ind. Cas. 78; so also an attempt to commit an offence. 17 A. 120 (123). "Offences" include acts, omissions and abetments even under special or local laws. A. I. R. 1932 All. 18=1931 A. L. J. 986=33 Cr. L. J. 236=53 A. 642. Criminal law connotes only quality of such act or omission as are prohibited under appropriate penal provisions by authority of state. A. I. R. 1931 P. C. 94 (P. C.)=32 Cr. L. J. 899=132 Ind. Cas. 593. Act not unlawful if carried out by criminal means it becomes criminal. A. I. R. 1931 Pat. 52=32 Cr. L. J. 478=130 Ind. Cas. 269. Entering cattle-pound with intent to commit an offence under s. 24, Cattle Trespass Act amounts to criminal trespass and entering pound with intent to intimidate person in charge amounts to an offence under s. 447. A. I. R. 1927 Lah. 495=8 Lah. 331=28 Cr. L. J. 665=9 L. L. J. 354.

Special law.—The Whipping Act is a special law. 22 Ind. Cas. 156=7 L. B. R. 63. The breach of bye-laws though made punishable is not an offence under this section. 30 Cr. L. J. 509=115 Ind. Cas 634. The word "offence" in this section is made to include an offence under a special law like the Indian Railways Act. 52 M. 882=30 Cr. L. J. 869=57 M. L. J. 114=A. I. R. 1929 Mad. 880. Doing anything in contravention of Salt Act or rule thereunder is not separate offence nor, an abetment of it. A. I. R. 1930 Oudh 497=128 Ind. Cas. 221.

"Special law." **41.** A "special law" is a law applicable to a particular subject.

Notes—Special laws such as the Excise, Opium, Cattle Trespass Acts etc. create fresh offences other than those specified in the Act. 7 L. B. R. 63=22 Ind. Cas. 147. Code does not override Evidence Act which is special law unless so provided. A. I. R, 1933 All. 440=34 Cr. L. J. 875=55A. 463=1933 Cr. C. 746.

"Local law." **42.** A "local law" is a law applicable, only to a particular part of British India.

Notes—All the rules framed under a local law is not necessarily included in it. 23 P. R. 1894.

"Illegal." "Legally bound to do". **43.** The word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

Notes.—"Illegal" has a wide meaning and includes anything prohibited by law which provides a cause of action for damages. A. I. R. 1929 All. 935=31 Cr. L. J. 12=1930 A. L. J. 242=120 Ind. Cas. 205. The word "unlawful" may be taken to correspond with the word "illegal" which is defined in section 49. A. I. R. 1926 Bom. 132=27 Bom. L. R. 1391=27 Cr. L. J. 689=94 Ind. Cas. 881; see also A. I. R. 1930 Pat. 593=9 Pat. 725=32 Cr. L. J. 87=12 P. L. T. 92=128 Ind. Cas. 141. Recommendation by Managing Committee to general body to

refund grant made to member of society is not illegal and hence does not come under s. 506 1933 Cr, C. 711=27 S. L. R. 214=34 Cr. L. J. 884=1933 Sind. 196. Distribution of defamatory pamphlet causing provocation which is ground for civil action is illegal. 22 Cr. L. J. 513=22 Bom. L. R. 166=62 Ind. Cas. 401. Having regard to the word "legally bound" in section 43. that section covers a breach of contract and not merely a lost. 58 B. 491=35 Cr. L. J. 1429=A. I. R. 1934 Bom. 202. An omission by a *Zaildar* or his *Sarbarah* to give information of a riot in his village is not an illegal omission. 19 P. R. 1886 Cr. Where a Deputy *Jaildar* stated in reply to an official question that he had no lands in a certain place and also a false statement to the same effect before the principal Assittant Collector, *held* that he could not be convicted of an offence under s. 177, as he was not legally bound "to furnish such information within the definition given in s. 43." 14 M. 484=1 M. L. J. 741=1 Weir 109. The omission to fence a well in private premises at a distance of only eight yards from the highway, and open to it is not "illegal" as defined by this section, and does not therefore constitute an offence. 6 M. 280=1 Weir, 245=7 Ind. Jur. 247, see also 1923 Rang. 140. Submitting false returns to a superior officer is illegal. 14 M. 484. As regards the meaning of the words "legally bound" *vide* 14 M. 484=1 M. L. J. 741= Weir 109.

"Injury."

44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property.

Notes.—The term "injury" as used in section 285 includes any harm illegally caused to the property of any other person, and is not confined to injury to the person only. 5 H. C. Cr. 57. It is simply an act contrary to law. 2 M. H. C. R. 158 (160). A false charge against a person to the police may subject a person to a substantial injury. 5 C. 281. Threat to ruin another with cases, where the cases are not false, does not amount to injury. 30 C. 418=7 C. W. N. 116; see also 27 C. W. N. 479. An unlawful detention of a cart causes injury to the cart-owner. 1 Weir 447. The term "property" is applicable only to something which is in existence. 17 P. R. 1898 Cr.; see also 21 M. 74 (F. B.) A tenant dishonestly cutting and removing trees of the land-lord was acquitted as he had raised a *bona fide* claim of title bond on custom whether well-founded or not. 21 Cr. L. J. 609=1 Pat. L. T. 318=57 Ind. Cas. 273. A threat of social boycott or that of labour boycott cannot be treated as a threat of injury. 1933 M. W. N. 736.

"Life."

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death."

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal."

47. The word "animal" denotes any living creature, other than a human being.

"Vessel".

48. The word "vessel" denotes any thing made for the conveyance by water of human beings or of property.

"Year", : "month".

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Section".

50. The word "section" denotes one of those portions of a chapter of this Code which, are distinguished by prefixed numeral figures.

"Oath".

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good faith".

52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

Good faith—The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. The law does not exact the same care and attention from all persons regardless of the position they occupy. 12 B. 377. All acts must be done with due care and attention 21 M. 249. What is done by a person who in good faith believes himself to be bound to do it, or what is done in good faith for a man's benefit, though in fact it causes harm to him, is not an offence (sections 76 and 88.) This explanation of good faith shews in what sense the above and other similar cases are not to be understood. Mere good faith in the sence of simple belief, actual belief, with out any grounds of believing, is not sufficient ; the belief must be a reasonable not an absurd belief, that is, there must be some reasonable ground for it. Good faith in fact or belief requires due care and attention to the matter in hand. The law cannot mark, except in this vague way, the amount of care and attention requisite, but if a man takes upon himself an office or duty requiring skill or care, and a question arises whether he acted in good faith, he must shew not merely a good intention, but such care and skill as the duty resonably demands for its due discharge. The degree of care requisite will vary with the degree of danger which may result from the want of care : where the peril is the greatest the greatest caution is necessary. Simple belief may negative malice and is a strong argument against any criminal intention, but where the question is whether a Magistrate or other public servant is justified in doing a certain thing, his justification must have a better foundation than his mere private belief ; for a man may be very foolish in believing himself justified and the law could not adopt so vague and unsafe a criterion.—*Morgan and Macpherson.* Where the accused seeing a stooping child in the early morning, in a place considered by the villagers to be haunted, and considering the child to be a spirit or demon, caused his death by inflicting blows, before he discovered his mistake, *held* that he was properly convicted under s. 304 A, as he did not act in good faith, *i. e.*, with due care and attention. 11 P. R. 1888 Cr. A man cannot be convicted of perjury for having acted rashly and credulously and having failed to make resonable enquiry with regard to the facts alleged by him to be true. It must be found that he made some statement which he knew or believed to be false or which he did not believe to be true. This finding should be arrived at independently of the definition of good faith in section 52 of the Code. 12 A. L. J. 550=36 A. 362=15 Cr. L. J. 579=25 Ind. Cas. 331. "Due care and attention" implies genuine effort to reach the truth and not the ready acceptance of ill-natured belief. 17 Bom L. R. 82=3 Bom. Cr. C. 15=16 Cr. L. J. 177=27 Ind. Cas. 657. See also A. I. R. 1934 Oudh. 124=35 Cr. L. J. 804=35 Cr. L. J. 804. A search by the Police without complying with the provisions laid down in s. 165, Cr. Pro. code under ordinary circumstances is not an act done in good faith. 136 Ind. Cas. 60=33 Cr. L. J. 233=10 Pat. 821=13 Pat L. T. 62=1933 Cr. L. 99=A. I. R. 1932 Pat. 66. If both the defamatory statement and its denial are published it cannot be said to be taking due care and attention. 145 Ind. Cas. 126=1933 Cr. C. 740=34 Cr. L. J. 926=A. I. R. 1933 All. 434. Where proprietor is not entitled to cut bamboos, preventing his men from cutting bamboos or from removing cut bamboos is not in good faith. A. I. R. 1931 Pat. 337=12 P. L. T. 556=32 Cr. L. J. 739. A sentence of fine imposed upon more than one prisoner individually and collectively is not a proper sentence. I Weir 30=5 M. H. C. App. 5. Where an offence is punishable with imprisonment and fine, fine need not necessarily be imposed. A. I. R. 1925 Oudh.

CHAPTER III.

OF PUNISHMENTS.

53. The punishments to which offenders are liable under the provisions of this Code are—

"Punishments"

First.—Death ;

Secondly.—Transportation ;

Thirdly.—Penal servitude ;

Fourthly—Imprisonment, which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour ;

(2) Simple ;

Fifthly.—Forfeiture of property ;

Sixthly—Fine.

Notes—The punishments provided for offences by this Code are contained in this chapter ; but the mode of inflicting, commuting and remitting punishments belong to the law of procedure,—*Morgan and Macpherson*. Every conviction must be followed by a sentence A. W. N. 1884. 219. A sentence must be plain and complete by itself. 15 A. 208 ; 24 M. 13. In the case of technical offence, a nominal sentence is quite sufficient to meet the ends of justice. 16 P. R. 1910 Cr.=6 Ind. Cas. 952. The maximum sentence whether of fine or of imprisonment, provided for by law, represents the sentence to be inflicted on extreme cases. Because a man may easily pay a fine is not a ground for ordering him to pay the maximum fine fixed by law, if the nature of the offence commited by him is not of the most serious character, having regard to the description of the offence itself. A. I. R. 1929 All. 919=1930 A. L. J. 26=31 Cr. L. J. 88. List of punishments given in s. 53 is not exhaustive. 1933 Cr. C. 1146=A. I. R. 1933 Rang. 329. Imprisonment should only be awarded to those who perform criminal acts, not only of technical but of criminal character. 134 Ind. Cas. 432=12 P. L. T. 791=32 Cr. L. J. 1166=A. I. R. 1931 Pat. 342. To impose a fine in addition to a substantial term of imprisonment except under extraordinary circumstances is inappropriate. 35 C. W. N. 519=53 C. L. J. 455=A. I. R. 1933 Cal. 710=1931 Cr. C. 990 Tender age by itself is not sufficient to mitigate punishment. A. I. R. 1933 Cal. 1=33 Cr. L. J. 837. In a sentence under s. 420 some sentence of imprisonment must be given. A. I. R. 1929 All. 260=30 Cr. L. J. 340. Order under s. 562, Cr. Pro. Code is not punishment. 22 N. L. R. 166=74 Ind. Cas. 66.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishmeut for any other punishment provided by this Code.

Commission of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Sentence of Europeans and Americans to penal servitude.

56. Whenever any person being a European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV, of 1855 ;

Proviso as to sentence for term exceeding ten years but not for life.

Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

Amendment.—This proviso has been added by the Indian Penal Code (Amendment) Act, 27 of 1870 s. 3.

Penal servitude.—The punishment of penal servitude is only applicable to Europeans add Americans. 19 M. 483=1 Weir 298.

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

Notes.—The Supreme Government appoints a place or places of transportation within the British territories, and the local governments give orders for the removal of persons sentenced to transportation to the places so appointed.—*Morgan and Macpherson.*

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code, such offender is liable to imprisonment.

Transportation instead of imprisonment.

Scope.—Under the provisions of this section, a sentence of transportation can be awarded in lieu of rigorous imprisonment for a similar term. 1 W. R. Cr. Letters 5. Under the provisions of this section, a sentence of rigorous imprisonment should first be passed and then commuted to one of transportation. 1 W. R. Cr. Letters 10. This section has no application to sentences under a local or special law, but only to offenders convicted under the Penal Code. 11 M. L. J. 127. But the commutation of two sentences, one of four years' rigorous imprisonment and the other of three years' rigorous imprisonment to one of transportation for seven years is illegal. 2 Cr. L. J. 473. Transportation must not exceed the maximum term of imprisonment. 48 I. A. 35 (P. C.) ; I. A. 43 (F. B.) The words "in every case" in s. 59 were construed as meaning "on any charge" or "for any offence". 2 Cr. L. J. 473. A sentence of transportation for 14 years passed upon a person found guilty of theft, after 4 previous convictions is illegal, as under s. 75. I. P. Code (as amended by Act III of 1910), the Court, if it awards sentence of transportation must sentence the convict to transportation for life. The Court may, however. in lieu of such sentence, sentence the prisoner to a term of ten years' imprisonment and under the provisions of s. 59. I. P. Code. 14 P. R. 1915 Cr.=16 Cr. L. J. 554. The restriction imposed by s. 35, Cr. Pro. Code must be read with sections of the Penal Code which prescribe the limits of punishments for different offences. L. B. R. (1893-1900), 478. Transportation can not be awarded in default of payment of fine. 17 P. R. 1880 Cr. ; 8 Ind. Cas. 985= 25 Cr. L. J. 1161. This section enacts a general rule to the effect that in the case of offences for which no transportation is specially mentioned as a punishment and which are punishable with imprisonment for a term of seven years or upward, it is competent to the Judge to substitute a sentence of transportation as a substantive sentence for that of imprisonment. This section does not authorize the substitution of transportation for the imprisoment provided by the Court in default of payment of fine. 5 M. 28=1 Weir 30 ; see also 2 A. W. N. 116. This section applies only to cases where the punishment inflicted on one offence alone is seven years' imprisonment, and not to cases where it is made up by adding two sentences together and then commuting the amalgamated period to transportation. 2 W. R. Cr. ; 5 W. R. Cr. 44 ; 3 W. R. Cr. 441 ; 63 P. R. 1866 Cr. ; 27 P. R. 1901. The Indian Penal Code in no instance specifically provides transportation for any term short of life as a punishment and s. 59 is the only authority for passing sentences of transportation for short periods. 14P. L. R. 1904=1 Cr. L. J. 89=31 P. R. 1903 Cr. The proper procedure in cases where a Judge desires to pass a sentence of transportation for a term is to pass a sentence of rigorous imprisonment and then, under this section, commute the sentence to one of transportation. L. B. R. (1893-1900) 483, but see 1 L. B. R. 292 by which this is overruled. A sentence of transportation cannot, under s. 59 I. P. Code, be for a period less than 7 years whatever might be the charge. 8 W. R. Cr. 2. A period of ten years is the maximum which a sentence of transportation under ss. 412 and 59, must not exceed. 5 W. R. Cr. 16. In order to make this section applicable, (1) the offence must be such as could be punished with seven years' imprisonment or more ; (2) no sentence of imprisonment for a shorter period than seven years can be passed in any case. 4 L. B. R. 65=6 Cr. L. J. 290 ; see also 17 P. R. 1880 Cr. This

section has no application to sentences under a special or local law. 11 M. L. J. 127. The High Court on appeal cannot enhance the sentence by imposing a sentence of transportation for a term of years exceeding the maximum term for which a sentence of imprisonment can be imposed. 40 M. L. J. 194=33 Cr. L. J. 222=59 Ind. Cas. 926 P. C. Where the offence is punishable with transportation for life or imprisonment for a term of ten years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment namely, ten years. 52 Ind. Cas. 49=20 Cr. L. J. 561.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Notes—Four men were convicted under s. 459 I. P. Code and sentenced to a long term of imprisonment and fine. It appearred that the accused belonged to an humble walk of life. *Held*, that under these circumstances it was not necessary to impose fine in addition to substantial sentence of imprisonment. 30 P. L. R 125=117 Ind. Cas. 802=30 Cr. L. J. 838 ; 30 P. L. R. 168.

61. [*Sentence of forfeiture of property*] [*Repealed by Act 16 of 1921*].

62. [*Forfeiture of property in respect of offenders punishable with death. transportation or imprisonment*] *Repealed by Act 16 of 1921*].

Amount of fine.

63. Where no sum is expressed to which a fine may extend the amount of fine to which the offender is laible is unlimited, but shall not be excessive.

Object.—The difficulty of framing any generel rule for the limiting of fine has always been felt. The rule here laid down, that excessive fines shall not be imposed, follows the words of the Bill of Rights (1 Will and Mary St. 2. C. 2). In cases which are not very heinous, the amount of fine, which the Courts may impose is, as has been shown above, limited by the Code ; but in serious cases the amount is left to their descretion.—*Morgan and Macpherson.*

Civil cases.—"In every cases in which fine is part of the punishment of an offence, it ought to be competent to the tribunal which has tried the offender acting under proper checks. to award the whole or part of the fine to the sufferer, provided that the sufferer signifies his willingness to receive what is so awarded in full satisfaction of his civil claim for reparation. If the Criminal Court shall not make such an award or if the sufferer shall not be satisfied with such an award, he must be left to his civil action. But if, in such an action, he recovers damages, the fine ought, in our opinion, to be employed, as far as the fine will go, in satisfying those damages The plan we propose would not be open to the strong and indeed unanswerable objections which Mr. Livingstone has urged against the plan of blending a civil and criminal trial together. Yet we think it likely that our plan could in a great majority of cases render a civil proceeding unnecessary. We are happy to be able to quote the high authority of Mr. Livingstone in favour of the doctrine that every fine imposed for an offence ought to be expended, as far as it will go, in paying any damages which may be due in consequence of injury caused by that offence",—*Note* A.

Amount—A fine should be fixed with due regard to the circumstances of the case in which it is imposed and the condition in life of the offender, 18 P. R 1878 Cr. ; 20 P. R. 1895 Cr. ; U, B. R. (1897-1901) Vol. I. 244. Capacity to pay fine must be considered. 8 L. L. J. 143=27 Cr. L. J 480=27 P. L. R. 199=193 Ind. Cas, 704 ; see also 30 P. L. R, 168 ; 5 L. L. J. 271=24 Cr, L. J. 278=71 Ind. Cas. 998. Where an accused is convicted under different sections to fine, he by paying into Court certain amount can impliedly request to appropriate it to a particular offence. A. I. R. 1931 Sind. 73=24 S. L. R. 437. The Court of Session and the High Court can inflict fine to any amount. 7 W. R. 37. An order for daily fine is not legal. 25 W. R. 9 ; 20 W. R. 64 ; 27 C. 565 ; 18 W. R. 44. Under no circumstances is a Magistrate justified in passing or confirming

a sentence of fine upon the accused which he has every reason to believe the accused cannot possibly pay. L. B. R. (1872—1892) ; 483. The intention of the framers of the Penal Code was that fines inflicted should not be disproportionate to all possible means of the criminals, if Magistrates should not be influenced by the consideration that the criminals. though poor, are backed up by the influential persons. Rat. Un. Cr. C. 553=Cr. Rg. 34 of 1891.

Sentence of imprisonment for non-payment of fine.

64. In every case of an offence punishable with imprisonment as well as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable *with imprisonment or fine or with fine* only, in which the offender is sentenced to a fine ;

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of sentence.

Act VIII of 1882.—Section 1 of Act VIII 1882, extends this section to all local and special Acts. whether passed before or after the General Clauses Act, 1868, but does not extend it to general Acts of the Governor-General in Council passed prior to 1868. L. B. R. (1872—1892), 473 ; but see 6 Bom. L. R. 357=1 Cr. L. J. 327.

Imprisonment in default of fine.—The sentence of imprisonment in default of fine should bear some reasonable proportion to the amount of fine. L. B. R. (1872—1892) 353. A sentence of imprisonment may be imposed in default of a sentence of a fine in an offence under s. 391. Municipal Act. 58C. 1293=35 C. W. N. 865. A sentence of imprisonment in default of a fine to run concurrently with any other sentence should not be imposed. 131 Ind. Cas. 61=A. I. R. 1931 Rang. 51= =1932 Cr. C. 153. Imprisonment in default of fine cannot be increased to exceed the aggregate punishment awarded in lower Court. 3 Pat. 638=5 P. L. T. 622= 12 Ind. Cas. 50=25 Cr. L. J. 1186. An offence under a special law is not punishable with imprisonment in default of payment of fine uuder this section. The law does not require that imprisonment should be awarded in default of payment of fine 30 P. R. 1878 Cr ; see also 3 M. H. C. R. 9 ; 6 M. H. C. R. 40 ; 6 Bom. L. R. 375 ; 15 C. W. N. 906 ; but see 20 A. 95 ; 18 M. 490.

Limit to imprisonment for non-payment of fine, when imprisonment and fine, awardable.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Scope.—The words "imprisonment as well as fine" contained in this section. must be held to include "imprisonment and fine" and also "imprisonment or fine," L. B. R. (1893-1900), 494. A sentence of 5 months' imprisonment in default of fine, when the maximum sentence for the offence is one year's imprisonment, is illegal. 25 Cr. L. J. 110 (1). The provisions of ss. 65 and 67 equally apply to punishments inflicted under special laws like the Bombay Gambling Act. 20 S. L. R. 31 =27 Cr. L. J. 90=91 Ind. Cas. 394=A. I. R. 1926 Sind 144. Where an offence is punishable with one year's imprisonment an imprisonment for five months for non-payment of fine is illegal. A. I. R. 1925 Oudh. 109=81 Ind. Cas. 985=25 Cr. L. J. 1161. Section 67 does not apply to cases where the offence is punishable either with imprisonment and fine or with imprisonment or fine. To the latter class of cases, s. 65 applies and the imprisonment in default of payment of fine cannot exceed one-fourth of the maximum term of imprisonment provided for the offence, 22 M. 338=1 Weir 32 ; see also 1898 P. J. 494. A Magistrate is not authorized to pass a sentence, under section 33 of Cr Pro. Code in excess of the term of section 65. 10 M. 165 F. B ; 6 W. R. 57 ; 1A 46. In the case of assault, a sentence of Rs. 50 fine and in default one month's imprisonment, is illegal. 16 W. R. Cr. 42. In case of conviction under three charges of bribery 18 months' rigorous imprisonment, i. e. six months under each count in default of payment of fine can be awarded by a Magistrate of the first class

on the strength of this section. 3 P. W. R. Cr. 1919. Sentence of four months and two months in default of payment of fine for and offence under S. 225 (d) of the Penal Code is illegal. 22 Cr. L. J. 145=3 Lah. L J. 346=59 Ind. Cas. 840. 15 days' imprisonment in default of payment of fine for an offence under s. 160 Penal Code is not legal. 11 Mys L. J. 426 ; see also A. I. R. 1934 All. 1031=1934 Cr. C. 1338. A sentence of 6 months' rigorous imprisonment in default of payment of fine, when the maximum sentence for the offence is one year's imprisonment is illegal. 25 Cr. L. J. 116=81 Ind. Cas. 985. Where, for an offence imprisonment as well as fine could be awarded, the term of imprisonment to which the accused will be liable in default of payment of fine must not exceed one-fourth of the maximum term of imprisonment awardable for the offence. S. C. 65 Oudh.

Principle. "The next question which it becomes our duty to consider was this ; When a fine has been imposed what measures shall be adopted in default of payment ? And the two modes of proceeding, with both of which we are familiar, naturally occurred to us. The offender may be imprisoned till the fine is paid, or he may be imprisoned for a certain term, such imprisonment being considered as standing in place of the fine. In the former case, the imprisonment is used in order to compel him to part with his money ; in the latter case, the imprisonment is a punishment substituted for another punishment. Both modes of proceeding appear to us to be open to strong objections. To keep the offender in imprisonment till his fine is paid is, if the fine be beyond his means to keep him in imprisonment all his life : and it is impossible for the best Judge to be certain that he may not sometimes impose a fine which shall be beyond the means of an offender. On the other hand, to sentence an offender to fine and to a certain fixed term of imprisonment in default of payment, and then to leave it to himself to determine whether he will part with his money or lie in gaol, appears to us to be a very objectionable course. The high authority of Mr. Livingstone is here against us. We regret we cannot agree with him; the object of the penal law is to deter from offences, and this can only be done by means of inflictions disagreeable to offenders. The law ought not to inflict punishments unnecessarily severe ; but it ought not on the other hand, to call the offender into council with his Judge, and to allow him an option between two punishments. In general, the circumstance that he prefers one punishment raises a strong presumption that he ought to suffer the other.....We are far from thinking that the course which we propose is unexceptionable, but it appears to us to be less open to exception than any other which has occurred to us. We propose that at the time of imposing a fine the Court shall also fix a certain term of imprisonment which no offender shall undergo in default of of payment.....But we do not mean that this imprionment shall be taken in full satisfaction of the fine"—*Report of the Law Commissioners, Note A.*

Description of imprisonment for non-payment of fine.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Notes.—Where the offence is punishable with rigorous imprisonment in that case the sentence in lieu of fine would be also rigorous imprisonment. 7 W. R. 31.

Imprisonment for non-payment of fine, when offence punishable with fine only.

67. If the offence be punishable with fine only, "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, *for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.*

Scope. This section refers only to cases in which the offence is punishable with fine only. 22 M. 238=1 Weir 32. This section does not authorize a sentence of rigorous imprisonment in default of payment of fine in the case of a conviction under s. 61 of the Stamp Act. 40 P. R. 1880 Cr. The sentence of imprisonment, awarded in default of payment of fine passed on a person sentenced under s 290 I. P. C. should be simple and not rigorous. 5. B. H. C. Cr. 45. The provisions of ss. 65 and 67 I. P. C. equally apply to punishments inflicted under special law like the Bombay

Gambling Act. 20 S. L. R. 31=91 Ind. Cas. 394=27 Cr. L. J. 90=A. I. R. 1926 Sind 144.

Imprisonment to terminate on payment of fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by proceas of law.

Termination of imprisonment on payment of proportional part of fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustrations.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months or at any later time while A continues in imprisonment, A will be immediately discharged.

Notes.—Having undergone a portion of the alternative imprisonment provided for non-payment of fine a person is not discharged from payment on the proportionate portion of the fine. A. W. N. 1882, 85. A sentence of imprisonment in default of fine is illegal in a conviction under s. 3 of Act. XXXI of 1850, since s. 69, I. P. Code, applies only to conviction for offences under the Penal Code. Rat. Un. Cr. C. 40.

Fine leviable within six years, or during imprisonment.

Death not to discharge property from liability.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period ; and the death of the offender does not discharge from the liability any property which would, after his death be legally liable for his debts.

Notes. The fact of a Magistrate having written off a fine as irrecoverable is no bar to the realization thereof at any time within the period allowed by law, if it subsequently appears that the person from whom the fine was due, has acquired the the means of paying it. 3 A. L. J. 818. This section is not applicable to immoveable property. 5 B. H. C. R. 63 ; 20 C. 478. Even after imprisonment in default of payment of fine, the property of the accused may be seized by distress and sold. 3 W. R. Cr. 61 ; 23 A. 497. After a lapse of seven years a prisoner's property is saved but he may be personally arrested. Rat. Un. Cr. C. 207.

Limit of punishment of offence made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"Where several acts, of which one or more than one would, by itself or themselves constitute, an offence, constitute, when, combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Illustrations.

(*a.*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b.*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Amendments. The clauses quoted have been added by Act 8 of 1882, s. 4.

Scope. This section contemplates several punishments for an offence against the same law and not under different laws. 19 Cr. L. J. 157; 1 Pat. L. J. 373. This section provides that where anything which is an offence, is made up of parts in itself an offence, the offender shall not be visited with punishment for more than one of such of his offences unless it be so expressly provided. L. B. R. (1872-1890), 390; L. B. R. (1872-1892), 476 L. B. R. (1872-1892), 492; A. W. N. 1903, 26. The infliction of separate punishment awarded is not in violation of the law, provided that the aggregate punishment awarded is not in excess of what the Court could inflict for either of the offences. 4 C. L. J. 90. But the conviction of prisoners for two offences, when the one offence formed an integral portion of the other, is illegal. 1 Agra H. C. R. 31; or in other words, where, substantially, only one offence has been committed, the several acts which, taken together, constitute that offence, cannot legally be treated as separate offences. 12 W. R. 2=3 B. L. R. (A. C.) 14; A. I. R. 1930 Lah. 266. The offence of conspiracy is a separate offence from the offence of participation in a particular dacoity or the dishonest reception of property stolen in a dacoity knowing it to be stolen. Separate sentences can be awarded to run consecutively for participation in dacoities and to this case can also be added consecutive sentences of participation in conspiracy A. I. R. 1928 Oudh. 507. Offences under sections 366 and 376 for having kidnapped and raped a married girl does not form part of the same transaction and separate sentences can validly be passed and section 21 is no bar to the same. 7 Lah. 484=99 Ind. Cas. 344=28 Cr. L. J. 137=27 P. L. R. 802=A. I. R. 1927 Lah. 88. An offence under s. 144, is not one of which actual theft is a necessary ingredient. Therefore separate convictions for an offence under s. 144 and for theft could be awarded. 8 C. W. N. 519=1 Cr. L. J. 449. Where an accused person is convicted of wearing the garb of a police constable, under s. 171, I. P. C. and of personating by means of such garb a police constable, and, as such, ordering a person to be kept in custody under s. 170 I. P. Code, held that only one sentence ought to be passed on him under s. 71. Rat. Un. Cr. C. 405. To pass sentence in an offence under s. 147 and also under s. 325 read with s. 149 I. P. Code is illegal. 35 C. W. N. 345=134 Ind. Cas. 1041=A. I. R. 1931 Lah. 606; see also A. I. R. 1930 Lah. 1044=129 Ind. Cas. 221=32 Cr. L. J. 249=1930 Cr. C. 1220; 66 M. L. J. 572=A. I. R. 1934 Mad. 388=1934 M. W. N. 8=57 M. 643=150 Ind. Cas. 977=35 Cr. L. J. 1226; 1932 M. W. N. 547; A. I. R. 1932 Rang. 184; 145 Ind. Cas. 913=1933 Cr. C. 1417=1933 A. L. J. 1178=A. I. R. 1933 All. 819; A. I. R. 1933 Mad. 338=56 M. 481=34 Cr. L. J. 273=1933 Cr. C. 441=64 M. L. J. 314=1933 M. W. N. 254. But if several injuries are inflicted in persuance of a common object, separate sentence under ss. 147 and 323 are valid. 145 Ind. Cas. 913=1933 Cr. C. 1417=1933 A. L. J. 1178=A. I. R. 1933 All. 819. Separate sentences under ss. 147 and 325 read with s. 149 are not legal. 33 Cr. L. J. 1=35 C. W. N. 345=A. I. R. 1931 Cal. 606. Section 71 does not apply to conspiracy as defined in s. 120 B. A. I. R. 1933 Nag. 252=1933 Cr. C. 936. Section 71 applies only where there is an offence made up of parts any one of which parts is itself an offence. A. I. R. 1933 Pesh. 99=146 Ind. Cas. 7. In case of a trial for several offences, a conviction for each such offence must follow always and a separate sentence must be passed in respect of each such conviction. 26 S. L. R. 416. In an offence of only one beating, the conviction should be only under s. 325 and not also under s. 323. 1933 M. W. N. 244. Separate convictions for s. 147 and 347 are legal. Aggregate sentences should not exceed that for graver offence. 140 Ind. Cas. 752=34 Cr. L. J. 81=13 P. L. T. 588=A. I. R. 1932 Pat. 335. In case

of conviction under ss. 147 and 323, separate sentence is legal. A. I. R. 1933 Mad. 338=56 M. 481=34 Cr. L. J. 273=37 M. L. W. 250=64 M. L. J. 314. Where persons are charged under s. 147 and as a consequence of that under s. 304, the case comes within s. 71 and separate sentences are forbidden on each of two charges. 35 C. W. N. 184=A. I. R. 1931 Cal. 450=32 Cr. L. J. 890. In case of charge of picketting against accused, two separate sentences under both Criminal Law Amendment Act and Ordinance are illegal. 142 Ind. Cas. 21=64 M. L. J. 351=34 Cr. L. J. 277=1933 M. W. N. 546=A. I. R. 1933 Mad. 337. Manufacture of excisable articles includes possession of materials and articles. Persons convicted of former should be leniently dealt with for latter. A. I. R. 1933 All. 438=34 Cr. L. J. 641=1933 A. L. J. 746=1933 Cr. C. 744.

Notes.—Separate sentence can be awarded to run consecutively for participation in separte dacoities and to these can also be added a consecutive sentence of participation in conspiracy. A. I. R. 1928 Oudh. 507. Where a person caused the death of two persons by one rash and negligent act committed at the same time and place, he can be convicted for the offence as one act under this section. Rat. Un. Cr. C. 852. The prisoner at the same time and place stole some cattle which happened to belong to different owners. The Magistrate tried the act as constituting three offences, and on the prisoner's plea of guilty, sentenced him to one year's rigorous imprisonment on each. *Held*, that there was only one offence under this section. L. B. R. (1872—1892), 168. Where two persons, are robbed in one continuous transaction by a dacoity, the Magistrate is barred by the first clause of this section from punishing the accused for more than one of the offences charged. L. B. R. (1872—1892) 440. Distilling spirits and possessing spirits obtained by such distillation are not distinct offences and a double sentence is prohibited. U. B. R. 1904, 1st Qr. Penal Code I=1 Cr. L. J. 552. The phrase constituting an offence as it occurs in the section must be understood to refer to the definitions of the offences as enunciated in the code itself, irrespective of the identity or non-identity whereby several acts are proved. 10 A. 58=A. W. N. 1887, 274.

Whether there are different definitions of the same offence or whether the same offence is provided for in different sections or by separate and different provisions in the code, the accused under no circumstances, should be sentenced to a greater punishment than the highest penalty contained in one of the provisions under which he may be convicted. 14 A. L. J. 738=17 Cr. L. J. 418=35 Ind. Cas. 978. An accused cannot in addition to being convicted under s. 147, be also convicted under s. 375 although it be shown that he himself, caused grievous hurt to the opposite party. 3 Pat. L. J. 641=48 Ind. Cas. 677; see also 51 C. 79=28 C. W. N. 347=81 Ind. Cas. 593=25 Cr. L. J. 945; 31 C. W. N. 532=28 Cr. L. J. 484=101 Ind. Cas. 650. House-breaking by night is not a necessary concommittant of the offence of rape though it may be the main and in fact the only object the accused may have in view. 75 Ind. Cas. 77=24 Cr. L. J. 877=1923 Lah. 291. Separate sentences for abetment of separate offences is quite legal. 1923 Cal. 403. Where a person is proved to have taken part in a particular dacoity and also to have been a member of a gang of dacoits, separate sentences could be passed on him. 10 O. & A. L. R. 988. The imposition of separate sentences under s. 342 I. P. Code read with section 149 is not legal. 40 C. L. J. 85; see also 8 C. W. N. 483.

This section may be invoked to relieve the offender under s. 323 if that is stated to be the common object of the unlawful assembly under s. 147. and separate sentences under ss. 147 and 323 or 325 read with s. 149 I. P. Code are illegal. 2 Pat. L. T. 91=61 Ind. Cas. 833=22 Cr. L. J. 449; see also 2 Pat. L. T. 316=63 Ind. Cas. 830=22 Cr. L. J. 702; 105 Ind. Cas. 828=A. I. R. 1927 Mad. 970=53 M. L. J. 656.

A Court cannot pass consecutive sentences in respect of conviction under ss. 394 and 397 based on the same set of facts. 89 Ind. Cas. 390=25 Cr. L. J. 1350. Preparation for committing dacoity and assembling for doing it are distinct offences. A. I. R. 1925 Lah. 119 (2). Separate sentences for the offence of rioting and hurt are legal when it is found that each person took an individual part in the assault. 41 C. L. J. 471=89 Ind. Cas. 241=26 Cr. L. J. 1297=A. I. R. 1925 Cal. 1039; 40 C. 511. There is nothing in section 71 that in any way restricts the power of the Court under s. 35 of Cr. Pro. Code of 1923. Therefore separate sentences can be passed under s. 35 as amended for an offence of house-breaking at night with intent to commit theft under s. 457 I. P. Code and of theft of ornaments from that house under s. 380 I. P. Code and the sentences of imprisonment can be made to run one after another. 88 Ind. Cas. 997=26 Cr. L. J. 1253=41 Cr. L. J. 563.

The force necessary to constitute the offence of rescuing a cattle may fall short of "causing bodily pain" and if further force is used which does cause bodily pain, the offences which are involved and are complete by mere use of criminal force have been exceeded and that excess constitutes another offence, viz, that of causing hurt or causing whatever more serious form of bodily hurt has been the result. In such a case separate sentences for the offences of causing hurt and of rescuing cattle may legally be passed. 39 M. L. T. 543=105 Ind. Cas 806=(1927) M. W. N. 850=53. M. L. J. 653. Where a person was tried on charges under ss. 366 and 376 I. P. Code, for having kidnapped and raped a married girl and convicted under both the sections and separate sentences were passed. *Held*, that the two offences did not form part of the same transaction, and that separate sentences could validly be passed and s. 71 I. P. Code was no bar to the same. A. I. R. 1927 Lah. 88=7 Lah. 484=99 Ind. Cas. 344=28 Cr. L. J. 136 ; see also 8 Bom. L. R. 120 ; 75 Ind. Cas. 77. Separate sentences for rioting and causing grievous hurt are illegal when the grievous hurt is not caused individually. 16 A. 121 ; 16 C. 442 (F. B.) ; 3 C. W. N. 761 ; 11 C. 349 ; 4 C. W. N. 245 ; 17 B. 260 (F. B.) ; 31 P. R. 1916 ; 4 P. R. 1901 ; 10 Pat. L. T. 136=116 Ind. Cas. 523 ; 10 Pat. L. T. 353=A. I. R. 1929 Pat 263 ; but see 7 A. 757 (F. B.) ; 10 A. 58. But when the grievous hurt is caused individually such sentences are legal. 17 B. 260 ; 19 C. 105 ; 12 C. 495 ; 7 A. 29. Where the common object of the rioters was the rescue of the first accused from a lawful custody, held that, although both the offences of rioting, and rescuing from custody may have formed "parts of one transaction," each of the offences was several and distinct. 1 Weir 34. A Court cannot legally pass separate sentences under ss. 307 and 392 I. P. C. with reference to the provisions of s. 71 of the same Code. 8 C.P. L.R. Cr. 23. The first clause of this section precludes the imposition of separate sentences for the two offences in ss. 326 and 397. 30 Ind. Cas. 439=16 Cr. L. J. 615=1915 M. W. N. 544. The infliction of separate punishments under sections 352 and 342 of the Code is not in violation of the law provided that the aggregate punishment awarded is not in excess of what the Court could inflict for either of the offences. 4 C. L. J. 90=4 Cr. L. J. 69. Where the intimidation by throwing a knife forms part of the assault in the case, an accused cannot be punished both under sections 354 and 506. 12 Cr. L. J. 242=10 Ind. Cas. 771 ; see also 6 L. B. R. 160=19 Ind. Cas. 167=14 Cr. L. J. 167. Where the accused stole eight buffaloes belonging to two different persons, he should be charged with stealing eight buffaloes belonging to A. and B. L. B. R. (1872—1892). 475. If the offence committed by a prisoner is made up of parts lurking, house-trespass and theft, a double conviction is illegal. Book-Cir 2 of 1864. Oudh ; L. B. R. (1872—1892) 390. When the members of an unlawful assembly become guilty of rioting and when violence is used, they cannot be convicted and sentenced separately for rioting and causing hurt. 161 P. L. R. 1911=12 Cr. L. J. 236=10 Ind. Cas. 278. Where the accused being convicted of rioting under section 147, and of causing grievous hurt in the course of the riot under sections 149 and 325, was separately sentenced for each offence, held that section 71 was inapplicable to the case and that the separate sentences were therefore justifiable. 8 P. R. 1895 Cr., see also 9 A. 645 ; 52 P. R. 1901 ; 16 C. 725 ; 17 B. 290 (F. B.) ; 31 P. R. 1894 Cr ; 9 W. R. Cr. 5 ; 7 W. R. Cr. 60 ; 11 C. 349 ; 7 A. 757 (F. B.) ; 16 C. 442 (F. B.). A person having four counterfeit coins in his possession, but uttering only one of them, cannot be separately convicted under s. 240, I. P. Code, respecting the one coin, and under s. 293, regarding the possession of the other three, as an offence under s. 240 implies prior guilty possession. Rat. Un. Cr. C. 202.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Objects. This provision is intended to prevent an offender whose guilt is fully established from eluding punishment on the ground that the evidence does not enable the tribunals to pronounce with certainty under what penal provision his case falls. Whether the doubt is merely between an aggravated and mitigated form of the same offence or between two offences neither of which is a mitigated form of the other, the offender must be punished for the offence to

which the lowest punishment is provided. If the same punishment is provided for each of the offences, the offender of course is liable to that punishment.—*Morgan and Macpherson.* If a conviction is justified only on one or other of the heads, and it is uncertain on which of the two occasions falsehood was uttered, then this section applies. Rat. Un. Cr. C. 336.

Cases.—When an accused person is convicted in the alternative, one of the offences of which he might be guilty being murder punishable under s. 302 of Indian Penal Code, s. 72 so far overrides s. 302 as to admit, in such case, of a less punishment than transportation for life being inflicted. 26 A. W. N. 93=3 Cr. L. J. 369. The causing of death by an act done with the intention of causing death cannot alternatively be the offence of murder or the offence of culpable homicide not amounting to murder, neither, section 236 Cr. Pro. Code, nor s. 72 I. P. Code being applicable to the case. 11 P. R. 1887 Cr. Alternative charges for offences under the Penal Code and special laws are not permissible. 10 Ind. Cas. 168=12 Cr. L. J. 224=5 S. L. R. 16. The provisions of this section and of ss. 236 and 367 (3) Cr. Pro. Code apply only to cases where the actual facts are established but there is a doubt as to the application of the law to the proved facts. 11 P. R. 1913 Cr.=14 Cr. L. J. 664=21 Ind. Cas. 904=271 P. L. R. 1914 ; see also 11 P. R. 1887 ; 7 N. W. P. 137 ; 21 C. 955.

Solitary confinement.

73. Whenever any person is convicted of an offence for which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole according to the following scale, that is to say :—

a time not exceeding one month if the term of imprisonment shall not exceed six months ;

a time not exceeding two months if the term of imprisonment shall exceed six months, and "shall not exceed one year" ;

a time not exceeding three months if the term of imprisonment shall exceed one year.

Amendment.—The words quoted have been substituted by the Indian Penal Code Amendment Act (VIII of 1882) s. 5.

Period of solitary confinement. The intention of this section is that a term of three months is the maximum period of solitary confinement that can be judicially awarded in a continuous period of imprisonment. U. B. R. (1897—1901) Vol. I, 247.

Solitary confinement cannot be awarded when a person is punished under a local or special law. 76 Ind. Cas. 184. ; L. R. 5 A. 19 Cr. ; A person cannot be kept in solitary confinement for the whole term of his imprisonment. Under this section it is to be imposed at intervals. 3 B. L. R. A. Cr, 49. This section provides that whatever the length of the sentence may be, a solitary imprisonment for a period exceeding 3 months cannot be passed (U. B. R. 1892—1896) Vol I, 146 ; 68 Ind. Cas. 817. Even cumulative sentences of solitary confinement exceeding 3 months are illegal. U. B. R. (1802—1896) Vol. I, 146 ; 5 C. P. L. R. 23 : 37 P. R. 1905 Cr. ; 13 P. R. 1877. Solitary confinement in lieu of fine is illegal. 26 P. R. 1878 Cr. ; 36 A. 495 ; 20 P. R. 1896 ; 9 P. R. 1882 : 53 P. R. 1887. Solitary imprisonment is legal only if a person is convicted under this Act. 46 A. 114=21 A. L. J. 914=1924 All. 319 ; 24 P. R. 1879 ; 76 Ind. Cas. 184 ; 120 P. R. 1866 ; 20 P. R. 1870 ; (1899) P. J. 554 ; 14 C. P. L. R. 39 : 1927 All. 478 ; 102 Ind. Cas. 342. The exact period of solitary imprisonment should be mentioned. 33 P. R. 1869. In a security proceeding under s. 110 Cr. Pro. Code solitary confinement cannot be ordered. 53 M. L. J. 656=105 Ind. Cas. 828. Where a person is imprisoned for failing to provide security, he cannot be kept in solitary confinement. A. I. R. 1933 All. 676=1933 A. L. J. 777=1933 Cr. C. 1188.

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall, in no case, exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days, in any one month, of the whole imprisonment

awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Notes. Solitary imprisonment must not be imposed for the whole term of the imprisonment. 3 B. L. R. A. Cr. 49.

75. Whoever having been convicted,—

(*a*) by a Court in British India of an offence punishable, under Chapter XII or Chapter XVII of this Code, with imprisonment of either description for a term of three years or upwards, or,

(*b*) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor-General in Council, or of any Local Government, of an offence which would, if committed in British India, have been punishable under those Chapters of this Code with like imprisonment for the like term,

Enhanced, punishment for certain offences under chapter XII or chapter XVII after previous conviction.

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term,

shall be subject, for every such subsequent offence, to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

Amendment—This section has been substituted for the original by Act III of 1910.

Scope.—Under this section, an accused renders himself liable to enhances punishment by reason of previous convictions against him only if such convictions were made before he committed the offence he stands charged with. 9 L. B. R. 77. In the case of men with previous convictions, regard should be had to their career and to the time that had elasped between the convictions passed upon them. This section was not intended for the purpose of automatically enhancing by a kind of geometrical progression the sentence to be passed after a previous conviction. The reason for passing a more severe sentence in the case of a criminal with a previous conviction is primarily to protect the society from the predations and offences committed by a habitual rogue, who has shown no signs of repentance. A Magistrate or Judge should make an enquiry into the repute and the antecedent behaviour of a man whom he proposes to sentence severely. 19 Cr. L. J. 655. This section properly applies to cases where it is intended to pass sentences more severe than those provided in the Penal Code for the particular offences charged. 52 Mad. 358=115 Ind. Cas. 483=30 Cr. L. J. 471=A. I. R. 1929 Mad. 306. It must be something apart from the nature of the offence such as youth, age, illness or sex and the interval of time which has lapsed between the accused person coming out of prison after serving the last sentence and the commission of the offence that should be considered for reduction of sentence. A. I. R. 1929 Mad. 841=53 M. 80=57 M. L. J. 743=30 M. L. W. 710=1929 Cr. C. 609. Where the accused was bound over under s. 101 Cr. Pro. Code, it is no ground for enhanced punishment. A. I. R. 1923 Lah. 294 ; see also A. I. R. 1934 Sind. 195=28 S. L. R. 199. Enhancement of sentence should not rest on previous security bond when accused is not questioned about it. A. I. R. 1930 Sind. 58=125 Ind. Cas. 46. Previous conviction must be proved strictly and in accordance with law 43C. 1128=17 Cr. L. J. 185=20 C. W. N. 725. Previous convictions should be proved according to s. 511 Cr. Pro. Code and not merely by admission of accused. A. I. R. 1929 Lah. 768=33 P. L. R. 530=30 Cr. L. J. 1082=119 Ind. Cas. 429 ; 36 P. L. R. 7 ; 35 P. L. R. 697=A. I. R. 1934 Lah. 693. Although accused admits previous conviction, formal charge under s. 75 is necessary. A. I. R 1930 Lah. 544 129 Ind. Cas. 300. This section has no application in case of a single previous conviction about 10 years before. A. I. R. 1934 Sind. 195=28 S. L. R. 199=1934 Cr. C. 1405. This section does not apply to attempts punishable under s. 511. 106 Ind. Cas. 340 ; see also 22 Cr. L. J. 750=24 O. C. 260=64 Ind. Cas. 142 ; 88 Ind. Cas. 724=A. I. R. 1926 All 144=23 A. L. J. 926=26 Cr. L. J. 1204 ; A. I. R. 1933 Lah. 433=1933 Cr. C. 673 ; 14 C. P. L. R. 72 ; 14 P. R. 1906 Cr. This section should also not be used when the previous offence took place as much as 12 years before the present one and there is only one previous

offence. 106 Ind. Cas. 448. A previous security order under section 110 Cr. Pro. Code, is irrelevant for the purpose of this section. 110 Ind. Cas. 804=29 Cr. L. J. 772. There is no justification for the view that whenever there is a previous conviction within the terms of this section, against an accused person, the Court is bound to pass an enhanced sentence on him, that is to say a sentence wholly disproportionate to the actual offence under investigation. This section does not empower a Court to pass an enhanced sentence merely because there are previous convictions against the accused person although it enables the Court to sentence a person to transportation for life or to imprisonment up to 10 years. This section enables a Court to pass a sentence commensurate with the nature of the offence on the accused person. It does not empower a Court to pass a sentence disproportionate to the nature of the actual offence ; recourse should not be had to this section if the punishment provided for the offence is sufficient. (1919) Pat. 463 ; see also 30 P. L. R 530=119 Ind. Cas. 429=30 Cr. L. J. 1082. Where an accused is charged under the provisions of s. 75 it is absolutely essential that the previous conviction in question should be clearly and legally proved. The proper way to prove such a conviction is either (1) by an extract certified under the hand of the officer in whose custody are the records of the Court which convicted ; or (2) by a certificate under the hand of the officer in charge of the jail in which the punisnment or any part thereof was undergone, or else by production of the actual warrant of commitment under which the punishment was suffered. In every case there must be evidence as to the identity of the accused person with the person so convicted. A.I.R. 1928 Lah. 107. A Magistrate can take into consideration the previous conviction at the time of awarding sentence independently of s. 75 A. I. R. 1928 (F. B.) R. 200. Under this section the Sessions Judge had no power to order transportation for ten years. A. W. N. 1883, 225. In a second conviction, a Magistrate cannot lawfully pass a sentence of more than double the amount of punishment, which might be passed on a prisoner for a first conviction of theft. S. C. 79 Oudh. This section does not apply to cases which are confined to s. 511. 17 A. 123=15 A. W. N. 23 ; 6 A. W. N. 255 : see also 17 A. 120 ; 14 P. R. 1906=5 Cr. L. J. 85 ; 27 A. W. N. 178=6 Cr. L. J. 7 ; 769 Ind. Cas. 142=22 Cr. L. J. 750. A sentence combining imprisonment and whipping cannot be passed on a summary trial, but only when there is a previous conviction. 12 C. P. L. R. Cr. 7. This section has no application where the subsequent conviction is for technical theft. 3. P. W. R. 1914 Cr.=4 P.L. R. 1914=15 Cr. L. J. 183=22 Ind. Cas. 759. This section has no application in the case of a person who is guilty of an offence under s. 403 and who was previously convicted under Chapter XVII of the Code. 11 Ind. Cas. 623=36 P. W. R. 1911 Cr.=72 Cr. L. J. 439. This section has no application in convictions under s. 417 in as much as an offence under section 417 is not punishable with 3 years imprisonment or upwards. 190, P. L R. 1889 Cr. A second class Magistrate cannot pass an enhanced sentence under this section. Rat. Un. Cr. C. 688. Where enhanced sentences are contemplated under this section, a separate head of charges must be distinctly drawn. 139 P. L. R. 1911=10 Ind. Cas. 241=12 Cr. L. J. 233=40 P. W. R. 1911 Cr. But the charge need specify the extent of the former punishment 4 M. H. C. App. 11. This section is inapplicable where the latter offence is not punishable under Chapter XVII of the Code or with imprisonment for 3 years. A W. N. 1882, 178 ; see also 2 Pat. L. R. 205 Cr. Where a person has been previously convicted of theft in a foreign state which has adopted the Penal Code, this section does not apply. 2 P. R. 1884 Cr. ; 17 P. R. 1913 Cr. ; 18 A. L. J. 58. A previous order under s. 118 of the Code of Criminal Procedure cannot be taken into account in inflicting an enhanced sentence on a person under this section. L. B. R. (1872-1892) 490. Enhanced sentenced under this section can be passed against an habitual offender. L. B. R. (1872-1892) 291 ; see also L. B. R. (1872-1892) 449. This section contains no power to fine for an offence punishable under Chapter XII or Chapter XVII, when such offence is committed after a previous conviction of an offence punishable under one of those Chapters. 1. L. B. R. 57. Previous conviction before Court-martial cannot be considered for enhancement under s. 75. 131 Ind. Cas. 445. 1933 Cr. C. 148=A. I. R. 1933 Pesh. 6. But conviction by Council of Elders under Sind. Frontier Regulation amounts to previons conviction. 18 Cr. L. J. 909=11 S. L. R. 46=42 Ind. Cas. 141 ; See also A. I. R. 1933 Pesh. 6=1933 Cr. C. 148=141 Ind. Cas. 445. In offences under s. 392 or s. 395 read with s. 75, accused is liable to enhanced sentence. A. I. R. 1934 Oudh. 122 ; see also A. I. R. 1933 Lah. 147=145 Ind. Cas. 1002=34 Cr. L. J. 1153=34 P. L. R. 903=1933 Cr. C. 269. Sentence should be commensurate in a trivial offence by a habitual offender. 1933 M. W. N. 1259. For meaning of "punish-

able" and for punishment of a habitual offender *vide* A. I. R. 1933 Mad. 268=34 Cr. L. J. 526=1932 M. W. N. 122=1933 Cr C. 371. Previous convictions should not prejudice Court. A. I. R. 1930 All. 17=1930 Cr. C. 33=31 Cr. L. J. 8=120 Ind. Cas. 202. Where an accused was convicted under ss. 379 and 403 at different times, only first conviction should be considered to avert punishment for subsequent offence. 29 Cr. L. J. 772=110 Ind. Cas. 804. Where an acused has been convicted under s. 326, Penal Code, Magistrate can take into consideration the previous conviction at the time of awarding sentence independently of s. 75. A. I. R. 1928 Rang. 200 (F. B.)=6 Rang. 39=111 Ind. Cas. 453. A previous conviction under s. 369 cannot be taken into consideration for enhancement of sentence. A. I. R. 1923 Lah. 285=6 L. L. J. 110=24 Cr. L. J. 944=75 Ind. Cas. 368. Where previous conviction is under s. 380, and subsequent conviction is under s. 448, section 75 is not applicable. A I. R. 1924 Pat. 665=26 Cr. L. J. 282=84 Ind. Cas. 346. Section 75 does not apply to an accused who commits second offence after the date of the first offence but before his conviction of the latter. A. I. R. 1926 Bom. 305=28 Bom. L. R. 484=27 Cr. L. J. 726=95 Ind. Cas. 54. Section 75 restricts enhancement of punishment to cases of previous convictions before commission of particular offence charged. 9 L. B. R. 77=19 Cr. L. J. 47=11 Ber. L. T. 107=42 Ind. Cas. 1007. Conviction under some other law will not attract operation of s. 75. A. I. R. 1935 Bom. 188.

The summary procedure laid down in Chapter XXII, Code of Criminal Procedure, 1882, is not adapted to the trial of offences to which this section applies. L. B. R. (1872-1892) 386. A sentence of seven years' transportation on a fifth conviction for theft is not excessive. 4 U. B. R. (1892-1896) Vol. I. 147. The evidence of previous conviction must be clear and precise. 14 W. R. Cr. 7 : see also 26 P. L. R. 843. It is not the intention of the legislature that a previous convfction should enormously enhance the heinousness of petty offences. 1 C. L. R. 481.

For the application of this section, the previous conviction must be under the Code. 10 C. L. R. 392. The object of this section is to pass an additional sentence on the accused not a less severe sentence. 9 C. 877. This section does not authorize a Magistrate to pass a sentence beyond his jurisdiction. 6 M. H. C. R. App. 2.

Where a long time has elapsed in the case of an accused from his last conviction, this section should not be applied. 99 Ind. Cas. 416=28 Cr. L. J. 160=A. I. R. 1927 Lah. 647 ; see also 96 Ind. Cas. 400=27 Cr. L. J. 944 ; 30 P. L. R. 52=114 Ind. Cas. 719. Previous conviction of theft and burglary should not be taken into account in increasing the sentence for an offence under s. 419. 100 Ind. Cas. 536=28 Cr. L. J. 312. This section has no application where the offence for which the sentence is passed is committed after the date of the first offence but before conviction for the same. 28 Bom. L. R. 484=27 Cr. L. J. 726=95 Ind. Cas. 726=A. I. R. 1926 Bom. 305 see also 9 L. B. R. 77. This section applies even where there is only one previous conviction. 94 Ind. Cas. 365=8 L. L. J. 146=27 Cr. L. J. 621=27 P. L. R. 267. Conviction of offence under s. 369 is insufficient for enhancement. 75 Ind. Cas. 368 =24 Cr. L. J. 944.

That a man has been convicted several times is no reason for passing a heavy sentence on him for an offence which is trivial in itself. A. I. R. 1929 Lah. 787. An accused person cannot be sentenced to enhanced punishment as an old offender until there is some proof or admission by him before the Court that he is the person who committed the previous offences. 52 M. 795=57 M. L. J. 270 ; 30 Cr. L. J. 1082=A. I. R. 1929 Lah. 768. Punishment inflicted under s. 75 of the I. P. C., is not included in the punishment for non-payment of fine which "shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence." S. C. 175, Oudh. Greatly enhanced sentence should not be passed for trivial offence. A. I. R. 1930 Lah. 100. Previous conviction 18 years old is not good ground for heavy sentence. A. I. R. 1930 Sind. 58. Enhancement of sentence should not rest on previous security bond when the accused is not questioned about it. A. I. R. 1930 Sind. 58.

Clause (b)—The previous conviction of the accused by the Court of a Native state does not come within s. 75. 18 A. L. J. 58=21 Cr. L. J. 144=54 Ind. Cas. 624. Where the accused was previously convicted outside British India, the Magistrate is not bound to consider it in determining the sentence even though it might have been open to him to have considered them. A. I. R. 1935 Mad. 198.

CHAPTER IV.

GENERAL EXCEPTIONS.

General exceptions.—Where an accused person has raised pleas inconsistent with the defence which would bring his case within one of the general exceptions in the Indian Penal Code, he cannot, in appeal, set up a case, upon the evidence taken at his trial, that his act came within such general exceptions. The circumstances which would bring the case of an accused person within any of the general exceptions in the Indian Penal Code can and may be proved from the evidence given for the prosecution or to be found elsewhere in the record. In the absence of such evidence, the Court is not competent to assume the existence of those circumstances, more particularly when the pleas taken are inconsistent with the assumption that such circmstances might have existed or that doubt may arise in consequence of such assumption and the accused ought to be given the benefit of the doubt. 7 A. L. J. 438=32 A. 451= 11 Cr. L. J. 374=6 Ind. Cas. 589. Where a defamatory statement was made by a person as a witness in a case, but the person was not bound by law to go into the witness box and make it, this section did not apply. 18 A. L. J. 846.

Prince's case on mistake of facts.—The following rules were laid down in Prince's case (*R* v. *Prince*, L. R. 2 C. C. 154) :—

(1) That when an act is in itself plainly criminal, and is more severely punishable if certain circumstances, co-exist,—ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence.

(2) That where an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge.

(3) That even in the last named cases, the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstances which alters the character of the act, or to a belief in its non-existence.

(4) Where an act which is in itself wrong is, under certain circumstances, criminal ; a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.—*Vide Mayne's Criminal Laws*, ss. 133—134.

Object of the Chapter—"This chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations. Some limitation relate only to a single provision or to a small class of, provisions. Thus the exception in favour of true imputations on character (section 499) is an exception which belongs wholly to the law of defamation, and does not affect any other part of the code. The exception in favour of the conjugal rights of the husband (s. 376) is an exception which belongs wholly to the law of rape, and does not affect any other part of the code. Every such exception evidently ought to be appended to the rule which it is intended to modify.

"But there are other exceptions which are common to all the penal clauses of the code, or to a great variety of clauses dispersed over many chapters. Such are the execptions in favour of infants, lunatics, idiots, persons under the influence of delirium ; the exceptions in favour of acts done by the direction of the law, of acts done in the exercise of the right of self-defence, of acts done by the consent of the party harmed by them. It would obviously be inconvenient to repeat these exceptions several times in every page We have, therefore, placed them in a separate chapter, and we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision shall be construed subject to the provisions contained in that chapter. Most of those exceptions appear to us to require no explanation or defence. But the meaning and the ground of the rules laid down in clause 88 and in the three following clauses may not be obvious at first sight. On these, therefore, we wish to make a few observations.

"We conceive the general rule to be, that nothing ought to be an offence by reason of any harm which it may cause to a person of ripe age who, undeceived, has given a free and intelligent consent to suffer that harm or to take the risk of that harm. The restrictions by which the rule is limited affect only cases where human life is concerned. Both the general rule and the restrictions may, we think, be easily indicated." *Note B.*

"We propose (clauses 74 to 84) to except from the operation of the penal clauses of the Code large classes of acts done in good faith for the purpose of repelling un-

lawful aggressions. In this part of the chapter we have attempted to define, with as much exactness as the subject appears to us to admit, the limits of the right of private defence. It may be thought that we have allowed too great a latitude to the exercise of his right ; and we ourselves are of opinion that if we had been framing laws for a bold and highspirited people, accustomed to take the law into their own hand, and to go beyond the line of moderation in repelling injury, it would have been fit to provide additional restrictions. In this country the danger is on the other side ; the people are too little disposed to help themselves ; the patience with which they submit to the cruel depredations of gang-robbers, and to trespass and mischief committed in the most outrageous manner by bands of ruffians, is one of the most remarkable, and at the same time one of the most discouraging symptoms which the state of society in India presents to us. Under these circumstances we are desirous rather to rouse and encourage a manly spirit among the people than to multiply restrictions on the exercise of the right of self-defence. We are of opinion that all the evil which is likely to arise from the execution of that right is far less serious than the evil which would arise from the execution of one person for over-stepping what might appear to the Courts to be the exact line of moderation in resisting body of dacoits." *Note B.*

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it.

Act done by person bound, or by mistake of fact believing himself bound by law.

Illustrations.

(*a*) A, a soldier, fires on a mob by the order of his superior officer, in comformity with the commands of the law. A has committed no offence.

(b) A. an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Application.—In its application to Hill-tribes to which the Kochin Hill-tribes Regulation (1 of 1895) is applied, the Code is to be read as if the following additional section were inserted.—

"75 A. Notwithstanding anything in this Code, or in any other enactment for the time being in force, a person convicted of any offence punishable under this Code or under any other enactments shall be punishable with fine in lieu of, or in addition to, any other punishment to which he may be liable.

Scope.—"Ss. 76 & 79 relate to the case of person who are and who justifiably believe that they are acting in conformity with law. Where their acts are, on their face, legal, of course no further question can arise. But cases of considerable difficulty occur where persons Act under superior, or even the highest authority, when the orders given to them are not in accordance with the usual working of the law. Such orders may be absolutely illegal, or they may be legalized by an emergency which sets aside the ordinary procedure applicable to similar cases, or they may be done by virtue of a power which stands above the law, and is exempt from its jurisdiction"—*Mayne's Criminal Law.* A police-officer, is liable to punishment for carrying out the illegal act under the orders of his superior officer. L. B. R. (1872-1892), 164. The rule as regards mistake of fact is thus stated by *Stephen J.* in *Reg.* v. *Tolson*, 23 Q. B. D. at p. 188 : "I think it may be laid down as a general rule, that an alleged offender is deemed to have acted under that state of facts which he in good faith, and on reasonable grounds, believed to exist when he did that act alleged to be an offence." 26 Bom. L. R. 138. A wrongful intent being the essence of every crime, it necessarily follows that whenever one without fault or carelessness is misled concerning facts and acts as he would be justified in doing were they what he believes them to be, he is legally innocent the same as he is innocent morally. The rule in morals is stated by *Wayland* to be that if a man "know not the relations in which he stands to others, and have not the means of knowing them, he is guiltless. If he knew them, or have the means of knowing them, and have not improved these means, he is guilty." *Wayland, Moral Science*, 81. The legal rule is enunciated by *Baron Parke*, as follows : "The guilt of the accused must depend on the circumstances as they appear to him." *Reg* v. *Thorburn*, 1 Den. C. C. 387 ; *Reg* v. *Cohen*, 8 Cox. C. C. 41 ; *Bishops Cr. Law* Vol. I. p. 205. See also 17 P. R. 1883 Cr. "So" says *Mr. Kenny* "our criminal law often allows mistake or ignorance to afford a good defence by showing, even where there has been an *actus reum* that no sufficient *mens rea* pre-

ceded it. But such a defence can only arise when three conditions are fulfilled :—(1) The first condition is that the mistake must be of such a character that, had the supposed circumstances been real, they would have prevented any guilt from attaching to the person in doing what he did..... (2) A further condition is that the mistake must be a reasonable one.....(3) The final condition is, that the mistake however reasonable, must not relate to matters of law but to matters of 'fact'. For a mistake of law even though inevitable, is not followed in England to afford any excuse for crime. *Ignorantia juris neminem excusat.*" *Outlines of Criminal Law pp 65—67.* "At common law an honest and reasonable belief in the existence of facts, which, if true, would make the act for which the prisoner is indicated an innocent act has always been held a good defence"....."Honest and reasonable mistake of facts stands in fact on the same footing as absence of the reasoning faculty (infant), or perversion of that faculty as in lunacy". *R.* v. *Tolson*, 23 Q. B. D. 168 (181) ; see also *Bank of N. S. W.* v. *Piper*, (1897) A. C. 383, 390; *R.* v. *Prince*, L. R. 2 C. C. R. 154. In *Toppen* v. *Marcus*, (1908) 2 Ir. Rep. 423, 425, *Palles C. B.* adop ing in substance the opinion of *Wright J.* in *Sherras* v. *DeRatzen*, (1895) 1 Q. B. 918, 921 said : "There is a presumption that *mens rea*, a knowledge of the facts which render the act unlawful is an essential ingredient in every criminal offence. That presumption is however, liable to be displaced by the words of the Statute creating the offence or the subject matter with which it deals, and both must be considered". *Russ Cr. Law* Vol. I p. 102. Section 76 does not apply to accused's belief with regard to age of girl, in a conviction under s. 361. A. I. R. 1929 Pat. 651=1929 Cr. L. J. 379. In an offence arising out of an advocate's letter to Magistrate demanding return of bribe, alleged instruction of client is no defence. A. I. R. 1931 Rang, 83=132 Ind. Cas. 553=32 Cr. L. J. 934=1931 Cr. C. 371. Where police acts under invalid order it is a mistake of fact and police is protected. 22 Cr. L. J. 5=47 C. 818=59 Ind. Cas. 37.

Mistake of law—Vide notes under section 79.

Bound by law.—Where a defamatory statement was made by a person as a witness in a case, but the person was not bound by law to go into the witness box and make it, this section is not applicable. 18 A. L. J. 846=57 Ind. Cas. 84=21 Cr. L. J. 564.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Object.—"One who serves in a judicial capacity is required to exercise a judgment of his own and as his duty obliges him to decide all questions of law and fact which are submitted for his judgment he is not punishable for error or mistake whether of fact or law. This large exemption is conferred on him when acting judicially, not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives to him but also in cases where he, in good faith exceeds his jurisdiction and has no lawful powers."—*Morgan and Macpherson.* In *Kemp* v. *Neville*, 10 C. B. N. S. p. 54 *Earle C. J.* observed : "The rule that a judicial officer cannot be sued for an adjudication, according to the best of his judgment, upon a matter within his jurisdiction, has been uniformly maintained." As regards their criminal liability *Cockburn C. J.* thus observed in *Reg.* v *Nelson*, Cockburn pp. 124, 156: "When there is jurisdiction but the jurisdiction is exercised under a misapprehension, either with reference to a person not within it, or in excess of the power of the tribunal, in such cases the persons acting with judicial authority would not be criminally responsible." See also 2 M. I. A. 293 ; 4 M. I. A. 353 ; 14 B. L. R. 254, 257 ; *Toxer* v. *Child*, 7 E. & B. 377 ; *R.* v. *Loggen*, 1 Str. 74 ; *Anderson* v. *Gorrie*, (1895) 1 Q. B. 665. The very existence of the exceptions to s. 499 indicates that the provisions of s. 77 cannot by themselves cover the case of remarks made by a Judge or Magistrate in the course of his office, so as to exempt him from any liability of section 500. A. I. R. 1934 Nag. 123=17 N. L. J. 43=1934 Cr. C. 515=35 Cr. L. J. 947=30 N. L. R. 234=149 Ind. Cas 140. Where an act is done by Magistrate in official capacity in performance of official duty even if he has exceeded his powers, complaint cannot be entertained without sanction of Local Government. A. I. R. 1935 Mad. 319.

Act done pursuant to the judgment or order of Court.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have

had no jurisdiction to pass which judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Scope.—The protection given under this section to ministerial officers acting under the authority of a Court of Justice is in terms rather less than that which is given to them against civil suits by Act VII of 1850,and rather more than is given to the public generally by s. 79. *Mayne's Criminal Law.* Under this section where the Court had no jurisdiction to issue an order, it is necessary further to show that the officer acting upon tbe order in good faith believed that the Court had jurisdiction. On the other hand, this section goes beyond s. 79 since under the former section a mistake in law may be pleaded as justification while under the latter section the mistake must be one of fact. Practically the burden of proof thrown upon the ministerial officer will vary very much according to his position, and to the amount of care and knowledge which he is expected to excrcise in that position. Every such officer will be held harmless, if he acts on a warrant which is valid on its face, and which is issued by a person who had jurisdiction to issue it. It is neither his right nor his duty to go behind the warrant. *Herdson* v. *Preston*, 21 Q. B. D. 362 cited in *Mayne's Criminal Law* § 150. This section does not extend to the oral order of a Judge. 4 L. B. R. 253=8 Cr. L. J. 68. Where a person exceeds the power given to him by the warrant he is liable. 7 B. H. C. R. 83 ; 12 W. R. 329 ; 8 B. H. C. R. (A.C.). 177.

79. Nothing is an offence which is done by any person who is justified by law, or who, by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified by law.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Scope.—The protection of this section is, it seems, given only where there is some law or colour of law to justify what is done ; it extends not to things the doing of which, though not prohibited by any law, cannot be said to be justified—*Morgan and Macpherson.* Protection under s. 79 Penal Code, is protection against conviction while that under s. 132 Cr. Pro. Code is protection against trial. 143 Ind. Cas. 115 =34 Cr. L. J. 528=1933 M. W. N. 1225=1933 Cr. C. 371=A. I. R. 1933 Mad. 268. Where there is no good faith s. 79 does not apply. A. I R. 1922 All. 264=23 Cr. L. J. 81=65 Ind. Cas. 433.

When an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then the ignorance of such circumstances is an answer to a criminal charge. 1 Weir 43.

Although ignorance of law does not excuse a person, who does an act, which is an offence irrespectively of any guilty knowledge on the part of the alleged offender yet when, to constitute the offence, it must be shown that there was a certain knowledge, the offence, is not committed by one, who acts without that knowledge and it is immaterial whether the absence of the knowledge required to constitute the offence proceeded from ignorance of law of ignorance of fact. For though ignorance of law is no ground of defence, it is evidence of mental condition. 1 Weir. 74. There is no justification within the meaning of s. 79 for a husband either under the Hindu law or Mahomedan law to use force or restraint to compel his wife to live with him in spite of the general English law and the provisions of the I. P. Code, ss. 339, 340, 350. *Emperor* v. *Ramlo*, 12 S. L. R. 29=47 Ind. Cas. 807=19 Cr. L. J. 955.

The principle of this section, should not be applied to an offence created by the Forest Act for the protection of the government revenue and of property belonging to government. 15 M. L. T. 124=12 Cr. L. J. 171=22 Ind. Cas. 747=38 M. 773 ; 9 M. L. T. 216 ; but see 14 Bom. L. R. 365=15 Ind. Cas. 802=13 Cr. L. J. 530.

The law sets bounds to the extent to which human life might be endangered by mistakes arising from timidity so excessive as to become inexcusable when a little

ordinary precaution would prevent such mistakes from arising. L. B. R. (1893—1900) 221. When a village Revenue Officer exercising powers of village Magistrate in the latter's absence, sentenced a woman to be imprisoned for five hours he was excused under this section. 1 Weir. 74.

A constable is justified in arresting a person if he entertains a *bona fide* belief that he is a thief. 12 B 377 ; see also 2 W. R. Cr. 9. So a person deputed by Court to arrest a judgment-debtor is not liable to be punished where he detained the closed palanquin of a purdah lady on the *bona fide* belief that the judgment-debtor is escaping by that palanquin. 24 C. 885=1 C. W. N. 665. By detention of suspended police-officer under illegal circular order of the Commissioner of Police no offence is committed. 47 C. 818.

When an arrest is made *bona fide* in pursuance of the power contemplated under s. 59 of the Cr. Pro. Code and the person assisting believes in good faith by reason of a mistake of fact that a non-bailable offence had been committed, this section is a complete answer to the charge. 5 P. L. J. 129=1 P. L. T. 60=(1920) Pat. 76=54 Ind. Cas. 997=24 Cr. L. J. 213. In a case of defamation, plea of good faith cannot be made under s. 79 when it has failed under s. 499, exception 9. A. I. R. 1923 Cal. 470=27 C. W. N. 389=24 Cr. L. J. 248=50 C. 518=71 Ind. Cas, 792. A school-master inflicting corporal punishment necessary for school discipline is protected under ss. 79 and 89. A. I. R. 1926 Rang. 107=27 Cr. L. J. 636=3 Rang. 661=94 Ind. Cas. 412. Where a widow's mother-in-law abducts and compells her to marry, she is not protected. A. I. R. 1929 Lah. 713=30 P. L. R. 573=1929 Cr. C. 305.

Where accused assaulted a man believing him to be a ghost and the assault proved fatal, he was not guilty either under s. 302 or under s. 304. A. I. R. 1926 Lah. 554. Criminal trespass and assault caused under *bona fide* claim of right is not punishable. 91 Ind. Cas. 392=27 Cr. L. J. 88=23 L. W. 426=A. I. R. 1926 Mad. 349.

Where a police constable acts under colour of his office there is no right of private defence against the arrest effected by him even though such arrest was not justified by law. 106 Ind. Cas. 581=29 Cr. L. J. 69.

Mistake of law—The plea or excuse of ignorance applies only to ignorance or mistake of facts, and not to error of law. Ignorance of the law is not allowed to excuse any one who is of age of discretion and *compose mentes* from its penalties when broken. On an indictment for a common nuisance by keeping a lottery house the jury returned a verdict of guilty, with a recommendation to mercy, on the ground that 'perhaps he did not know that he was acting contrary to law.' This was ruled to be a verdict for the Crown, for ignorance of a Statute is no excuse if the Statute is violated. *R.* v. *Crawshaw*, 30 L. J. M. C. 58, 64. One feels compelled, with the late *Prof. Henry Sidgwick*, to regard the rule as "not a realisation of ideal justice, but an exercise of society's right of self-preservation." *Kenny's Outlines of Criminal Law p. 68.*

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

Accident in doing a lawful act.

Illustration.

A is at a work with a hatchet ; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Notes.—If the accused person puts forward a substantive defence of accident within the purview of this section, it is incumbent upon him to prove it. Where the evidence as to the deed is sufficiently convincing, it is immaterial to consider with what motive it was done, 19 C. W. N. 1043. Where a person has several intercourse with a girl of a little over twelve years of age, with her consent and thereby causes grievous hurt to her, he commits an offence under s. 325 I. P. Code, and is not protected under s. 80 or s. 88. 12 C. P. L. R. 11. When a person kills by shooting with an unlicensed gun by accident he is protected under this section and the fact that he was shooting with an unlicensed gun will not affect his immunity under this section. 3 Bom. L. R. 678 ; see also 5 P. R 1901 Cr.=51. P. L. R. 1901. If a shot while shooting pigs, hits spectator, it is pure accident. 130 Ind. cas. 654=31 P. L.

R. 955=32 Cr. L. J. 587=A. I. R. 1931 Lah. 54 ; see also A. I. R. 1927 Lah. 880=29 P. L. R. 45=9 L. L. J. 482. In case of a voluntary drunkenness the presumptions that the man intends the natural consequences of his act does not stand rebutted. A. I. R. 1932 Lah. 244=137 Ind. Cas. 86=33 Cr. L. J. 378=33 P. L. R. 130. Where a person in trying to hit another who was carrying a baby in her shoulder, actually hit the baby and as a result thereof the baby died, he cannot escape under this section as he was not there doing a lawful act in a lawful manner by lawful means. 9 O. & A. L. R. 203=74 Ind. Cas. 533=24 Cr. L. J. 789.

Such sports and exercises as tend to give strength, activity and skill in the use of arms, and are entered into as private recreations amongst friends without any intention to cause bodily harm, such as playing at cudgels, or foils, or sparring with gloves (*R.* v. *Young* 10 Cox. 371), wrestling by consent, or foot ball (*R.* v. *Bradshaw*, 14 Cox 83 ; *R.* v. *Moore*, 14 T. L. R. 229), are deemed lawful ; and if either party happens accidentally to be killed in such sports, it is excusable homicide by misadventure. Fort 259, 260 ; 1 East. P. C. 268. Homicide by misadventure is where in doing a lawful act, without any intention of bodily harm and using proper precautions to prevent danger, one man unfortunately happens to kill another. The act must be lawful ; for if it is unlawful, the homicide will amount to murder, or man-slaughter, according to the attending circumstances, and it must not be done with intent to inflict great bodily harm ; for then the legality of the act, considered in the abstract, would be no more than a mere cloak, or pretence and consequently avail nothing. The act must also be done in a proper manner, and with a due caution to prevent danger. 1 East. P. C. 261. *Russ. Cr.* 808. Thus, if people, in following their common occupations, use due caution to prevent danger, and nevertheless happen, unfortunately, to kill any one, such killing is homicide by misadventure. Thus where a person driving a cart or other carriage, happens to drive over another and kill him, if the accident happen in such a manner that no want of due care could be imputed to the driver, it will be accidental death, and the driver will be excused. *Fori.* 263 ; *Russ. Cr.* 808.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation,—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a*) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that before he can stop his vessel, he must inevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that danger which he intended to avoid was such as to excuse him in incurring the risk of runnig down C.

(*b*) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Principle—This section is intended to give legislative sanction to the principle that, where, on a sudden and extreme emergency, one or other of two evils is inevitable, it is lawful so to direct events that the smaller only shall occur.—*Mayne's Criminal Law.*

Scope—This section applies only to acts done without any criminal intention to cause harm. 5 B. H. C. R. Cr. 59. An act done for the prevention of greater harm falls under this section. 17 B. 626. Inoculation is not an offence in itself, though s. 6 of the Vaccination Act prohibits the practice within the areas to which the Act is extended. Being really practised as a remedial measure, this section will apply. L. B. R. (1893—1900) 45. The rule of English Common Law that it is open to a private citizen to arrest any person who is reasonably apprehended to commit a breach of the peace is not applicable to India. 46 M. 605=44 M. L. J. 655=17 L. W. 592=73 Ind. Cas. 343=24 Cr. L. J. 599=1923 Mad. 523 (F. B.) overruling, 44 M. 913.

Criminal intention.—In *Queen* v. *Tolson*, 23 Q. B. D. 168 *Will. J.* said : "It is, however, undoubtedly a principle of English Criminal Law, that, ordinarily speaking, a crime is not committed if the mind of the person doing the act in question be innocent." 'It is a principle of natural justice and of our laws,' says *Lord Kenyon C. J.*, 'that *actus non facit reum, nisi mens sit rea.*' The intent, and act must both concur to constitue the crime. *Fowler* v. *Paget*, 7 T. R. 509, 514. The guilty intent is not necessarily that of intending the very act or thing done and prohibited by common or statute law, but it must at least be the intention to do something wrong. That intention may belong to one or other of two classes. It may be to do a thing wrong in itself and apart from positive law, or it may be to do a thing merely prohibited by statute or by common law, or both elements of intention may co-exist with respect to the same deed. There are many things prohibited by no statute—fornication or seduction, for instance—which nevertheless no one would hesitate to call wrong ; and the intention to do an act wrong in this sense at the least must as a general rule exits before the act done can be considered as a crime. Knowingly and intentionally to break a statute must, I think, from the judicial point of view, always be morally wrong in the absence of special circumstances applicable to the particular instance and excusing the breach of the law, as for instance, if a municipal regulation be broken to save life or to put out a fire. But to make it morally right some such special matter of excuse must exist, inasmuch as the administration of justice and, indeed the foundations of civil society rest upon the principle that obedience to the law, whether it be a law approved of or disapproved of by the individual, is the first duty of a citizen. Although *prima facie* and as a general rule there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not."

"In all ordinary crimes" says Mr. Kenny "the psychological element which is thus indispensable may be fairly and accurately summed up as consisting simply in 'intending to do what you know to be criminal' *Outlines of Criminal Law* p. 41. In *Reg.* v. *Prince*, L. R. 2 C. C. R. 154, *Lord Esher M. R.* held that to constitute criminal *mens rea* there must always be an intent to commit some criminal offence. In that case, *Denman J.* was clearly of opinion that an intention to do anything that was legally wrong at all, even though it were no crime but only a tort, would be a sufficient *mens rea*. And seven other Judges, including *Bramwell B.* appear to have gone still farther, and taken a third view, according to which there is a sufficient *mens rea* wherever there is one intention to do anything that is morally wrong, even though it be quite innocent legally. If this last opinion be correct the rule as to *mens rea* will simply be that any man who does any act which he knows to be immoral must take the risk of its turning out, in fact, to be also criminal. But such a doctrine (even if it be right to construe the language of these seven Judges as maintaining it) must be considered highly questionable in view of the observations of *Cave J.* in *Reg.* v. *Tolson*, 23 Q. B. D. at p. 182 and of the express decision in *Reg.* v. *Hibbert*, L. R. I. C. C. R. 184 which none of the Judges who decided *Reg.* v. *Prince*, *supra* seem to have wished to overrule. A further argument against holding the intention of doing a merely moral wrong to be a sufficient *mens rea* is that in *Mac Naughtens' Case*, 10 Cl. & F. 200, the Judges, in defining the *mens rea* required insane criminals, were careful to speak only of "knowing that his act was contrary to the law of the land." *Kenny's Outlines of Criminal Law* p. 42.

In *Toppen* v. *Morcus*, (1908) 2 Ir. Rep. 423. 425, *Palles C. B*, adopting in substance the opinion of *Wright J.* in *Sherros* v. v. *de Ret Zen*, (1895) 1 Q. B. 918, 921, said : "There is a presumption that *means rea*, a knowledge of the facts which render the act unlawful, is an essential ingredient, in every criminal offence. That presumption is however liable to be displaced by the words of the statute creating the offence or the subject matter with which it deals, and both must be considered."

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Notes.—The presumption of English Law against the possibility of the offence of rape by a boy under 14 does not apply to India and the question is one of fact only. 13 A. L. J. 254=37 A. 197=16 Cr. L. J. 372=28. Ind. Cas. 658. Where the accused is under seven years of age, he cannot be prosecuted. 22 W. R. 27. But receiving stolen property from such a child is an offence, 1 Weir 470.

"Under the law of England a child under seven years of age cannot be guilty of any criminal offence, whatever evidence may be available of his possessing a mischievous discretion ; for *ex praesumtione juris* he 'has not discretion and understanding' (*Reniger* v. *Fogossa*, Plowd. 1, 19) ; and the presumption cannot be rebutted. 1 Hale, 27, 28. In consequence of this rule it has heen held illegal to arrest a child under seven found stealing wood. *Marsh* v. *Loader*, 14 C. B. N. S. 535." *Russ. Cr.* 58. Beyond the provisions of ss. 82 and 83 the Penal Code does not say anything about there being any age limit for capital sentence. 1930 M. W. N. 681=32 M. L. W. 220=129 Ind. Cas. 228.

Act of a child, above 7 and under 12, of immature understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Scope.—In construing this section, the capacity of doing what is wrong is not so much to be measured by years, as by the strength of the offender's understanding and judgment ; such a decree of malice may be disclosed by the circumstances of a case as to justify the application of the maximum *malitia supplet actatem* 1 W. R. Cr. 43.

Consequences of his conduct.—"The consequences of his conduct" referred to in the section, are not the penal consequences to the offender, but the natural consequences which flow from voluntary act. 22 W. R. Cr. 27. Where an accused person is under twelve years, the Magistrate should, under this section, find that the accused has attained sufficient maturity of understanding to judge of the nature and consequences of his act. 27 C. 133. Under the section a child between seven and twelve years of age cannot be held guilty of an offence with respect to any act unless it is shown that the child had attained sufficient maturity of understanding to judge of the nature and consequences of that act 5 M. L. T. 296. A child under 10 years of age was acquitted when charged with an offence of bigamy. Rat. Un. Cr. C. 876=Cr. Rg. 55 of 1896. The presumption of English Law, against the possibility of the offence of rape by a boy under 14 does not apply to India and the question is one of fact only. 13 A. L. J. 254=37 A. 178=16 Cr. L. J. 322=28 Ind. Cas. 658. The conviction of a person charged with receiving stolen property is not bad on the ground that the child who sold the property was under twelve years of age. 6 M. 373=7 Ind. Jur. 304. A boy of 12 can be convicted for an attempt to commit rape, 11 Bur. L. V. 135.

If a child commits an offence when he is unable to understand the nature of the offence it can hardly be supposed that he will be able to understand that he must plead his own lack of understanding when placed upon his trial. He cannot be debarred from the defence allowed him by this section merely because of his ignorance of Court procedure. 10 O. & A. L. R. 788. A person who is not under 12 years of age cannot come under this section even if it is proved that he was not of sufficiently mature mind. 10 Lah. L. J. 463=113 Ind. Cas. 11=30 Cr. L. J. 65= A. I. R. 1929 Lah. 64.

English Law—A child of seven and under fourteen is presumed to be incapable of criminal intent (*doli incapax*) ; but the presumption may be rebutted, and weakens with the advance of child's years towards fourteen. and the particular facts and circumstances attending the doing of the act and manifesting the extent of the understanding and disposition of the child. The evidence of criminal capacity which is allowed to displace the presumption (expressed in the phrase *militia supplet actatem*) should be strong and clear beyond all doubt and contradiction. *R. Vamplew*, 3 F. & F. 520 ; *Russ Cr.* 59.

84. Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

Principle—Since a criminal intent is an indispensable element in every crime, a person incapable of entertaining such intent cannot incur legal guilt."—*Bishop's Cr. Law* § 375.

Unsoundness of mind.—This section requires that the unsoundness of mind, in order to be valid ground of non-lability, must be such as would make the accused incapable of knowing the nature of the act, or that he is doing what is contrary to law. And it is for the defence to make out this ground of non-liability. 22 C. 817. See also 26 M. L. T. 361 ; 3 W. R. 9 ; 29 Cr. L. J. 204 ; 29 Cr. L. J. 827 ; 33 C. W. N. 136. The nature and extent of the unsoundness of mind must be such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. 23 C. 604. See also, 94 P. L. R. 1909 ; Rat. Un. Cr. C. 818 ; 17 C. P. L. R. 113 ; U. B. R. 1914, 3. Qr. 28. Mere fact that accused's mind is partially deranged or that he is subject to some uncontrollable impulse due to insanity would not do. So long as he is not insane as to make it impossible for him to know nature of act or to realize that his act is wrongful or contrary to law, he would be guilty of offence committed by him. A. I. R. 1933 All. 233=139 Ind. Cas. 147=33 Cr. L. J. 714=1932 Cr. C. 231 ; see also A. I. R. 1933 Lah. 123=34 Cr. L. J. 900=1933 Cr. C. 228=145 Ind. Cas. 119 ; A. I. R. 1927 Lah ; 52=28 Cr. L. J. 720. A. I. R. 1932 Lah. 1=32 P. L. R. 804=33 Cr. L. J. 186=135 Ind. Cas. 666 ; 33 C. W. N. 136. The accused's disease of the mind must have been formed before the act was done. ; A. I. R. 1929 Cal. 1=48 C. L. J. 307=33 C. W. N. 136 ; 28 Cr. L. J. 598=29 P. L. R. 104. Mere eccentricity or singularity of manner or uncontrollable impulse which in full reasoning powers or moral insanity is no defence. 33 C. W. N. 136=30 Cr. L. J. 494=115 Ind. Cas. 561. Evidence of premeditation, design or resistance to arrest negatives plea of insanity. Inference of insanity cannot be drawn from want of notice. *Ibid* ; see also 29 Cr. L. J.=1006=112 Ind. Cas. 222 ; A. I. R. 1928 Mad. 196=29 Cr. L. J. 63=55 M. L. J. 228=106 Ind. Cas. 559. Medical and legal standard of sanity is not identical A. I. R. 1923 Lah. 508=28 Cr. L. J. 395=77 Ind. Cas. 413 ; see also A. I. R. 1932 Oudh. 190=33 Cr. L. J. 542. Knowledge that an act is wrong along with unsound mind is not covered by the section. A. I. R. 1924 All. 13=46 A. 243=22 A. L. J. 116=81 Ind. Cas. 171. Previous and subsequent madness of accused should be convicted to infer insanity. A. I. R. 1923 All. 327=24 Cr. L. J. 225=45 A. 329=71 Ind. Cas. 689 ; see also A. I. R. 1934 Lah. 123=35 Cr. L. J. 869. Insane delusion or superstitous belief is not *per se* sufficient to exempt a murderer from criminal liability for his wrongful act, unless the impulse was such as to render him unconscious of what he was doing. 18 Cr. L. J. 766=41 Ind. Cas. 142=3 Pat. L. W. 356 ; see also 3 Pat. L. J. 291=19 Cr. L. J. 135=43 Ind. Cas. 423. Legal insanity means that the person is incapable of knowing the nature of the act or of realizing that the act is wrong or contrary to law. 32 Cr. L J. 816=131 Ind. Cas. 746. Where father kills a child and no motive is proved mental derangement should be proved. A. I. R. 1933 Nag. 307=1933 Cr. C. 1265. Court is not concerned whether s. 84 is too narrow or too drastic 135 Ind. Cas. 384=8 O. W. N. 1221=7 Luck 341=A. I. R. 1932 Oudh. 18. A person who though of unsound mind, knows that in killing another he is committing a wrongful act is not entitled to the benefit of this section 3 A. L. J. 463. The provisions of this section which are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords in *MacNaughten's* Case, show that it is only unsoundness of mind which materially impairs the cogitative faculty of the mind that can form a ground of exception from criminal responsibility, the nature and extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. A person subject to insane impulses is not entitled to exemption from criminal liability if his cogitative faculties are left unimpaired. 23 C. 604 ; see also 23 C. W. N. 621=29 C. L. J. 209 ; 32 Ind. Cas. 671 ; 48 I. C. 492 "Our law has never held (as a widespread popular error imagines it to hold) that the mere existence of insanity is of itself necessarily sufficient to exempt the insane person from criminal responsibility. Only insanity of a particular and appropriate kind will

produce any exemptive effect. For lunatics are usually capable of being influenced by ordinary motives, such as the prospect of punishment ; they usually plan their crimes with care, and take means to avoid detection.' *Kenny's Outlines of Criminal Law p. 51.* In the consideration of the plea of insanity the antecedent and subsequent conduct of the accused are relevant only to show what was the state of the mind of the accused at the time the act was committed. 108. Ind. Cas. 424=29 Cr. L. J. 393. The nature and the extent of the unsoundness of mind must be such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. The test of insanity as viewed from a legal point does not coincide with the medical idea. and in many cases a man, who who is, in the opinion of the medical experts of unsound mind cannot claim the benefit of this section. 94 P. L. R. 1909=6 M. L. T. 101=4 Ind. Cas. 988=11 Cr. L. J. 105. See also 10 B. 512 ; 2 U. B. R. 28. If a person is of unsound mind, he is to be judged by the ordinary rules in regard to insanity, no matter whether the insanity arises from disease of the brain or from persistent indulgence in intoxicating drugs or liquor. 7 N. L. R. 185=13 Ind. Cas, 916=13 Cr. L. J. 164. See also 14 B. 564 ; 1906 A. W. N. 193 ; 29 C. 493. But the term of "unsoundness of mind" cannot be construed so widely as to cover the loss at self control following a hostile blow on the head. 7 L. B R. 13=20 Ind. Cas. 413=14 Cr. L. J. 427. Partial delusions or mere existence of mental disease does not necessarily exempt a person from criminal responsibility. Rat. Un. Cr. C. 229; 28 C. 613=5 C. W. N. 665 ; 43 Ind. Cas. 423=3 Pat. L. J. 291 ; 109 P. R. 1866 Cr.; 29 Cr. L. J. 204. If a lunatic has lucid intervals, the law presumes the offence of such person to have been committed in a lucid interval. Rat Un. Cr. C. 172. A person whose intellect is weak and whose father was insane is not necessarily a person of unsound mind. Rat. Un. Cr. R. C. 10. The test to determine whether a person who has committed an offence was of unsound mind, is whether he knew that he was doing wrong. 24 W. R. Cr. 5 ; see also 8 P. R. 1869 Cr.; 29 C. 493=6 C. W. N. 506 ; 7 W. R. 42; 25 Cr. L. J. 576. This section exempts a man from criminal liability for his act, only when he is prevented, by reason of mental disease, from controlling his own conduct, or from passing a rational judgment on the moral character of the act he meant to do. 42 P. R. 1187 Cr. see also 26 M. L. T. 361. An accused who is suffering from a type of insanity known as *folie circulaire* cannot be exempted. 46 A. 243=22 A. L. J. 116=81 Ind. Cas. 171=25 Cr. L. J. 683. In order to come under this section it must be shown that the accused was incapable of knowing the nature of the act or of knowing that he was doing what was either wrong or contrary to law. 74 Ind. Cas. 69=24 Cr. L. J. 741 ; 102 Ind. Cas. 774=28 Cr. L. J. 598 ; A. I. R. 1925 Mad. 1238=49 M. L. J. 598 ; 13 Cr. L. J. 49 ; 30 Cr. L. J. 1024=119 Ind. Cas. 270.

Onus.—The onus lies on an accused person to show that he is exempted from criminal responsibility by reason of such unsoundness of mind as made him incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. 55 Ind. Cas. 477 ; 21 Cr. L. J. 317 ; see also 23 C. W. N. 621=29 C. L. J 209=50 Ind. Cas 991=20 Cr. L. J. 383 ; 21 A. L. J. 776=L. R. 4 A. 234 ; A. W. N. 1901, 132 ; 56 P. R. 1865 Cr.; Rat. Un. Cr. C. 818 ; 17 C. P. L. R. 113 ; 20 Ind. Cas. 411 ; 29 Cr. L. J. 234 =9 Lah. 371 ; 151 Ind. Cas. 672=35 Cr. L. J. 1398=35 P. L. R. 703 ; A. I. R. 1929 Cal. 1=48 C. L. J. 307=33 C. W. N. 136=30 Cr. L. J. 494=115 Ind. Cas. 561 ; A. I. R. 1933 All. 233=139 Ind. Cas. 147=33 Cr. L. J. 714=J. R. 1932 All. 536. In case of conflicting evidence as to insanity, accused cannot be held to have discharged onus. A. I. R. 1924 All. 186=21 A. L. J. 77=25 Cr. L. J 348=77 Ind. Cas. 236. The opinion of the expert on lunacy cannot be brushed aside upon strength of lay opinion of a trial Judge. A. I. R. 1935 Oudh. 143.

Cr. Pro. Code ss. 464 & 465.—When an issue as to unsoundness of mind of an accused person is raised the Court is bound to enquire before it begins to record evidence. 42 A. 137=18 A. L. J. 53=54 Ind. Cas. 483=21 Cr. L. 83 ; A. W. N. 1905. 2=2 Cr. L. J. 91 ; A. W. N. 1882, 106 ; 3 W. R. Cr. 57 ; 3 W. R. Cr. 70 ; 1 W. R. Cr. 11 ; 1 W. R. Cr. 15 ; 9 W. R. Cr. 23 ; 10 W. R. Cr. 37 ; 1 B. H. C. 33 Cr.

Cases.—The accused who was a habitual *ganja* smoker murdered by a boy who was an absolute stranger to him and for which there was no motive. The plea of unsoundness of mind under s. 84 was not taken. *Held* under the circumstances the case fell under s. 86. 27 C. W. N. 290=1923 Cal. 460. Even if it be proved that an accused charged of murder was conceited, odd and irascible, and his brain was not

quite all right, it cannot be said that he was incapable of knowing that murder was wrong so as to exempt him from criminal liability under this section. 103 Ind. Cas. 59=28 Cr. L. J. 635=A. I. R. 1927 Lah. 567 ; see also 32 C. W. N. 342. A man may be suffering from some form of insanity in the sense in which the words would be used by an alienist, but may not be suffering from the unsoundness of mind as defined in this section ; 8 Lah. 114=8 L. L. J 566=92 Ind. Cas. 328=28 Cr. L. J. 120=27 P. L. R. 823=A. I. R. 1927 Lah. 52. Where there was no positive evidence that the accused was suffering from delirium at the time he committed the murder, or that he was unconscious of the nature of the act he had committed he cannot take shelter under this section. 12 M. 459=1 Weir 42. Where an accused, notwithstanding some mental derangement, is held accountable under the criminal law for his actions, because he was capable of knowing the nature of his acts and that what he was doing was wrong and contrary to law, a Court, in determining the legal punishment, may properly take into judicial consideration the impaired capacity of control over the emotions and will which forms part of the mental derangement in which other faculties are involved. L. B. R. (1893-1900) 240. Where the facts on the record proved that the unsoundness of mind prevented the accused, from knowing the nature of the act and its wrongfulness, he is entitled to be acquitted under this section. 34 C. 686=6 Cr. L. J. 233. If a man suffers from a partial delusion only and is sane in other respects, he must be dealt with as if the facts with respect to which the delusion existed were real. 15 O. C. 321=18 Ind. Cas. 641=14 Cr. L. J. 84 ; see also U. B. R. 1914, 3rd Qr. 28=26 Ind. Cas. 1207=16 Cr. L. J. 95. A person who though of unsound mind, knows that, in killing another, he is committing a wrongful act, is not entitled to the benefit of the section. A. W. N. 1906, 193=3 A. L. J. 463=4 Cr. L. L. J. 88. Test of insanity is to ask, in the circumstances, whether the man would have committed the act, if a police man would have been at his elbow. 32 C. W. N. 342. In the absence of other evidence mere want of motive for the crime is not sufficient to base an inference of unsoundnes of mind for the purposes of a defence under s. 84 I. P. Code. 9 Lah. 371=106 Ind. Cas. 796=29 Cr. L. J. 204=A. I. R. 1928 Lah. 796 Mere ailment before offence is not sufficient defence. A. I. R. 1930 Nag. 63. Person committing two murders though behaving eccentrically before committing offence cannot be said to be insane and should be hanged till death. 129 Ind. Cas. 323=7 O. W. N. 1100=32 Cr. L. J. 327=A. I. R 1931 Oudh. 77. Mere unsoundness of mind at time of committing offence is no sufficient excuse. But it is ground for giving lesser penalty under s. 302. 144 Ind. Cas. 437=1933 Cr. C. 734=34 Cr. L. J. 791=A. I. R. 1933 Rang. 144.

M' Naughten's Case. In *Reg* v. *Daniel M' Naughten*, 10 Cl. & F. 200, *Tindal, C. J.*, told the jury that the question to be determined was whether at the time the act in question was committed the prisoner had or had not the use of his understanding, so as to know that he was doing a wrong or wicked act. The verdict of the jury was 'Not guilty' on the ground of insanity. This verdict, and the question of the nature and the extent of the unsundness of mind which would excuse the commission of a crime, attracted great attention throughout England and became the subject of a debate in the House of Lords. The House determined to take the opinion of the Judges on the law. Accordingly, on June 19, 1843, all the Judges attended the House of Lords ; when (no argument having been made) the following questions of law were propounded to them :—

"1st—What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons ; as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit ?

"2nd—What are the proper questions to be submitted to the jury when a person alleged to be afflicted with an insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence ?

"3rd—In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time upon the act was committed ?

"4th—If a person under an insane delusion as to the existing facts commits an offence in consequence thereof, is he thereby excused?

"5th—Can a medical man, conversant with the disease of insanity who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witness, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any and what delusion at the time ?"

Lord Chief Justice Tindal, in answering the opinion of the Judges said : "My Lords, Her Majesty's Judges with the exception of Mr. Justice Maule, who has stated his opinion to your lordships, in answering the questions proposed to them by your lordships House, think it right in the first place, to state that they have forborne entering into any particular discussion upon these questions, from the extreme and almost insuperable difficulty of applying those answers to cases in which the fact are brought judicially before them. The facts of each particular case must of necessity present themselves with endless variety, and with every shade of difference in each case. As it is their duty to declare the law upon each particular case on facts proved before them, and after hearing argument of counsel thereon, they deem it at once impracticable, and at the same time dangerous to the administration of justice if it were practicable, to make minute applications of the principles involved in the answers given by them to your lordship's questions.

"1. In answering to the first question, assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respect insane, we are of opinion that (notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion of redressing or revenging some supposed grievance or injury, or of producing some public benefit) he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law ; by which expression we understand your lordships to mean the law of the land.

"2&3. As the second and third questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction, and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of the committing of the act, the party accused was labouring under such a defect of reason, from the disease of the mind, as not to know the nature and quality of the act he was doing, or if he knew it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between right and wrong ; which mode, though rarely, if ever leading to any mistake with the jury, is not as we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the questions were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do and if the act was the same time contrary to the law of the land, he is punishable. The usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong ; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

"4. To the 4th question the answer must of course depend, on the nature of the delusion, but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a

serious injury to his character and fortune, and he killed him in revenge for some supposed injuries, he would be liable to punishment.

"5. In answer to the 5th question, we state to your lordships, that we think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated ; because each of those questions involves the determination of the truth of the facts deposed to which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted, or not disputed, and the question become substantially one of science only it may be convenient to allow the question to be put in the general form ; though the same cannot be insisted on as a matter of right."

Maule J. in answering the question said : "To render a person irresponsible for crime on account of unsoundness of mind the unsoundness should, according to the law as it has been long understood and held, be such as to render him incapable of knowing right from wrong."

To the second question the learned Judge answered. "If on a trial such as is suggested in the question the Judge should have occasion to state what kind and degree of insanity would amount to a defence, it should be stated conformably to what I have mentioned in my anewer to the first question as being, in my opinion the law on the subject". See also *R.* v. *Higginson.* 1 C. & K. 129 ; *R.* v. *Burton*, 3 Cox. 275 ; *R.* v. *Burton* 3 F. &. F. 772 ; *R.* v. *Towley*, 3 F. & F. 389.

English cases. In *Earl Ferrer's Case*, 19 St. Tr. 886, 947, it was urged successfully by the prosecution, that complete possession of reason was unnecessary to warrant the judgment of the law, and that it was sufficient if the party had such possession of reason as enabled him to comprehend the nature of his actions, and discriminate between moral good and evil. In *Arnold's Case*, *Tracey J.* told the jury that where a person has committed a great offence, the exemption of insanity must be every clearly made out before it is allowed ; that where a man is totally deprived of his understanding and memory, and does not know what he is doing, any more than an infant, or a wild beast, he will properly be exempted from the punishment of the law. See also *Parke's Case*, 1 Collin 477 ; *Bowler's Case* 1 Coll. 673 (n). In order to support such a defence it ought to be proved by the most distinct and unquestionable evidence that the prisoner was incapable of judging between right and wrong. *Bellingham's Case*, Russ. Cr. 65. In *R.* v. *Oxford*, 5 C. & P. 168, *Lord Lyndhurst C. B.* told the jury that 'they must be satisfied, before they could acquit the prisoner on the ground of insanity, that he did not know, when he committed the act, what the effect of it, if fatal, would be, with reference to the crime of murder. The question was, did he know that he was committing an offence against the laws of God and nature." See also *R.* v. *Oxford*, 9 C. & P. 532. "If a prisoner seeks to excuse himself upon the plea of insanity, it is for him to make it clear that he was insane at time of committing the offence charged. The onus rests on him ; and the jury must be satisfied that he actually was insane. If the matter be left in doubt, it will be their duty to convict him ; for every man must be presumed to be responsible for his acts till the contrary is clearly shown." *Per Rolfe B.* in *R.* v. *Stokes*, F. 3 C. & K. 185.

In *R.* v. *Haynes* 1 F & F. 666, *Bramwell B.* said : "It has been urged that you should acquit the prisoner on the ground that, it being impossible to assign any motive for the preparation of the offence, he must have been acting under what is called a powerful and irresistible influence, or homicidal tendency. But the circumstances of an act being apparently motiveless, is not a ground from which you can safely infer the existence of such an influence. Motive exists unknown and innumerable which might prompt the act. A morbid and restless, but resistible thirst for blood, would itself be a motive urging to such a deed for its own relief. But if an influence be so powerful as to be termed irresistible, so much the more reason is there why we should not withdraw any of the safe-guards tending to counteract it. There are three powerful restraints existing, all, tending to the assistance of the person who is suffering under such an influence,—the restraint of religion, the restraint of conscience, and the restraint of law. But if the influence ifself be held as a legal excuse, rendering the crime dispunishable, you at once withdraw a most powerful restraint—that forbidding and punishing its preparation. We must therefore return to the simple question you have to determine—did the prisoner know the nature of the act he was doing, and did he know that he was doing what was wrong". See also *R.* v. *Layton*, 4 Cox, 149. But *Sir James Stephen*, supports the view that an insane impulse should be admitted

as a defence if really irresistible because then the act would not be voluntary act at all. See also per *Denman C. J. Reg.* v, *Oxford*, 9 C. & P. 525. In the United States both the Supreme Court and the Courts of almost all the States recognise irresistible impulse as being a sufficient defence, even when accompanied by a knowledge that the act was wrong. *Kenny Outlines, of Cr. Law*, 56 ; *Life* v. *Terry*, 15 Wall. 580. The American Law on the subject is thus stated by *Bishop* : " The medical writers are in substantial accord on the further proposition and the mental and physical machine may slip the control of its owner ; so that a man may be conscious of what he is doing, and of its criminal character and consequences while impelled to it by a power to him irresistible. Whether or not this is so must, in the nature of things, be a pure question of fact, not of law." *Bishop's Cr. Law* § 387.

Act of a person incapable of judgment by reason of intoxication caused against his well.

85. Nothing is an offence which is done by a person who, at the time of doing it, is by reason of doing it, is by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law : provided that the thing which intoxicated him was administered to him without his knowledge of against his will.

Principle.—Drunkenness is described by by Coke and Hale as *clementia affecta* or acquired madness—*Russ. Cr.* 87.

Scope—Where the acts proved are themselves sufficient to establish the offence, relieving the prosecution of the responsibility of proving intention, proof of motive is not called for. But where there are circumstances which have any bearing on the degree of the criminality involved, it is certainly the duty of the prosecution to bring them forward, whether they tell for or against the accused. Voluntary drunkenness is never an excuse for crime. The fact that a man was drunk makes no difference *per se* to the question of his criminal liability. Involuntary drunkenness, as a ground of exemption, is ground treated in just the same way as insanity under section 84. Therefore it would be no ground of excuse for crime to plead merely that the accused was involuntarily drunk. It must be shown that he was so drunk and that he did not know (1) the nature of the act or (2) that it was wrong or (3) that it was contrary to law. But though neither voluntary drunkenness nor involuntary drunkeness nor which does not involve one or other of the three states of mind mentioned in this section, is an excuse for crimes committed under its influence, yet the fact of drunkeness may alter the nature of the legal offence committed though it is no excuse for the act. This occurs when the essential of the crime is the presence of some particular knowledge of intention. Intention is sometimes a presumption of law ; sometimes it is a mere fact to be proved like any other fact. 7 N. L. R. 180=13 Ind. Cas. 919. Evidence of drunkenness failing short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his act. 30 P. L. R. 357=116 Ind Cas. 707=30 Cr. L. J. 662= A. I. R. 1929 Lah. 637 ; see also 29 Cr. L. J. 63=A. I. R. 1928 Mad. 196. Where an act done is not an offence unless done with a particular intention, it is permissible to consider voluntary drunkeness in determing whether the accused had that intention. 11 Cr. L. J. 659. But in the other cases voluntary drunkenness is no reason for not inflicting maximum sentence. A. I. R. 1926 Lah. 428=7 Lah. 141=27 P. L. R. 332=27 Cr. L. J. 764=95 Ind. Cas. 284. Evidence merely establishing that the accused was a drunkard is not sufficient. A. I. R. 1926 Lah. 232=7 Lah. 500=27 P. L. R. 294=27 Cr. L. J. 630=94 Ind. Cas. 406. For drunkenness to operate as a ground of immunity, the accused's mind should be so much affected by the drink that he must be incapable of understanding what he was doing. 8 Bur. L. T. 220=17 Cr. L. J. 49=8 L. B. R. 306 (F. B.)=32 Ind. Cas. 641 ; see also 27 C. W. N. 290=39 C. L. J. 34 (where lesser sentence was given).

Incapable of knowing the nature of the act—Drunkenness is a defence when it amounts to unsoundness of mind. Although drunkenness is no excuse for any crime whatever, yet it is often of very great importance in cases where it is question of intention *R.* v. *Cruse*, 8 C & P. 541, 546 ; *R.* v. *Doperty*, 16 Cox. 306. But even in such cases the intoxication must be such as to prevent his restraining himself from committing the act in question, or to take away from him the

power of forming any specific intention. *R.* v. *Monkhouse*, 4, Cox. 55 ; *R.* v. *Moore*. 3C. & K. 319 ; *R.* v. *Doody*. 6 Cox. 463. An accused is liable for criminal act, where drunkenness is not sufficient to incapacitate acccused from forming intent necessary to constitute crime. A. I. R. 1930 P. 108.

Without knowledge or against his will.—The older authorities lay it down as a general rule that voluntary drunkenesss does not take away responsibility for any crime. [*R.* v. *Meade* (1209) 1 K. B. 895 ; Co. Litt. 247 ; 1 Hale, 32] and must be considered rather an aggravation than a defence. Co. Litt. 247 ; *Beairley's Case* 4 Co. Rep. 125. In *Reniger* v, *Fogossa*, 1 Plowd. 1, 19, it is said, if a person that is drunk kills another this shall be felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no understanding or memory ; but in asmuch as that ignorance was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged." *Russ Cr.* s. 7.

86. In cases where an act done is not an offence unless done with a particular knowledge, or intent, a person who does that act in a state of intoxication shall be liable to be dwelt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him, was administered to him without his knowledge, or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

Scope.—In most cases, intention has to be inferred from the nature of the acts done and from all the circumstances of the case. If a drunkard, by reason of his drunkenness, does not know the nature of his act, he cannot be presumed to have intended the consequences of that act. Therefore in cases where an act is not an offence at all unless it is done intentionally, drunkenness is an excuse. A drunkard is often fully conscious of what he is doing and what are the natural consequences of his acts. If he fails to prove that owing to his intoxication, he had not the same knowledge in relation to the offence as he would have had if sober, then s. 86 will not apply at all and an intention will be presumed or not, just as it would be in the case of a sober man. 17 Ind. Cas. 800. This section creates an artificial rule for the effect of evidence and the significance of facts. The section must be read as it is and should be construed strictly. 30 Ind. Cas. 451. This section does not establish any presumption of law relating directly to intention, but it binds the Court to treat the accused as having the same knowledge as he would have had, if he had been sober, and intention on this case is an inference from knowledge. 4 L. B. R. 406=9 Cr. L. J. 5 No further intention than what can be ascribed to a sober man can be ascribed to a drunkard. A. I. R. 1929 Lah. 433=11 L. L. J. 44=31 Cr. L. J. 44=120 Ind. Cas. 183. Cases where intent has to be found as a fact, voluntary drunkenness may be relied on to show that intent is absent. A. I. R. 1928 Mad. 196=27 M. L. W. 77=29 Cr. L. J. 68=55 M. L. J. 221=106 Ind Cas. 559 : but see 12 Rang. 445=152 Ind. Cas. 1054=1934 Cr. C. 1326=A. I. R. 1934 Rang. 361. Drunkenness where not available as a defence can be pleaded in mitigation of sentence. 28 P. R. 1917=18 Cr. L. J. 868=41 Ind. Cas. 980. This section deals with question of knowledge of the accused and leaves open the question of his intention. 1931 M. W. N. 113. This section makes it clear that ordinary drunkenness makes no difference to the knowledge with which a man is credited. If the accused knew what the natural consequences of his act were, he must be presumed to have intended to cause them. *Per Ayling*, in 38 M. 479=30 Ind. Cas. 451=16 Cr. L. J. 627 ; 8 Pat. 911. It is true that s. 86 lays down that in certain cases an intoxicated porson shall be liable to be dealt with "as if he had the same knowledge as he would have had if he had not been intoxicated." But it does not provide that the intoxicated person shall be dealt with as if he had the same intent. 33 M. 479=30 Ind. Cas. 451=16 Cr. L. J. 627, per *Tyabji J.* This section gives the drunken man that knowledge of the sober man when judging of his action ; but does not give him that intention ; it does not render him liable to be dealt with as if he had the same intent. 6 L. B. R. 100=5 Bur. L. T. 193=17 Ind. Cas. 802=13 Cr. L. J. 864 (F. B.) ; see also U. B. R. (1910) 2nd Qr. 77.

Although drunkenness by itself does not excuse the commission of an offence, this along with other circumstances can well be taken into account in considering the nature of the penalty to be inflicted. 8 Pat. 911.

Cases requiring a specific intent—It is plain that when the law requires a specific intent in distinction from general malevolence to render one guilty, the intent to drink followed by intoxication cannot stand in the stead of this intent. *Reg v. Monkhouse*, 3 Cox. C. C. 55. Evidence of intoxication there is admissible for the purpose of ascertaining the condition of the mind of the accused. to determine whether he was incapable of entertaining the specific intent charged, where such intent, under the law, is an essential ingredient of the particular crime alleged to have been committed. *Bishop's Criminal Law* § 408. Where the very nature and essence of the crime is made to depend upon the condition of mind at the time, the fact of intoxication is a proper subject of consideration in the determination of the question whether a particular crime has been committed. There is a plain distinction between cases where the act done constitutes the offence and cases where an evil intent must be combined with the act. In cases where the intent or purpose of the party is a necessary element of the crime it may be shown that intoxication has so affected the physical and mental condition of the defendant as to preclude the formation of a criminal intent. This applies even to drugs. A person rendered insane from the voluntary recent use of cocaine and morphine who on that account does not understand the nature and quality of his act and is incapable of forming an intent cannot be guilty of assault with intent to commit murder. Complete deprivation of reason by intoxication eliminates the essential element of specific intent, when such intent is essential. *Bishop's Cr. Law* § 408.

Involuntary drunkenness.—If a person, by the unskilfulness of his physician, or by the contrivance of the enemies, eat or drink such a thing as causes frenzy, this puts him in the same condition with any other frenzy, and equally excuses him. 1 Hale. 22. The law deems it wrong for a man to cloud his mind or excite it to evil by the use of intoxicating drinks ; and one who does this, then, moved by the liquor while too drunk to know what he is about, performs what is ordinarily criminal subjects himself to punishment ; for the wrongful intent to drink coalesces with the wrongful act done while drunk, and makes the offence complete. The exception is that if the offence is of a sort constituted only where there is a particular intent, and the accused person did not intend it until he became too drunk to entertain the intent. it is not committed simply by the formal doing where the special purpose is wanting. *Bishop's Criminal Law* § 398.

Intoxication if ground of leniency.—Insanity is no excuse for the commission of a crime but may be in some cases be taken into consideration when awarding punishment for a crime committed in a state of drunkenness. 1923 Lah. 294.

87. Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express, or implied, to suffer that harm ; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Act not intended and not known to be likely, to cause death or grievous hurt, done by consent.

Illustration.

A and Z agree to fence with each other for amusement : This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play ; and if A, while playing fairly, hurts Z, A commits no offence.

Principle.—"Another class of cases of misadventure, of still greater practical importance, are those where death is accidentaly caused in the course of some lawful game or sport.....At the present day, all such exercises with naked swords would be illegal however licensed. But ordinary fencing, and, similarly, boxing, wrestling, football, and the like, are lawful games if carried on with due care. Every one who takes part in them gives, by so doing, his implied consent to the infliction upon himself of a certain (though a limited) amount of bodily harm. But no one has the right to consent to the infliction upon himself of a certain (though a limited) amount of bodily harm. But no one has the right to consent to the infliction upon himself of an excessive degree of bodily harm, such harm as amounts to 'maiming' him, and thus his

agreement to play a game under dangerously illegal rules will, if he be killed in the course of the game, afford no legal excuse to the killer." *Kenny's Outlines of Criminal Law* P. 110.

Object.—"Generally speaking, every man is free to inflict any suffering or damage he chooses on his own person and property ; and if instead of doing this himself, he consents to its being done by another, the doer commits no offence. A man may give away his property, and so another, who takes it by his permission does not commit theft, He may inflict self-torture or he may consent to suffer torture at the hands of another. But the law, as declared by this exception does not permit him to give his consent to any thing intended, or known to be likely, to cause his own death or grievous hurt"—*Morgan and Macpherson.* When death is caused under misconception of fact, but where no intention or knowledge of the accused was proved, the case is governed by ss. 87 and 90. 16 Cr. L. J. 581=30 Ind. Cas. 133 ; see also U. B. R. (1892—1901) Vol. 1, 298.

Cause death or grievous hurt.—Criminal responsibility for the use of any means intended to cause death nor to the doing of any act which is in itself an offence against the law, is not removed by the consent of the person on whom they are used, to the use of the means. The same rule applies as to the use of force likely to cause death or grievous hurt, if used with knowledge of the consequences likely to ensue and with indifference and recklessness as to whether death or serious injury would ensue. *Russ. Cr.* 886. In 1 East. P. C.. 269, it is said : "In cases of friendly contests with weapons, which though not of a deadly nature may breed danger there should be due warning given that each party may start upon equal terms. For if two were engaged to play at cudgels and the one made a blow at the other likely to hurt before he was on his guard and without warning and death ensued, the want of due and friendly warning would make such an act amount to man slaughter." *Ibid* ; see also *Ex parte Barronet*, 1 E & B. 1 ; Dears 51.

Act not intended to cause death done by consent in good faith for person's benefit.

88. Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

Principle.—"The reason on which the general rule which we have mentioned rests is this, that it is impossible to restrain men of mature age and sound understanding from destroying their own property, their own health, their own comfort, without restraining them from an infinite number of salutary or innocent actions. It is by no means true that men always judge rightly of their own interests. But it is true that in the vast majority of cases, they judge better of their own interest than any lawgiver, or any tribunal, which must necessarily proceed on general principles and which cannot have within its contemplation—the circumstances of particular cases and the tempers of particular individuals, can judge for them." *Note B.*

Scope.—No consent can justify an intentional causing of death. But a person for whose benefit a thing is done, may consent that another shall do that thing even if death may probably ensue. It is often the wisest thing that a man can do to expose his life to great hazard. It is often the greatest service that can be rendered to him to do what may probably cause his death. He may labour under a cruel and wasting malady which is certain to shorten his life, and which renders his life, while it lasts, useless to others and a torment to himself. Suppose that under these circumstances he gives his free and intelligent consent to take the risk of an operation which in a large proportion of cases has proved fatal but which is the only method by which his disease can possibly be cured, and which if it succeeds, will

restore him to health and vigour ; the person, who with due care and skill, performs the operation, commits no offence. Again, if a person attacked by a wild beast should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call they would commit no offence though by firing they might cause death, and though when they fired they knew themselves to be likely to cause his death.—*Morgan and Macpherson.* p. 66.

Benefit.—Pecuniary benefit is not the benefit within the meaning of this section (vide s. 92 expl). Hence dangerous exhibitions are not protected by it. Nor are mutilations permissible which are consented to for some indirect motive, such as making the sufferer an object of charity or prevent enlistment as a soldier, or for the purpose of procuring a discharge.—*Mayne's Crtminal Law*, 432.

Cases.—Where a person has several intercourse with a girl of a little over twelve years of age, with her consent and thereby causes grievous hurt to her, he commits an offence under s. 325 I. P. C. and is not protected by s. 80 or s. 88. 12 P. C. L. R. 4. A *Kabiraj* who had training in surgery cannot be exempted under this section, for causing the death of a patient by surgical operation. 14 C. 566 ; see also 5 W. R. Cr. 7. But where the operation is done in accordance with recognized Indian method, he is protected under this section. 28 A. W. N. 91=5 A. L. J. Cr. 155.

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause, to that person :

Provisos. Provided—

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death ;

Secondly.—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Principle.—"We have now explained the provisions contained in clauses 69 and 70. The cases to which the two next clauses relate bear a close affinity to those which we have just considered. A lunatic may be in a state which makes it proper that he should be put into a strait waist coat. A child may meet with an accident which may render the amputation of a limb necessary. But to put a strait waist coat on a man without his consent is, under our definition, to commit an assault. To amputate a limb, is by our definition, voluntarily to cause grevious hurt, and, as sharp instruments are used, is a very highly penal offence. We have therefore provided, by clause 71, that the consent of the guardian of a sufferer who is an infant or who is of unsound mind, shall, to a great extent, have the effect which the consent of the sufferer himself would have, if the sufferer were of ripe age and sound mind. That there should be some provision of this sort is evidently necessary. On the other hand, we feel that there is considerable danger in allowing people to assume the office of judging for others in such cases. Every man always intends in

good faith his own benefit, and has a deeper interest in knowing what is for his benefit than any body else can have. That he gives free and intelligent consent to suffer pain or loss creates a strong presumption that it is good for him on the whole to suffer that pain or loss. But we cannot safely confide to him the interest of his neighbours in the same unreserved manner in which we confide to him his own, even when he sincerely intends to benefits his neighbours. Even parents have been known to deliver their children up to slavery in a foreign country to inflict the most cruel mutilations on their male children, to sacrifice the chastities of their female children, and to do all this declaring, and perhaps with truth, that their object was something which they considered as advantageous to the children. We have therefore not thought it sufficient to require that on such occasion the guardian should act in good faith for the benefit of the ward. We have imposed several additional restrictions which, we conceive, carry their defence with them"—*Note B.*

Scope.—This section provides that the consent of the guardian shall to a great extent, have the effect which the consent of the sufferer himself would have, if the sufferer were of ripe age and sound mind. But because there is considerable danger in allowing people to assume the office of judging for others in such cases, some restrictions are imposed on the guardian's power to consent besides the requisites of good faith and benefit to the sufferer. Every man always intends in good faith his own benefit and has a deeper interest in knowing what is for his own benefit than any body else can have. Therefore the fact that he gives a free and intelligent consent to suffer pain or loss, creates a strong presumption that it is good for him on the whole to suffer that pain or loss. But the interest of his neighbours is not to be confided to him in the same unreserved manner in which we confide to him his own even when he sincerely intends to benefit his neighbours. For these reasons where the consent required is that of some one other than the individual himself, some thing more than mere good faith and the benefit of that sufferer are by this section made necessary. *Morgan and Macpherson* p. 67. School-master inflicting corporal punishment on child below 12 years necessary for school discipline is protected under s. 89. A. I. R. 1926 Rang. 107=27 Cr. L. J. 636=3 Rang. 659=94 Ind. Cas. 412.

90 A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception ; or

Consent known to be given under fear or misconception.

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or,—

Consent of insane person.

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Consent of child.

Scope.—This section is rather a General Explanation than a General exception. A free and intelligent consent must be given. Fear of injury or mistake of fact are not consistent with such a consent. Suppose an ignorant person to represent himself as having skill to perform a difficult operation and by this pretence to obtain consent to perform it, such consent can avail him nothing. But where the facts which invalidate a consent are unknown to the person to whom it is given as if other persons without his knowledge represent that he possesses medical skill and thus obtain consent to his administering a potent medicine etc., this will not make the consent invalid. *Morgan and Macpherson*, p. 68. The object and effect of s. 90. obviously was not to lay down that a child under 12 years of age is in fact incapable of expressing or withholding his or her consent to an act, but to provide that when the consent of person may afford a defence to a criminal charge such consent must be a real consent, not vitiated by immaturity, fear or fraud. Every act done "against the will" of a person no doubt, is done "without his consent" but an act done "without the consent" of a person is not necessarily "against his will" which expression imports that the act is done inspite of the opposition of the person to the doing of it. 143 Ind. Cas. 872=1933

Cr. C. 573=11 Rang. 213=34 Cr. L. J. 696=A. I. R. 1933 Rang. 98 (F. B.) Section 90 is not to be applied to s. 366 and mere absence of a valid consent does not raise presumption as to intention necessary under the section. *Ibid.* The expression "under a misconception of fact" is broad enough to include all cases when the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the fact with reference to which consent was given. A misrepresentation as to the intention of a person is a misrepresentation of a fact. 36 M. 453=22 Ind. Cas. 168=15 Cr. L. J. 24; see also 14 C. 566; 5 W. R. 7; 12 W. R. 7; 17 P. R. 1919 but see 8 L. B. R. 166.

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87, and 88, and 89, do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit, it is done in good faith, even without that person's consent, if the circumstances, are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provisos. Provided—

First,—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b*) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit A's ball gives Z a mortal wound. A has committed no offence.

(*c*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation inspite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d*) A is in a house which is on fire, with Z., a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the

fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

Principle.—"There yet remains a kindred class of cases which are by no means of rare occurrence. For example, a person falls down in an apoplectic fit. Bleeding alone can save him, and he is unable to signify his consent to be bled. The surgeon who bleeds him commits an act falling under the definition of an offence. The surgeon is not the patient's guardian, and has no authority from any such guardian ; yet it is evident that the surgeon ought not to be punished. Again, a house is on fire. A person snatches up a child too young to understand the danger, and flings it from the house-top, with a faint hope that it may be caught in a blanket below but with the knowledge that it is highly probable that it will be dashed to pieces. Here, though the child may be killed by the fall, though the person who threw it down knew that that it would very probably be killed and though he was not the child's parent or guardian, he ought not to be punished."—*Note B.*

Scope.—In these examples there is what may be called a temporary guardianship justified by the exigency of the case and by the humanity of the motive. This section extends to act done in the exercise of this temporary guardianship a protection very similar to that given by section 89 to the acts of regular guardians—*Morgan and Macpherson* p. 70.

Pecuniary benefit.—The benefit alluded to in this section must be some physical benefit i. e., the alleviation of some disease or diseased or disorganized condition of some part or member of the body. 5 W. R. 7.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder, and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence : provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1,—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2,—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools, and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Principle.—Persons are properly excused from those acts which are not done of their own free will, but in subjection to the power of others. *1 Hale ; 43 ; Russ. Cr.* 90.

Scope.—This section is the only law which allows the doer of a crime to plead necessity as a defence. In order that the doctrine may be applicable, there must be a reasonable fear at the very time, of instant death. The Indian law about compulsion and necessity as a justification of an act otherwise criminal, is based on the law of England. The law does not, where there is no fear of instant death, require the

Courts to discuss the philosophy of free will, or determine whether the person who bribes to secure some advantage to himself is a victim of extortion or feels helpless or not. 14 B. 115. But in order to get protection under this section the fear must be of instant death. 10 W. R. 48 ; 20 B. 215 ; 20 B. 394 ; 1912 M. W. N. 1108. Thus although the fear of having houses burnt or goods spoiled is no excuse in law for joining and marching with rebels, yet an actual force upon the person and present fear of death may form such excuse, provided they continue all the time during which the party remains with the rebels. *Mc Growther's Case.* Fort. 13 ; *R.* v. *Tyler*, 8 C. & P. 616 ; *Russ Cr. 91* ; *R.* v. *Crutchley*, 5 C. & P. 133. Moral force put upon the person is no legal excuse. 1 Hale, 43 ; 1 East. P. C. 225. As to persons in private relations, neither a child nor a servant is excused for the commission of any crime, by the command or coercion of the parent or master. 1 Hale, 44, 516 ; *Russ Cr. 91.* This section is not applicable when the accused voluntarily subjects himself to threats. A. I. R. 1933 Rang. 204=1933 Cr. C. 919. Compulsion by threats of instant death is good defence except for 'murder" and offences against State. A. I. R. 1924 Cal. 1031 =52 C. 112=40 C. L. J. 143=28 C. W. N. 1046=26 Cr. L. J. 11=83 Ind. Cas. 491. So compulsion is not a defence to a charge under s. 121 I. P. Code. 1931 Cr. C. 875 =I. R. 1933 Rang. 81=34 Cr. L. J. 696=A. I. R. 1933 Rang. 98 (F. B,)=1933 Cr. C. 573.

Murder.—Does not mean abetment of murder. 52 C. 112 ; see also A. I. R. 1925 All. 315=26 Cr. L. J. 676=47 A. 306=23 A. L. J. 25=86 Ind. Cas. 52.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Object.—"Clause 73 (this section) is intended to provide for those cases which, though, from the imperfections of language, they fall within the letter of the penal law, are yet not within its spirit and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommodate him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the judges to except them in practice ; for if the code is silent on the subject the judges can except these cases only by resorting to one of two practices which we consider as most pernicious, by making law, or by wresting the language of the law from its plain meaning.—*Note B.*

Scope.—This section is only intended to provide for those cases which fall within the letter but not within the spirit of the law. 12 M. 198.

This section will have no application unless the act in question amounted to an offence under the Code. *Emperor* v. *Preo Nath Chowdhury*, 29 C. 489 ; 1 N. L. R. 189. A theft of pods of no value falls under this section. 5 B. H. C. Cr. 35. This section is not applicable to a case where the accused is charged with the offence of theft of three pies worth of dung cakes. Rat. Un. Cr. C. 400. An offence of causing slight harm is covered by this section. A. W. N. 1881. 100. A. W. N. 1882, 229 ; 8 C. P. L. R. Cr. 15 ; A. W. N. 1887, 73 ; 27 A. 28=A. W. N. 1904, 153 ; 13 Cr. L. J. 1912 Cr. 71 ; 15 Cr. L. J. 14. A trumpery quarrel is covered by this section. 12 Cr. L. J. 103=9 Ind. Cas. 586 ; see also 17 N. L. J. 66=A. L. R. 1934 Nag. 129. The term *Kula bhr ashta* i. e. prostitute's son used in a book is *prima facie* defamatory and does not fall under s. 95. (1911) 2 M. W. N. 8=10 M. L. T. 96=12 Cr. L. J. 497=12 Ind. Cas. 217. But when the imputation is very slight this section applies. 99 Ind. Cas 347 =28 Cr. L. J. 139=1927 Rang. 43. Imputation to a Hindu that he is an out-caste is dafamatory and is not covered by this section. 1928 All. 213. This section is applicable to a trivial offence arising out of a Court's observation. A. I. R. 1931 Cal. 392=132 Ind. Cas. 783=32 Cr. L. J. 991=8 O. W. N. 157= 14 O. L. J. 20=1931 Cr. C. 824. Vulgar abuses are not always to be taken literally. 56 B. 196=137 Ind. Cas. 186=33 Cr. L. J. 463=34 Bom. L. R. 282=A. I. R. 1932 Bom. 193=1932 Cr. C. 297. It is not every insult that can be punished under s. 504. 24 C. L. J. 137=18 Cr. L. J. 17=21 C. W. N. 95=36 Ind. Cas. 849. Prosecution

should not lodge a complaint where it is simply a case of exchanging abuse in a public street. A. I. R. 1926 Lah. 412=8 L. L. J. 82=27 P. L. R. 176=27 Cr. L. J. 696=94 Ind. Cas. 888. Where complainant suggested that his lost book may be searched in accused's pleader's books and accused in reply said that he was not in the habit of stealing like complainant, offence is of a petty nature, A. I. R. 1929 Lah. 234=30 Cr L. J. 379=115 Ind Cas. 72. Where accused was provoked to use insulting language owing to complainant's obstructiveness to lawful exercise of authority, the offence is trivial. 4 L. W. 556=36 Ind. Cas. 142=17 Cr. L. J. 462. Where plaintiff's vakil questions status of person signing defendant's written statement, on which another person says that the status of the agent is higher than that of the plaintiff's vakil the offence is a petty one. A. I. R. 1921 All. 30=43 A. 497=19 A. L. J. 425=22 Cr. L. J. 715=63 Ind. Cas. 875. The charge of obstructing peons of municipality is very slight, so slight that no person of ordinary sense and temper would complain of such harm, and where the municipality has not been active in proving the other offences of gravity, namely, evasion of Octroi duty and causing hurt to peons the complaint against the accused should be dismissed. A. I. R. 1929 All, 940 ; see also 33 C. W. N. 751.

OF THE RIGHT OF PRIVATE DEFENCE.

Principle.—"We propose (clauses 74-84=sections 96 to 106) to except from the operation of the penal clauses of the Code large classes of acts done in good faith for the purpose of repelling unlawful aggressions. In this part of the chapter we have attemped to define, with as much exactness as the subject appears to us to admit, the limits of the right of private defence. It may be thought that we have allowed to great a latitude to the exercise of this right ; and we are ourselves of opinion that if we had been forming laws for a bold and high spirited people, accustomed to take the law into their own hand, and to go beyond the line of moderation in repelling injury, it would have been fit to provide additional restrictions. In this country the danger is on the otherside ; the people are too little disposed to help themselves ; the patience with which they submit to the cruel depredations of gang robbers, and to trespass and mischief committed in the most outrageons manner by bands of ruffians, is one of the most remarkable, and at the same time one of the most discouraging symptoms which the state of society in India presents to us. Under these circumstances we are desirous, rather to rouse and encourage a manly spirit among the people than to multiply restrictions on the exercise of the right of self-defence. We are of opinion that all the evil which is likely to arise from the abuse of that right is far less serious than the evil which would arise from the execution of one person for overstepping what might appear to the Courts to be the exact line of moderations in resisting a body of dacoits.

"We think it right, however to say that there is no part of the Code with which we feel satisfied than this. We cannot accuse ourselves of any want of diligence or care. No portion of our work has cost us more anxious thought or has been more frequently rewritten. Yet we are compelled to own that we leave it still in a very imperfect state ; and though we do not doubt that it may be far better executed than it has been by us, we are inclined to think that it must always be one of the least exact parts of every system of criminal law.

"We have now made such observations as appears to us to be required on the general exceptions which we propose. It is proper that we should next explain why we have not proposed any exception in favour of some classes of acts which, as some persons may think, are entitled to indulgence.

"We long considered whether it would be advisable to except from the operation of the penal clauses of the Code acts committed in good faith from the desire of self-preservation ; and we have determined not to except them.

" We admit indeed that many acts falling under the definition of offences ought not be punished when committed from the desire of self-preservation ; and for this reason, that as the Penal Code itself appeals solely to the fears of men, it can never furnish them with motives for braving dangers greater than the dangers with which it threatens them. Its utmost severity will be inefficacious for the purpose of preventing the mass of mankind from yielding to a certain amount of temptation. It can indeed, make, those who have yielded to temptation miserable afterwards. But misery which has no tendency to prevent crime is so much clear evil. It is, vain to rely on the dread of instant death, or the sense of actual torture. An eminently virtuous man indeed will prefer death to crime ; but it is not to our virtue that the penal law addresses itself ; nor would the world stand in need of penal laws if men were virtuous. A man who refuses to commit a bad action when he sees preparations

made for killing or torturing him unless he complies, is a man who does not require the fear of punishment to restrain him. A man on the other hand who is withheld from committing crimes solely or chiefly by the fear of punishment will never be withheld by that fear when a pistol is held to his forehead or a lighted torch applied to his fingers for the purpose of forcing him to commit a crime.

"It would, we think, be mere useless cruelty to hang a man for voluntarily causing the death of others by jumping from a sinking ship into an over-loaded boat. The suffering caused by the punishment is considered by itself, an evil, and ought to be inflicted only for the sake of some preponderating good. But no preponderating good, indeed no good whatever, would be obtained by hanging a man for such an act. We cannot expect that the next man who feels the ship in which he is left descending into the waves, and sees a crowded boat putting off from it, will submit to instant and certain death from fear of a remote and contingent death. There are men, indeed, who in such circumstances would sacrifice their own lives rather than risk the lives of others. But such men act from the influence of principles and feelings which no penal laws can produce, and which, if they were general, would render penal laws unnecessary. Again, a gang of dacoits, finding a house strongly secured, seize a smith, and by torture and threats of death induce him to take his tools and to force the door for them ; here, it appears to us, that to punish the smith as a housebreaker would be to inflict gratuitous pain ; we cannot trust to the deterring effect of such punishment. The next smith who may find himself in the same situation will rather take his chance of being at a distant time, arrested, convicted and sentenced to imprisonment, than incur certain and immediate death.

"In the cases which we have put, some persons may perhaps doubt whether there ought to be impunity ; but those very persons would generally admit that the extreme danger was a mitigating circumstances to be considered in apportioning the punishment. It might, however, with no small plausibility be contended that if any punishment at all is inflicted in such cases, that punishment ought to be not merely death, but death with torture ; for the dread of being put to death by torture might possibly be sufficient to prevent a man from saving his own life by a crime ; but it is quite certain, as we have said, that the mere fear of capital punishment which is remote, and which may never be inflicted at all, will never prevent him from saving his life. And *a fortiori*, the dread of a milder punishment will not prevent him from saving his life. Laws directed against offences to which men are prompted by cupidity, ought always to take from offenders more than those offenders expect to gain by crime. It would obviously be absurd to provide that a thief or a swindler should be punished with a fine not exceeding half the sum which he had acquired by theft or swindling ; in the same manner, laws directed against offences to which men are prompted by fear ought always to be framed in such a way as to be more terrible than the dangers which they require men to brave. It is on this ground, we apprehend, that a soldier who runs away in action is punished with a rigour altogether unproportioned to the moral depravity which his offence indicates. Such a soldier may be an honest and benevolent man, and irreproachable in all the relations of civil life ; yet he is punished as severely as a deliberate assasin, and more severely than a robber or a kidnapper. Why is this ? Evidently because, as his offence arises from fear, it must be punished in such a manner that timid men may dread the punishment more than they dread the fire of the enemy.

"If all cases in which facts falling under the definition of offences are done from the desire of self-preservation were as clear as the cases which we have put of the man who jumps from a sinking ship into a boat, and of the smith, who is compelled by dacoits to force a door for them, we should, without hesitation, propose to exempt this class of acts from punishment. But it is to be observed, that in both these cases the person in danger is supposed to have been brought into danger, without the smallest fault on his own part by mere accident, or by the depravity of others. If a captain of a merchantman were to run his ship on shore in order to cheat the insurers, and then to sacrifice the lives, of others in order to save himself from a danger created by his own villainy ; if a person who had joined himself to a gang of dacoits with no other intention than that of robbing were at the command of his leader, accompanied with threats of instant death in case of dis-obedience, to commit murder though unwillingly, the case would be widely different, and our former reasoning would cease to apply ; for it is evident that punishment which is inefficacious to prevent a man from yielding to a certain temptation may often be efficacious to prevent him from exposing himself to that temptation. We cannot count on the fear which a man may entertain of being brought to the gallows at some distant time as sufficient to overcome

the fear of instant death ; but the fear of remote punishment may often overcome the motives which induce a man to league himself with lawless companions, in whose society no person who shrinks from any atrocity that they may command can be certain of his life. Nothing is more usual than for pirates, gang-robbers and rioters to excuse their crimes by declaring that they were in dread of their associates, and durst not act otherwise. Nor is it by any means improbable that this may often be true. Nay, it is not improbable that crews of pirates and gangs of robbers may have committed crimes which every one among them was unwilling to commit, under the influence of mutual fear ; but we think it clear that this circumstance ought not to exempt them from the full severity of law.

"Again nothing is more usual than for thieves to urge distress and hunger as excuses for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft and than the disgrace which that punishment brings with it to the mass of mankind. It is equally certain that, when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not keep him from committing theft ; yet it by no means follows that it is irrational to punish him for theft ; for though the fear of punishment is not likely to keep any man from theft when he is actually starving, it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistible motive which immediately prompts to theft ; but it is of great effect to counteract the motives to that idleness and that profusion which end in bringing a man into a condition in which no law will keep him from committing theft. We can hardly conceive a law more injurious to society than one which should provide that as soon as a man who had neglected his work, or who had squandered his wages in stimulating drugs, or gambled them away, had been thirty six hours without food, and felt the sharp impulse of hunger, he might, with impunity, steal food from his neighbours.

"We should therefore think it in the highest degree pernicious to enact that no act done under the fear even of instant death should be an offence. It would a *fortiori* be absurd to enact that no act under the fear of any other evil should be an offence.

"There are, as we have said, cases in which it would be useless cruelty to punish acts done under the fear of death, or even of evils less than death. But it appears to us impossible precisely to define these cases. We have therefore, left them to the Government, which, in the exercise of its clemency, will doubtless be guided in a great measure by the advice of the Courts"—*Note B.*

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Principle.—"The whole law of self-defence rests upon these propositions :—(1) that the society undertakes, and, in the great majority of cases, is able to protect private persons against unlawful attacks upon their persons or properties ; (2) that where its aid can be obtained, it must be resorted to ; (3) that where its aid cannot be obtained, the individual may do everything that is necessary to protect himself, but (4) that the violence used must be in proportion to the injury to be avoided and must not be employed for the gratification of vindictive or malicious feeling—*Mayne's Criminal Law.* This right arises to every man on a reasonable apprehension of danger to himself or others, when the protection of the law and its officers cannot be obtained. It exists for the defence not only of his own person and property, but also of the persons and properties of others, and it extends to causing death in some cases and harm in others. As the right is founded not upon any idea of retributive justice but of prevention, it cannot extend to the inflicting of more harm than is necessary for the purpose of defence—*Morgan and Macpherson,* 73. For the application of the law regulating the right of self-defence, greater pains should be exercised to record the incidents and stages of the fight so far as they are material. L. B. R. (1893—1900), 262. When a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage with men, who, on the other hand, are equally determined to vindicate by unlawful force their rights, or supposed rights no question of self-defence arises. 24 A 143=A. W. N. 1901, 193 ; 89 Ind. Cas. 158, see also, 20 A, 459. There is no right of private defence where persons believing they will be attacked, court such attack. W. R. 1864 Cr. 11. The

onus of proving the right is upon the person who wants to plead it. (1912) M. W. N. 404 ; see also 31 C. W. N. 314=45 C. L. J. 131=28 Cr. L. J. 334 ; A. I. R. 1926 Pat. 433=8 Pat. L. T. 319 ; 1 C. L. R. 62 ; 11 C. L. R. 232. No right of private defence arises against any act which is not an offence under this Act. 16 C. 206. This defence cannot be taken for the first time in the Appellate Court, where a plea not consistent with this has been raised in the Lower Court. 21 A. 122. Against the act of a public servant the right of private defence cannot be raised. 22 A. L. J. 501. An accused may be acquitted on the plea of the right of private defence even when he has not specifically pleaded it. (1912) M. W. N. 404 ; see also 1 C. W. N. 545 ; 99 Ind. Cas. 149=A. I. R. 1926 Nag. 221 ; 97 Ind. Cas. 958=1927 Mad. 97=27 Cr. L. J. 1198 ; 87 Ind. Cas. 597=26 Cr. L. J. 995=90 Ind. Cas. 400 ; 6 L. L. J. 625. A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. 2 B. L. R. A. Cr. 16=10 W. R. Cr. 64 ; 12 W. R. 15 Cr. ; 7 W. R. Cr. 112. People whose rightful possession and enjoyment of a certain land is interfered with are justified in opposing such interference by using force even to the extent of causing grievous hurt if they could not help it. A. W. N. 1882 ; 42. There is no right of private defence against persons who are merely taking refuge in the offenders' land from other persons trying to take their lives. 8 C. L. J. 561.

Scope.—Where the accused happened to hit the deceased on the head, while resisting an attack made by the latter, but rather harder than perhaps he intended to have done and thus killed him, he cannot be said to have exceeded his right of self-defence and should not be convicted. A. I. R. 1929 All. 897. Where the right of private defence of property is set up, the burden of proof is on the accused to show that he injured the other party in defence of his property. Where neither side had peaceful possession of the property it cannot be said that the property belonged to the accused so as to invoke the right of private defence. To prove that it was done in defence, it should be shown that he did all he could to avoid it. So where both parties arm themselves for a fight to enforce their rights the right of private defence cannot be pleaded in defence. 5 P. 520=A. I. R. 1926 Pat. 433. Where both parties come down armed with a full determination to settle their quarrel by force no right, of private defence exists. 89 Ind. Cas. 158=26 Cr. L. J. 1294 ; see also 89 Ind. Cas. 264=26 Cr. L. J. 1320=L. R. 6 A. 113 Cr.=A. I. R. 1925 All. 753. Where the assembly is unlawful from the very beginning the question of self-defence does not arise. A. I. R. 1929 Nag. 43=30 Cr. L. J. 38=112 Ind. Cas. 902. There can be no room for a plea of self-defence against persons who carry no arms. Mere fact that persons were approaching the house of the assaulter is not sufficient basis. A. I. R. 1928 Pat. 46=28 Cr. L. J. 868=104 Ind. Cas. 708. Accused should show that offence affecting human body was commited on the person on whose behalf he has interfered. 18 Cr. L. J. 803=15 A L. J. 505=41 Ind. Cas. 323 causing death to one in aggressive party in defending possession of property from opponents is protected. A. I. R. 1924 Cal. 449=25 Cr. L. J. 773=51 C. 271=38 C. L. J. 379=81 Ind. Cas. 261. The exercise of the right of private is not an offence in return. 18 Cr. L. J. 864=41 Ind. Cas. 832. Magistrate should not overlook the importance of private defence. A. I R. 1927 Lah. 194=28 Cr. L. J. 252=100 Ind. Cas. 124. Accused hitting deceased while being attacked by him though blow is harder than intended is acting in self-defence. A. I. R. 1929 All 897=1929 Cr. C. 489 ; see also A. I. R. 1929 Pat. 523 ; 87 Ind. Cas. 597=A. I. R. 1925 All. 664=26 Cr. L. J. 997. Attack with lathis will create reasonable fear of grievous hurt being caused. A. I. R. 1925 All. 313=23 A. L. J. 131=85 Ind. Cas. 382. In case of non-apprehension of danger a person cannot be deemed to have acted in exercise of those right of private defence. 136 Ind. Cas. 721=1931 Cr. C. 854=33 P. C. R. 952=33 Cr. L. J. 315=A. I. R. 1931 Lah. 566. In case of a pitched battle the right of private defence cannot be invoked. 132 Ind. Cas. 381=32 Cr. L. J. 868=A. I. R. 1931 Lah. 513 ; see also A. I. R. 1934 Lah. 209=35 C. L. J. 1462. In a plea of private defence the party so claiming should show that he was not the aggressor. A. I. R. 1933 Sind 386=1933 Cr. C. 1426. Sahu 96 applies to s. 160. 1933 M. W. N. 721 ; 144 Ind. Cas. 1010=34 Cr. L. J. 882=1933 A. L. J. 472=1933 Cr. C. 369=A. I. R. 1933 All. 213. Plea of self can be raised for the first time in appeal if it is justified on facts. 1933 Cr. C. 820=A. I. R. 1932 Lah 606=33 P. L. R. 718. In every case where a person accused of an offence has or has not justified the commission of that offence by proving that it was committed in the course of his defending himself is a matter which has to be decided on the facts before the Court in each instance. 6 Lah. L. J. 625=26 Cr. L. J. 81 ; see also 36 P. L. R. 1918=20 P. W. R. Cr. 1918=45 Ind. Cas. 683=19 Cr. L. J. 635.

Person inflicting wounds in defending himself is not guilty. A. I. R. 1930 Lah. 93. The right of private defence to property can only exist in favour of the person who possesses a clear title to that property and where no such title has been determined, no right of private defence can exist. 19 O. C. 18=17 Cr. L. J. 180 33 Ind. Cas. 820. In order to set up the defence under ss. 96 to 106 of the Indian Penal Code it is incumbent upon the accused to gain by showing that an offence affecting the human body was being committed on the person of an individual. 15 A. L. J. 565. The right of private defence of property under the Penal Code is a restricted one. 35 C. 103=7 Cr. L. J. 123. Once attack is made on persons in the lawful exercise of their rights over a property they are entitled to the right of private defence ; and the only question which can arise after that is whether any member of the party individually exceeded that right. People who were in the exercise of lawful rights cannot be held to have been members of an unlawful assembly, nor can that assembly become unlawful by reason of their repelling the attack made upon them by persons who had no right to obstruct them or by reason of their exceeding the lawful use of the right they had. 16 C. W. N. 1053=39 C. 896.

English law.—The common law, from a very early stage in its history, regarded the defence of one-self against a wrong-doer even in cases of homicide as being strictly justifiable ; and therefore as involving no legal penalty whatever. A man is justified in using force against an assailant, in defence of himself (*Howle's Case*, Maitland's Select Pleas 94). Hence if he has a reasonable apprehension of danger and adopts none but reasonable means of warding it off, he will be innocent even though the wrong-doer be killed by the means thus adopted. But reasonable these means must be. *Kenny's Outlines of Criminal Law* p. 104.

Whether the right should be pleaded.—One who depends upon the right of private defence must prove it by evidence. 1 C. L. R. 62 ; 11 C. L. R. 232 ; 24 A. W. N. 113 ; 31 C. W. N. 314=45 C. L. J. 131. Even if the accused did not plead self-defence, it is open to the Court to consider such plea if the prosecution evidence would support it. 97 Ind. Cas. 958=27 Cr. L. J. 1198=A. I. R. 1927 Mad. 1927 ; 22 A. L. J. 501; 29 C. L. J. 571; 19 C. W. N. 653 (F. B) ; 15 Cr. L. J. 710 ; 22 A. L. J. 501 ; 3 L. L. J. 284 ; A. I. R. 1926 Nag. 221 ; 90 Ind. Cas. 149=26 Cr. L. J. 1493; 90 Ind. Cas. 400=26 Cr. L. J. 1552.

An Appellate Court should examine a plea of self-defence even if it was not adverted to it in the trial Court. 87 Ind. Cas. 597=26 Cr. L. J. 997=A. I. R. 1925 All. 604.

An accused can take the defence of the right of private defence as well as the alternative plea of *alibi*. 16 A. L. J. 169 ; see also 1 C. W. N. 545.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section, 99, to defend—

First—His own body, and the body of any other person, against any offence affecting the human body ;

Secondly—The property, whether moveable or immoveable of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

Offences—Offences against the person, and such offences against property as are or probably may be, accompanied by force as distinct from mere fraud, are meant—*Morgan and Macpherson*, 74.

First—Under the English law a person has no right to commit an assault merely in defence of other person, unless he stands in a particular relation to them. Such reciprocal relations are husband and wife, (*Leward* v. *Basely*, 1 L. Raym. 62), and parent and child. A servant may assault in defence of his master, and perhaps *vice versa*. *Daltons Justice* Ch. 121. But 'neither can the farmer or tenant justify such an act, in defence of his landlord, nor, a citizen etc. in defence of the mayor (or bailiffs) of the city or town corporate where he dwelleth.' *Dalton*, ib ; *Roscoe Cr. Ev.* 409. But this section is wider than the English law. Under this section a stranger can exercise the right of private defence. 46 M. 605 (F. B.) ; 29 Cr. L. J. 445 ; 2 Pat. 595 ; 20 W. R. 36 Cr. 23 A. L. J. 1037. Person pleading self defence to prove such

necessity for each act of self-defence. A. I. R. 1927 Lah. 786=28 Cr. L. J. 838=104 Ind. Cas. 454 : see also A. I. R. 1927 Cal. 324=45 C. L. J. 131=31 C. W. N. 314=28 Cr. L. J. 334=100 Ind. Cas. 718. Counter attack should not be out of all proportion to the form employed in the original attack. A. I. R. 1927 Lah. 194=28 Cr. L. J. 252=100 Ind. Cas. 124 A person may resist under s. 97 when being taken for employment against his will. 20 Cr. L. J. 727=6 O. L. J.. 327=52 Ind. Cas. 887. There is no right of private defence if a person voluntarily engages himself in a fight. 40 B. 105=16 Cr. L. J. 772=17 Bom. L. R. 888=31 Ind. Cas. 372.

Secondly—The right of private defence of property can only exist in favour of the person who possesses a clear title to that property and where no such title has been determined, no right of private defence of property can exist. 17 Cr. L. J. 180. Section 97 gives a right of private defence of property against an act which amounts inter-alia to an offence of criminal trespass or mischief. 148 Ind. Cas. 644 =35 Cr. L. J. 730=1934 A. L. J. 689=A. I. R. 1934 All. 829 ; see also A. I. R. 1939 Oudh. 207=11 O. W. N. 425. This right extends even where the property belongs to another person. 23 W. R. 40 Cr. Proof that property belongs to him is to be by the person setting up plea of private defence. A. I. R. 1926 Pat. 433=5 Pat. 520=27 Cr. L. J. 1322=8 P. L. T. 319=98 Ind. Cas 394. A thief can exercise right of private defence of property when owner takes both his own and thief's property. A. I. R. 1927 Lah. 355=9 L J. 260=28 P. L. R. 299=28 Cr. L. J. 750=103 Ind. Cas. 798. There is no right of private defence when neither party is in possession of the property. A. I. R. 1926 Oudh. 148=27 Cr. L. J. 62=2 O. W. N. 862.

Extent of right—There is no obligation upon a person entitled to exercise his right of private defence to retire merely because the assailant threatens him with violence. As regards the extent of the right, a man acting under an apprehension of death cannot be expected to judge too nicely the force of his own blow. He is not bound to moderate his defence step by step according to the attack before there is reason to believe the attack is over. 2 Pat. 595. The right of private defence, as described in s. 97 of the Penal Code, is subject to the restrictions mentioned is s. 99, that is, it should be exercised only in defence of one's own body or that of another person against an offence affecting the body. 4 B. L. R. Ap, 101=13 W. R. Cr. 55. Where the accused found some others taking away moveable property in which they were interested, *held* that they had a right to retain the same by force. A. W. N. 1896, 170. The law must not be invoked to oppress the persons, who, when there is no time to have recourse to the public authorities, find themselves in a position in which they must either exert the privilege of private defence as provided and restricted by the law or submit to a forcible invasion of a right of person or property in cases, where under s. 97, the law does not require any such submission. L. B. R. (1893-1900), 219. The law allows every person to use reasonable force to defend his possession from a trespasser. But when the property has been taken possession of by another, however wrongful it might be, the person dispossessed would not be entitled to take the law into his own hands and forcibly recover possession. 6 S. L. R. 121=17 Ind. Cas. 78=13 Cr. L. J. 766 ; see also 7 W. R. 76 ; 16 W. R. 64 ; 14 W. R. 16 ; 24 C. 686. A person who sees a woman being assaulted in the manner described in s. s. 97 and 131 of the Penal Code, is justified in going to her assistance and even in cutting another person with a *da* if he interferes to prevent him. 13 Cr. L. J. 53=13 Ind. Cas. 389=Bur. L. T. 268. Where A was trying to kill C, B hit A with a branch of a tree whereupon A killed B. : *Held* that there was no provocation on the part of B as he was exercising his right under this section. 12 Cr. L. J. 477=12 Ind. Cas. 85. The accused was watching his field, the grain of which had, on previous occasions been stolen ; he saw a thief cutting corn in it and gave chase. The thief ran his head against a tree and fell. The accused hit him recklessly and caused his death. *Held* that he exceeded his right of private defence. 22 P. L. R. 1903=29 P. R. 1902 Cr. The right of private defence against an act of trespass on one's property is not lost by reason of the omission to send words to a Police Station which is at some distance from the place of occurrence. 44 Ind. Cas. 40=19 Cr. L. J. 248. There is only a right of private defence against acts which are offences. Where an act is justified as being within the limits of the right of private defence, it could give rise to no right of private defence in return. 18 Cr. L. J. 864=41 Ind. Cas. 832. There can be no right of private defence of property when the matter was not urgent and no serious loss of property was threatened and there was ample time to have recourse to the authorities. 102 Ind. Cas. 769=28 Cr. L. J. 593. There is no right of private

defence where there is time to get aid from authorities. A. I. R. 1927 Lah. 705=28 Cr. L. J. 848 ; see also A. I. R. 1926 Lah. 516=26 P. L. R. 267=27 Cr. L. J. 7.

Facts unknown to the accused at the time but proved before the Court at the trial should not be taken into account and made the basis for finding against the plea of self-defence. The question is not what a perfectly cool by-stander would think absolutely necessary but whether there was reasonable apprehension of danger to life or property on the part of the accused having regard to all the circumstances and allowances should be made for one who with the instinct of self-preservation strong upon him pursues his defence a little further than might appear to be absolutely necessary to a cool by-stander. 1929 M. W. N. 511=A. I. R. 1929 Mad. 748. A man upon whom lathi blows are being showered is justified in striking with a spear and does not exceed his right of private defence. 110 Ind. Cas. 787=29 Cr. D. J. 755=A. I. R. 1928 Lah. 900. It lies upon the person bringing the plea of self-defence to establish the circumstances under which each blow that causes an injury to a member of the opposite party is inflicted. 104 Ind. Cas. 455=28 Cr. L. J. 838. In order to establish the right of private defence, the accused is not bound to prove affirmatively his own possession. He can rely on the presumption of continuance of possession. 100 Ind. Cas. 383=24 Cr. L. J. 303=A. I. R. 1927 Pat. 181. Before an accused person can set up a right to private defence of property, he must show that the property was his property and that he actually was in peaceful possession of it. The mere right to have possession restored by a Civil Court does not justify an individual in taking the law into his own hands. 21 S. L. R. 141=98 Ind. Cas. 467=27 Cr. L. J. 1347. Reasonable apprehension of grievous hurt or death to self is the test for plea of self-defence. 1930 M. W. N. 502. Right of private defence is to be distinguished from act done under grave provocation. 40 A. 284. 19 Cr. L. J. 371=16 A. L. J. 169=49 Ind. Cas. 675. Right of private defence may be pleaded specifically or alternatively. 1 Pat. L. T. 79=5 Pat. L. J. 64=21 Cr. L. J. 799=58 Ind. Cas. 527.

A blow or other violence necessary for the defence of a man's person is not a battery. Thus if A, lift up his stick, and offer to strike, B, it is a sufficient assault to justify B in striking A ; for he need not stay till A has actually struck him. B. N. P. 18. But every assault will not justify every battery, it must be proportionable to the assault whare it appeared that A had in a scuffle 'ran his finger' towards B's eye, it was held a justification for B"s biting off A's finger. *Cockroft* v. *Smith*, 2 Salk. 641 ; 1 L. Raym. 177, 1704. If one use violence more than necessary to repel the assault, he may be convicted of an assault. *R.* v. *Mabel*. 9 C. & P. 474. An attack with fists must not be met with wounding by a razor. *R.* v. *Morse*. 4 Cr. A. R. 50, (1910). In assault, as in other cases of trespass. the attacked ought not, in the first instance, to be at the assailant unless the attack is made with such violence as to render the battery necessary. *Weaver* v. *Bush*, 8 T. R. 78, 1898. It is not the law that 'no more than warding off a blow must be attempted by any one attacked ; a battery in return for an assault which missed being a battery is justified. *R.* v. *Deana*, 73 J. P. 255. Where a man strikes at another within reaching distance, the latter is justified in using such a degree of force as will prevent a repetition (but no more). *Per Perke B.* Anon. 2 Lewin, C. C. 48, 1836. But a blow struck after all danger is past, is an assault. *R.* v. *Driscoll*, Cor. & M. 214 ; 1841. In the same case *Lord Coleridge* said "It is a common error to suppose that one person has a right to strike another who has struck him, in order to revenge himself." *Roscoe Cr. Ev.* 408.

In execution of a decree possession was given to the decree-holder and the judgment-debtors were allowed to reap the standing crops that were on the land. After reaping the crops, they offered resistance by using force to the decree-holder entering upon the land, *Held*, they had no right of private defence. 28 Cr. L. J. 264=9 L. L. J. 209. The right of private defence can be exercised by a person, who is attacked by a party armed with *dangs* while carrying away his own tree. 102 Ind. Cas. 769. Right of private defence does not exist in cases in which there is time to have recourse to the protection of public authorities and therefore a person when dispossessed of land can claim no right of private defence of property as against the complainant, assuming him to be a trespasser who had just entered the land. 114 Ind. Cas. 464=28 Cr. L. J. 148. Under section 97, every person has a right to defend the property whether moveable or immoveable of himself or of any other person against any act which is an offence falling under the definition of theft, robbery or criminal trespass. 22 A. L. J. 81=77 Ind. Cas. 881=25 Cr. L. J. 481.

Where two parties are in joint actual possession of property, the act of one party in excluding the other from the enjoyment of such a possession by collecting rent

from the tenants for his own benefit to the exclusion of the other party is clearly wrongful and the other party is justified in using force in the exercise of the right of private defence for the purpose of preventing the wrongful act. 11 O. L. J. 743.

If a person kills a wild animal or wild bird on the property of another person, such dead creature does not belong to the killer but to the proprietor of the property, and such proprietor either himself or by his only authorised agent can lawfully demand and if refused seize such dead creature from the possession of the killer, and such persons as help him to exercise his right are doing no wrong, but, as against any person other than the proprietor of the estate or his only authorised agent or those lawfully helping the proprietor or his agent the killer has a right to certain possession of the dead creature and any body else depriving him forcibly of possession commits an offence. 81 Ind. Cas. 82=25 Cr. L. J. 94=3 Pat. 549.

Where a right of private defence is set up the essence of the case should be to ascertain who was the aggressor and whether the accused party used more violence than was necessary. It is only against a danger present and imminent that the right of private defence avails. The right is a limited one and cannot be converted into one of refusal. 85 Ind. Cas. 731=26 Cr. L. J. 587=A. I. R. 1925 Nag. 260.

Where a Police Inspector was making a search in the course of investigation of a theft case, he laid hands on a woman without any lawful excuse. Her brother-in-law came to her assistance and there was a quarrel between him and the Police Inspector. The brother-in-law (accused) was struck with a stick and he took it from the Police Inspector and gave him two blows on his head as a result of which the Police Inspector died. *Held* that the accused did not exceed his right of private defence and the death was not caused voluntarily. 23 A. L. J. 1037=L. R. 6 A. 173.

Men who have reason to fear that a man is going to attack them with a loaded weapon are entitled to attack him first and to use force in order to destroy his power of attack or take the weapon from him. 23 A. L. J. 68=86 Ind. Cas. 45=26 Cr. L. J. 669=A. I. R. 1925 All. 319. The right of private defence cannot be availed of when there was sufficient time to have recourse to the public authorities. 26 Cr. L. J. 1069=88 Ind. Cas. 13=A. I. R. 1925 Nag. 372. There can be no right of private defence where both parties, in a riot, are aware that a fight is likely to happen and expecting to be attacked, turn out in force and go out of their way to be attacked ; in such a case it is immaterial who was the first to attack unless it be shown that the accused were right in the right of private defence. If both the parties were determined to vindicate their supposed rights and engaged in a fight no question of private defence can arise ; in other words, the law does not permit rival claimants to settle their dispute by entering into a cold-blooded battle. The tendency of law in civilised countries is to restrict the right of private defence within constantly narrowing limits. 6 Pat. L. T. 87=A. I. R. 1924 Pat. 388. There is no obligation upon a person entitled to exercise the right of private defence to retire merely because the assailants threaten him with violence. 2 Pat. 595. If a man is entitled to protect his own life by using a lathi it is impossible to weigh the force of the blows which he used for that purpose as it is said in "golden scales" and to adjudicate with great nicety as to the exact amount of force which would be justified. 71 Ind. Cas. 605=24 Cr. L. J. 189 ; see also 24 Cr. L. J. 735=79 Ind. Cas. 975 ; 13 C. W. N. 1180. The right of private defence is not available to parties determined to fight. A. I. R. 1930 Oudh. 22 ; 24 A. 143 ; 35 C. 368=7 C.L.J. 359=12 C.W.N. 384. A. I. R. 1927 Sind. 92=21 S.L.R. 148=27 Cr. L J. 1347=98 Ind. Cas. 467 ; 20 Cr. L.J. 83=36 P.R. 1918=48 Ind. Cas. 853 ; 47 M. 232=45 M. L. J. 602=81 Ind. Cas 203 ; 10 O. W. N. 383=34 Cr. L. J. 1016 ; A. I. R. 1934 Lah. 512=35 P. L. R. 381=35 Cr, L. J. 1393.

Where there is evidence proving that a person accused of killing or injuring another acted in exercise of the right of private defence, the Court may not ignore the evidence and convict the accused merely because the latter set up a different defence and denied having committed the assault. 3 Lah. L. J. 284=62 Ind. Cas. 331=22 Cr. L. J. 507.

Cases.—Cattle which had strayed into the lands of the accused were being taken to the pound when the complainants tried to rescue them by force. The accused in trying to prevent the rescue caused grievous hurt to the complainants. It was held that they only exercised the right of private defence and were not guilty. 6 Pat. L. T. 833=83 Ind. Cas. 988=16 Cr. L. J. 924=A. I. R. 1925 Pat. 762. Where it was found that six accused were driving their cattle and one of them exceeded the right of private defence with regard to property, all of them cannot be committed as being members of an unlawful assembly. 23 Cr. L. J. 249=66 Ind. Cas. 185=1 Lah.

L. J. 245. A person is perfectly justified, under s. 97, in offering resistance to his being taken away against his will with the object of being impressed for service or employment. 52 Ind. Cas. 887=20 Cr. L. J. 727. Where the complainants were in possession, though it may have been a wrongful possession, the accused were not entitled to go in force to turn them out, much less were they entitled to take a spearman, for the purpose, as the accused could not, in such a case, be considered to have the right of private defence of property. 21 C. 392. In a case of rioting, if the accused were justified in resisting the theft of their crops, they are not members of an unlawful assembly, even though some members thereof have exceeded the right of private defence. 36 C. 296=13 C. W. N. 677 ; 39 C. 896=16 C. W. N. 1053. But if persons continue to be in the assembly, even after knowing that some have exceeded the right of private defence, they are members of an unlawful assembly ; and if they aid and abet those who exceeded the right, they have also exceeded the right. 36 C. 296=13 C. W. N. 677. Maiming a cow by pelting stone after she is driven out of the fields is mischief and not in exercising right of private defence. 18 Cr. L. J. 286=12 N. L. R. 188=38 Ind. Cas. 318. If a person rightfully abates nuisance and person causing nuisance without any right attacks him former has right of private defence. A. I. R. 1933 Sind. 142=34 Cr. L. J. 768=1933 Cr. C. 340. Section 97 is subject te section 99. A. I. R. 1933 Oudh. 399=1933 Cr. C. 1245=10 O. W. N. 835. Where Amin attaches property honestly believing that he is entitled to do so, accused has no right of private defence under s. 97. 1933 A. L. J. 917=1933 Cr. C. 992=A. I. R. 1933 All. 620. Right of private defence can be pleaded alternatively with *alibi*. 1933 Cr. C. 1342=A. I. R. 1933 Pat. 568. That Municipality has no right to realize toll is not justification for beating peon of Municipality who come to demand it. A. I. R. 1933 Pat. 144=34 Cr. L. J. 726=1933 Cr. C. 314. As regards the extent of private defence, vide A. I. R. 1933 Rang. 273=1933 Cr. C. 1017=146 Ind. Cas. 212 ; A. I. R. 1933 Oudh. 41=9 O. W N. 997=1933 Cr. C. 8=34 Cr. L. J. 387 ; 1933 P. L. J. 917=A. I. R. 1933 All. 620=55 A. 617=1933 Cr. C. 992 ; A. I. R. 1933 Sind. 193=144 Ind. Cas. 328=34 Cr. L. J. 751=27 S. L. R. 24=1933 Cr. C. 708 ; A. I. R. 1933 Sind. 142=144 Ind. Cas. 431=34 Cr. L. J. 768 ; A. I. R. 1934 Cal. 610=59 C. L. J. 482=38 C. W. N. 854. If right of private defence is not established claim of title though *bona fide* will not avail. 33 Cr. L. J. 864=13 P. L. T. 288=11 Pat. 523 A. I. R. 1932 Pat. 215. Judgment-debtor cannot claim right of private defence in assaulting auction-purchaser who has been put in possession by Civil Court. 152 Ind. Cas. 591=1934 Cr. C. 1218=A. I. R. 1934 Pat. 565. Where accused has been given lathi blows by the opposite party, he can inflict simple hurt on the other side in exercise of the right of private defence. 36 P. L. R. 300.

Right of private defence against the act of a person of unsound mind, &c.

98. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication, of the person doing that act, or by reason of any misconception on the part of that person ; every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a*) Z, under the influence of madness attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*) A enters by night a house which he is legally entitled to enter. Z, in good faith taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Principle.—The right of private defence arises from the natural right of self protection and not from any supposed criminality on the part of the person who causes the danger. Although he may be blameless, or an insane person incapable of committing an offence, I am no more bound to suffer what he attempts to inflict than I should be, if he had a criminal intention. Of course if the right is exercised against a woman or a child, it must not exceed the moderate bounds which in such a case, will ordinarily be sufficient—*Morgan and Macpherson.*

Notes.—Where a tenant did not object to the *Malguzar* entering upon the land, but to the removal of a tree growing thereon after its severance from the

ground by the action of the wind and where the *Malguzar* used force not more than what is justified by law to protect his rights over the tree. *Held*, that the *Malguzar* committed no offence. 10 N. L. R. 38=15 Cr. L. J 352=23 Ind. Cas. 704. Even drunken men are entitled to the protection of the law, but, if they break the law and attack either the person or property of the people any member of the public is entitled to exercise his right of private defence, provided he does no more harm than the necessities of private defence require. 5 Bur. L. J. 223 ; 101 Ind. Cas. 477=28 Cr, L. J. 445.

Acts against which there is no right of private defence.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may be not strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension, of death or of grievous hurt, if done or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing unless he produces such authority, if demanded.

Principle—Ministerial officers of Justice aud other public servants are protected by the law in the discharge of their duties and if questions arise touching any trivial excess or irregularity committed by them or by their orders in good faith, such questions must be determined by the civil tribunals. The risk to public servants would be extreme, if any departure from the strict letter of their authority justified resistance to them. The expressions "under colour of this office," and "in good faith" show that the protection is intended to be given only to a public servant acting honestly in discharge of powers conferred or of duties imposed on him. The right of private defence does not arise when recourse may be had to the public authorities for this right does not take the place of the functions of those public servants who are specially charged with the protection of life and property and the apprehension of offenders, and where the assistance of the public authorities can be procured, the right cannot lawfully be exercised.—*Morgan and Macpherson*, 75.

First clause.—This clause has its application in cases in which the public servant is acting in good faith under colour of his office, 18 A. 246. This section has no application in a case when the police officers were acting under a warrant the issue of which was altogether illegal. 24 C. 320 ; see also 20 Ind. Cas. 992 ; 3 C. W. N. 627 ; 13 B. 168. Where an act, however irregular or illegal it may be, is an act of a public servant acting in good faith under colour of his office, no person has a right of self-defence under this section. 21 M. 296=1 Weir 135 ; see also 57 P. L. R. 1918 ; 19 M. 349 ; 7 B. H. C. R. 50 ; 18 C. W. N. 548 ; 21 M. 79 ; 9 C. W. N. 125 ; 29 C. 417 ; 14 Cr. L. J. 142=18 Ind. Cas. 894=15 P. L. R. 1913=16 P. R. 1913 Cr.=20 P. W. R. 1913 Cr. ; 18 C. W. N. 548=15 Cr. L. J. 427=24 Ind. Cas. 163.

Section 99 applies to acts where jurisdiction is wrongly exercised not where there is complete absence of jurisdiction. 51 C. 902=39 C. L. J. 452=A. I. R. 1924 Cal. 959=83 Ind. Cas. 481 ; see also A. I. R. 1926 Lah. 19=6 Lah. 392=26 Cr. L. J. 1631=26 P. L. R. 801=90 Ind. Cas. 927 ; 61 Ind. Cas. 794=A. I. R. 1921 Pat. 415=2 P. L. T. 455=22 Cr. L. J. 442. So an illegal order under s. 144 Cr. P. Code may be resisted. 22 Cr. L. J. 442=2 Pat. L. T. 455=61 Ind. Cas. 794. Prospective general order to subordinates to do certain acts do not bind the officers with acts done without his knowledge. A.I.R. 1921 Mad. 569=13 M.L.W. 314. Right of private defence against public servant in the discharge of his duty exists if only death or greivous hurt is apprehended. A. I. R. 1927 Lah. 706=9 L. L. J. 424=28 Cr. L. J. 993=105 Ind. Cas. 817 ; see also 54 Ind. Cas. 577=3 U. B. R. (1919) 176. Where there is no defect in authority in issuing warrant of arrest right of private defence to resist execution does not exist. A. I. R. 1932 Pat. 315=13 P. L. T. 502=11 Pat. 743 =1932 Cr. C. 853=34 Cr. L. J. 269. Apprehension by executing peon is lawful and resistance cannot be justified. *Ibid.* Protection is afforded even when there is minor defect in his authority. Where there is no authority at all or it is wholly defective this section has no operation. 142 Ind. Cas. 160=34 Cr. L. J. 269=11 Pat. 743=13 P. L. T. 502=A. I. R. 1932 Pat. 315 ; see also 144 Ind. Cas. 817=57 C. L. J. 41=34 Cr. L. J. 826=A. I. R. 1933 Cal. 469 ; A. I. R. 1933 Oudh. 276=1933 Cr. C. 601=34 Cr. L. J. 73=144 Ind. Cas. 256 ; 33 Cr. L. J. 233=13 P. L. T. 62=A. I. R. 1932 Pat. 66 ; A. I. R. 1933 Sind. 193=27 S. L. R. 24=34 Cr. L. J. 751 ; A. I. R. 1933 Sind. 174=27 S. L. R. 219= 146 Ind. Cas. 43 ; 67 M. L. J. 510=A. I. R. 1934 Mad. 634=152 Ind. Cas. 481. Mere wearing of uniform does not show good faith where he is acting in bad faith. A. I. R. 1934 Oudh. 124=11 O. W. N. 337=35 Cr. L. J. 804=A. L. R. 1934 Oudh. 229. Accused is not entitled to right of private defence where attachment was effected legally under good order. Omission to record reasons in order of appointment of vakil to effect attachment, held, did not make attachment illegal. A. I. R. 1935 All. 490.

A Court ought not to set up, on behalf of persons accused before it a defence they were acting in the exercise of the right of private defence of property, which defence the accused themselves did not set up. A. W. N. 1904, 113=1 Cr. L. J. 427. But when the evidence shows that the accused was acting in private defence he may be acquitted. 15 Ind. Cas. 310=13 Cr. L. J. 470=11 M. L. T. 251.

Where the right of private defence of property exists it is difficult to distinguish between the right of private defence of property and the right of private defence of the person where the prosecution party comes upon the land in possession of the accused not only to deprive them of their property but also to violently, attack them if they tried to defend their possession by force. 15 Cr. L. J. 447=86 Ind. Cas. 218. When a man strikes another it is not easy for the man who is struck to calculate with accuracy the exact force which he can use in defence. Even if he uses more force, he is protected by the law. 26 Cr. L. J. 730=86 Ind. Cas. 218.

Clause (2).—There is no right of private defence against the arrest by a constable acting under colour of his office even though such arrest is not strictly justified by law. 29 Cr. L. J. 69=106 Ind Cas. 581 ; see A. I. R. 1927 Lah. 851=28 P. L. R. 290=28 Cr L. J. 972=105 Ind. Cas. 684.

Clause (3).—The right of private defence of property commences when a reasonable apprehension of danger to the property commences. 14 B. 441. This clause allows no right of private defence in cases where there is time to have recourse to the authorities. 1 Weir, 44 ; 26 P. L. R. 267 ; 74 Ind. Cas. 73 ; 60 Ind. Cas. 33 ; A. I. R. 1932 Pat. 189=33 Cr. L. J. 509=13 P. L. T. 193=133 Ind. Cas. 693.

Clause (4).—Right of private defence extends even against drunkard provided no more harm is done than is necessary. A. I. R. 1927 Rang. 121=5 Bur. L.J. 223=28 Cr. L. J. 445=101 Ind. Cas. 477. It is in excess of self-defence to kill even a stronger man when he is about to assault with only clod of earth. 8 L. L. J. 455=27 P. L. R. 430=27 Cr. L. J. 756=95 Ind. Cas. 276. Causing severe injuries in a lathi fight consequent on molestation and obstruction to irrigation is not excessive. A. I. R. 1925 Oudh. 425=27 O. C. 292=26 Cr. L. J. 513=85 Ind. Cas. 353. Amount of force required to keep within right cannot be definitely weighed. A. I. R. 1923 All. 357=24 Cr. L. J. 442=73 Ind. Cas. 975. Prosecution must prove that the accused exceeded right of private defence. A. I. R. 1924 Oudh. 334=11 O. L. J. 50=26 Cr. L. J. 61=83 Ind. Cas. 589. Right of self-defence continues till the danger is

over. A. I. R. 1925 Nag. 260=26 Cr. L. J. 587=85 Ind. Cas. 731 ; see also 22 Cr. L. J. 177=60 Ind. Cas. 33 ; (1918) Pat. 359=19 Cr. L. J. 983=48 Ind. Cas. 163 ; 4 Pat. L. J. 289=20 Cr. L. J. 375.

Explanation I—A right of private defence exists where the alleged offender does not know and has no reason to believe that the person doing the act is a public servant. A. I. R. 1924 All. 645=22 A. L. J. 501=26 Cr. L. J. 501=85 Ind. Cas. 245.

Cases.—The plea of private defence can be taken up in the Appellate Court. A. I. R. 1926, Nag. 202. Under this section, the right of private defence against an injury apprehended to be done by a public servant extends only to those cases in which there is a reasonable cause of apprehension of death or grievous hurt being caused by the act of such public servant. 9 Lah. L. J. 424. In order to establish the exercise of the right of private defence it is absolutely necessary to detail the exact circumstances which led the accused to strike the blow in question; obviously such a defence can seldom successfully be made out when the accused's case is that they did not strike the blow at all. 32 C. W. N. 839=48 C. L. J. 138=A. I. R. 1928 Cal. 700. Three or four men being armed with lathis, etc., came to a village during night time apparently to commit dacoity. The accused saw them and feeling the danger fired a gun at the thieves and one of them was killed. In a prosecution for murder, *held*, that the accused was justified in firing and that he had not exceeded the right of private defence. One does not wait for firing until a dacoit or robber comes up to shake hands or to enquire after another's health. 27 A. L. J. 148=115 Ind. Cas. 609=30 Cr. L. J. 504=A. I. R. 1929 A. 299. Even if the arrest made by police is wholly illegal yet the person arrested or the persons who assist the arrested person are not entitled to use more force than is necessary for protection against illegal arrest. 20 S. L. R. 85=94 Ind. Cas. 404=27 Cr. L. J. 628. When an Income-tax officer whose notice to produce account books is not complied with, enters on the premises and takes possesion of the books and remains on the premises though asked to go away, the owners are within their rights in turing him out by force, and section 99 does not deprive them of their right of private defence. 7 Lah. 104=27 P. L. R. 298=95 Ind. Cas. 308=27 Cr. L. J. 772. This section is inapplicable to a case where a police officer attempted to snatch a *kuthari* from a person, in trying to prevent which injuries were inflicted to him. The possession of a *kuthari* not being forbidden by law, the act of the police officer is wholly without jurisdiction. 6 Lah. 392=90 Ind. Cas. 927=26 Cr. L. J. 1631. Force can be used to defend possession of property but not for recovery. A. I. R. 1925 Nag. Even if a warrant of attachment is illegal, an accused cannot plead a right of private defence of property when he is charged under s. 323 I. P. C. 26 P. L. R. 290. The right of private defence does not extend to shooting after retreat. L. R. 3 A. 20 Cr. When the direction under which certain public servants acted was not a lawful one in respect of what they were directed to do or of their superior's right to give such a direction at all, the right of private defence is not taken away by s. 99 and resistance to such public servant will be justified. 28 M. L. T. 178. There is no right of private defence where two parties arm themselves for a fight and deliberately engage in a violent riot without seeking the protection of the police authorities near by. 36 P. R. Cr. 1918=48 Ind. Cas 883=20 Cr. L J. 83. Right of private defence is available to a person wrongfully deprived of property, but wrong doer has no such right. A. I. R. 1930 Lah. 314. Order of arrest without imergency contemplated by Cr. Pro. Code s. 151 is Illegal and a person whose arrest is attempted may offer resistance and if a constable uses force towards him causing injury the person has right of private defence. A. I. R. 1830 Lah. 348. In an offence of rioting, the plea of private defence is available. 10 P. W. R. 1907 Cr.=5 Cr. L. J. 218. Where an illegal search warrant has been issued by virtue of which the daughter of the accused is seized, he can obstruct the police officer in exercise of the right of private defence. 11 C. W. N. 836 ; see also 2 C. P. L. R. 73. The right of private defence does not arise where the accused commit riot in enforcing their supposed right in a piece of land. 12 C. W. N. 579=35 C. 384=7 Cr. L. J. 374. Where accused states another not with intention of causing death but to evade arrest by him which he was not entitled to do, right of private defence is exceeded. A. I. R. 1933 Pat. 508=14 P. L. T. 464=1933 Cr. C. 1079. Where complainant's party are aggressors, accused party have right of private defence. 145 Ind. Cas. 294=14 P. L. T. 228=1933 Cr. C. 972=A. I. R. 1933 Pat. 434. Where the deceased was aggressor but was made helpless by being disarmed, accused has no right of private defence by causing injuries. A. I. R. 1935 Pesh. 59.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death, or of any other harm, to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

When the right of private defence of the body extends to causing death.

First.—Such an assault, as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

Secondly—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly.—An assault with the intention of committing rape ;

Fourthly.—An assault with the intention of gratifying unnatural lust ;

Fifthly.—An assault with the intention of kidnapping or abducting ;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Scope—Certain aggravated assaults which are here enumerated justify the exercise of the right of private defence to the extent of causing death (if this be necessary). The reference to the restrictions in the preceding section should probably be understood to apply to the restrictions, therein mentioned exclusive of those in the first and second clauses, as to which this reference is inapplicable.—*Morgan and Macpherson*, 78. The right of private defence arises in case of assault to one's wife. 27 Cr. L. J. 617=94 Ind. Cas. 36=1926 M. W. N. 212. The extent to which the exercise of the right of self-defence is justified depends not on the actual danger but whether there was a reasonable apprehension of such danger. 25 Cr L. J. 625=81 Ind. Cas. 113=1925 Lah. 49 ; see also 23 A. L. J. 131=26 Cr. L. J. 542=85 Ind. Cas. 382.

A person will be justified, in the exercise of his right of private defence of his person, in stabbing the assailant, when the latter attacks him with a knife inflicting a serious wound, even though the person exercising the right of private defence may have escaped further injury by resorting to less violence or by running away. 28 M. 454=3 Cr. L. J. 43 ; see also 8 P. L. R. 1906=3 Cr. L. J. 232. When the deceased tried to commit rape on the accused's wife, the latter was justified in killing him. Rat. Un. Cr. C. 867. This section gives the right of private defence of the body only against actual assailants. 3 Lah. 144=4 Lah. L. J. 91=68 Ind. Cas. 113=23 Cr. L. J. 513 ; see also 30 P. L. R. 97=11 Lah. L. J. 80 ; 27 A. L. J. 148=115 Ind. Cas. 609 =30 Cr. L. J. 504.

A person in order to defend himself may kill his adversary provided he has a reasonable apprehension that otherwise he himself will be killed. 26 Cr. L J. 1143=88 Ind. Cas. 455=A. I. R. 1925 Mad. 1069 ; see also A. I. R. 1925 Lah. 49 ; 26 Cr. L. J. 1305. Where the accused provokes a quarrel and tries to hit a person and afterwards runs for his safety from a counter attack with lathis made on him and finds after running for some distance, that he cannot escape, turns round and hits the person who dies three days afterwards, held that the accused acts in self-defence and cannot be convicted of grievous hurt. 23 A. L. J. 131=85 Ind. Cas. 382=26 Cr. L. J. 542=A. I. R. 1925 All. 313. Where the accused was one of a party escorting ladies according to the latter's wish and where there was a fight, one of the party being obstructed in its progress and where the accused stabbed the person obstructing, who had levelled a gun against the accused held the accused was not guilty of murder. 23 A. L. J. 68=86 Ind. Cas. 45=26 Cr. L. J. 669. Where the solitary injury received by the deceased which proved fatal was inflicted by one of the two accused, in exercise of his right of private defence the other accused could on no account be held responsible for the same. 89 Ind. Cas. 249=26 Cr. L. J. 1305=A. I. R. 1025 Lah. 370. In the heat of the moment and while defending one-self from a man armed with a stick it is practically impossible to calculate with accuracy the exact force which one is entitled to employ in self-defence. 26 P. L. R. 14=86 Ind. Cas. 218=26 Cr. L. J. 730. A man who is assaulted is not bound to modulate his defence step by step, according to the attack before there is reason to believe the attack over. He is entitled to secure

his victory, as long as the contest in continued. 1923 Lah. 155. According to section 100, Indian Penal Code, the right of private defence of the body extends under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be such an assault as may reasonably cause the apprehension that death or grievous hurt will be the consequeuce of such assault. 72 Ind. Cas. 570=24 Cr. L. J. 408; see also 1923 Lah. 155: 72 Ind. Cas. 611=24 Cr. L. J. 451 ; 1923 Lah. 172 ; 23 Bom. L. R. 817=63 Ind. Cas. 154=22 Cr. L. J. 618 ; 2 P. L. R. 1920=55 Ind. Cas. 607=21 Cr. L. J. 335 ; 54 Ind. Cas. 577=21 Cr. L. J. 97 ; 48 Ind. Cas. 163 ; 105 P. L. R. 1916 ; 34 Ind. Cas. 990=69 P. L. R. 1916 Person attacked by another with "slat" can cause death of assailant. A. I. R. 1929 Lah. 443=30 P. L. R. 97=11 L. L. J. 80=31 Cr. L. J. 47=120 Ind. Cas. 185. Person finding himself in dangerous situation has right of private defence. A. I. R. 1933 Sind. 138=34 Cr. L. J. 760=1933 Cr. C. 336. Section applies in case of attack giving reasonable apprehension of death or serious injury. A. I. R. 1933 Lah. 665=1933 Cr. C. 887=34 Cr. L. J. 584=143 Ind. Cas. 362, see also A. I. R. 1933 All. 401=34 Cr. L. J. 765=1933 Cr. C. 684=1933 A. L. J. 581=I. R. 1933 All. 426 ; A. I. R. 1933 Lah. 1053 ; A. I. R. 1933 Oudh. 380=1933 Cr. C. 1097=10 O. W. N. 750 ; A. I. R. 1933 Oudh. 59=34 Cr. L. J. 243=9 O. W. N. 1146=141 Ind. Cas. 75=1933 Cr. C. 99=I. R. 1933 Oudh. 82. If a person rightfully abates nuisance and person causing nuisance without any right attacks him, former has right of private defence. A. I. R. 1933 Sind. 142=34 Cr. L. J. 768=1933 Cr. C. 340. Extent of right depends not on actual danger but even on reasonable apprehension. 142 Ind. Cas. 818=9 O. W. N. 1019=34 Cr. L. J. 373=A. I. R. 1933 Oudh. 63 ; see also A. I. R. 1933 Oudh 41=34 Cr. L. J. 387=9 O. W. N. 997=34 Cr. L. J. 387 ; see also 142 Ind. Cas. 818=A. I. R. 1933 Oudh. 63 ; A. I. R. 1933 Lah. 227. Right of private defence need not be specifically pleaded. A I. R. 1933 Oudh 63=34 Cr. L. J. 373=9 O. W. N. 1019. Any hard and fast rule as regards right of private defence cannot be laid down. Every case depends on its own facts A. I. R. 1934 Lah. 748=35 P. L. R. 783=1934 Cr. C. 1097. Where accused's wife has been attacked with the intention of committing rape on her, the accused can cause the death of the deceased in exercise of the right of private defence. A. I. R. 1934 Lah. 620=35 P. L. R. 659=1934 Cr. C. 945 ; see also A. I. R. 1934 Pat. 588=1934 Cr. C. 1245.

An accused person, who pleads the benefit of the provisions of the Indian Penal Code regarding the right of private defence, has to satisfy the Court affirmatively, by evidence which the Court can believe and act upon that he is entitled to the benefit of these provisions. 1923 All. 277. Under this section detailed circumstances must be set out. 1928 Cal. 700.

When such right extends to causing any harm other than death.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues.

Reasonable apprehension.—There must be an attempt or a threat, and consequent thereupon an apprehension of danger ; but it is not mere idle threat, or every apprehension of a rash or timid mind, that will justify the exercise of the right. Reasonable ground for the apprehension is requisite. Suppose that threat to proceed from a woman or child and to be addressed to a strong man ; in such a case there could hardly be a reasonable apprehension. Present and imminent danger seems to be meant. But if a man is preparing himself, as by seizing a dangerous weapon in such a way that he manifestly intends immediate violence, this seems sufficient justification of the exercise of the right ; for his conduct amounts to a threat, and the other has reason to consider the danger to be imminent—*Morgan and Macpherson*,

79. Whether the right of private defence of his body, which the accused possessed was exceeded by him or not, will depend, not on the actually continuing danger but on whether there was a reasonable apprehension of such danger. 28 M. 454; see also 22 A. L. J. 625. When a person is attacked while doing a lawful act, he is entitled to stand his ground and defend himself, and the law does not intend that he must run away to have recourse to the protection of the public authorities. 10 O. C. 196=6 Cr. L. J. 271. An offence is excused only if the right of private defence is rightly exercised. 25 Cr. L. J. 693=81 Ind. Cas. 181=A. I. R. 1924 All. 441; A. I. R. 1933 Lah. 167. There is no right of private defence when the trespasser is out of it. A. I. R. 1924 Pat. 275=5 P. L. T. 198=24 Cr. L. J. 813. Mere presence of persons does not take away right of private defence. A. I. R. 1933 Lah. 167=34 P. L. R. 259=146 Ind. Cas. 27=1933 Cr. C. 312.

When the right of private defence of property extends to causing death.

103. The right of private defence of property extends under the restrictions mentioned in section 99, to the voluntary causing of death, or of any other harm to the wrong doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

First—Robbery ;

Secondly—House-breaking by night ;

Thirdly—Mischief by fire committed on any building, tent or vessel, which building, tent, or vessel, is used as a human dwelling, or as a place for the custody of property ;

Fourthly—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

Comment.—Violence is the characteristic of all offences enumerated in this section.—*Maynes' Crimianl Law.*

Notes.—Under this section the right of private defence of property to the extent of causing death arises not only when house is broken into but when an attempt is made to break into the house. 98 Ind. Cas. 193=27 Cr. L. J. 1287=A. I. R. 1926 Cal. 1012. Right of killing an offender found committing burglary given by s. 103 is subject to the provisions of s. 99. A. I. R. 1926 Lah. 26=6 Lah. 463=27 Cr. L. J. 38=26 P. L. R. 719.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Scope.—Under this section the right of private defence extends to the causing of any harm other than death subject to the restriction in s. 99 that it is limited to the inflicting of only such harm as is necessary for the purpose of defence. 18 Cr. L. J. 862. Where a person is enjoying a right and in protecting his right repelled attack of the prosecutors, he commits no offence. 41 C. 43=20 Ind. Cas. 140. It cannot be said that, when after a thief has effected his retreat with stolen property the property is subsequently found in his possession the owner's right of private defence would revive for the purpose of its recovery. 28 P. L. R. 299=9 Lah. L. J. 260=103 Ind. Cas. 798=28 Cr. L. J. 750. Under section 104, Penal Code, the right of private defence extends to the causing of any harm other than death subject to the restriction in section 99 that it was limited to the inflicting of only such harm as was necessary for the purpose of defence. 18 Cr. L. J. 862=41 Ind. Cas. 830. Where the accused in exercise of the right of private defence inflicted mortal wound he is liable under s. 326 though not under s. 302 I. P. code. 1932 M, W. N. 67.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property, or either the assistance of the public authorities is obtained or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Notes.—Where a person whose property has been stolen finds the thief or the property, he is not bound to put off the capture of the thief or the property, until he can find assistance from public authority. 7 Cr. L. J. 49=3 N. L. R. 117. The Penal Code does not give any right of private defence of property in regard to which an offence under s. 403 or 411 I. P. C. has been committed. 37 P. R. 1914 Cr.= 16 Cr. L. J. 209=27 Ind. Cas. 833=219 P. L. R. 1915. If serious disorder are to be avoided the right of private defence must strictly be confined within the limits fixed by statute. 7 Lah. 21=27 P. L. R. 280=96 Ind. Cas. 385. Where the owner of the land on which cattle has trespassed had them chased and the chaser followed the cattle to the field of the accused who inflicted mortal injuries on one of them who in consequence died and the accused pleaded private defence, held, the mere fact that the cattle had left the land trespassed upon did not deprive the owner of the right of seizure under s. 10 of the Cattle Trespass Act, and that no case of private defence has been established. A. I. R. 192 Lah. 692. Killing a thief after he has thrown away the stolen property is not for the purpose of recovering the property and as such is not covered by this section. A. I. R. 1934 Lah. 595=1934 Cr. C. 923=35 P. L. R. 664; see also A. I. R. 1933 Rang. 340=1933 Cr. C. 1150.

Right of private defence against deadly assault when there is risk of harm to innocent person.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if, by so firing, he harms any of the children.

Principle.—A man must not escape death by designedly causing the death of an innocent person but in the case supposed he is excused for causing an innocent person to run the risk of death—*Morgan and Macpherson, 82.*

CHAPTER V.

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing who—

First.—instigates any person to do that thing; or

Secondly.—engages with one or more other person or persons in any

conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or

Thirdly—intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public-officer is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B, abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to, or at the time of, the commission of an act, does anything, in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Application.—Chapter V applies to offences punishable under ss. 8, 121A, 124A, 125A, 225B 249A, and 304A.—Vide, s. 13 of Act 22 of 1870.

Comment.—When an offence is committed and several persons take part in the commission of it each person may contribute in a manner and degree different from the other to the doing of the criminal act. Mere knowledge or standing by while an offence under s. 379 is being committed cannot be covered by the definition of abetment. 1929 A. I. R. Sind. 9. Emigration or assisting in the emigration is not an abetment within s. 213. 1928 Cal. 339. To substantiate a charge under section 100, it is necessary to show intentional aid by some act or illegal omission. 1 Bom. L. R. 351. Guilty knowledge on the part of the abettor is necessary. 6 A. 491 ; see also Rat. Un. Cr. C. 93 ; 15 Cr. L. J. 617. The mere presence at the commission of a crime of a person, who has no authority to interfere will not constitute an abetment of the offence. Rat. Un. Cr. C. 844 ; Rat. Un. Cr. C. 303 ; 8 C. 728 ; 1 Weir, 52 ; 20 B. 394.

An offence of abetment is committed by intentional aiding. 12 W. R. Cr. 52 ; 4 C. W. N. 309 ; 30 P. R. 1868 Cr. So an abetment by instigation depends on abettor's intention. 22 W. R. Cr. 8 ; 24 P. R. 1882 Cr. It is not necessary to constitute the offence of abetment, that the act abetted should be committed. 18 W. R. Cr. 32 ; 4 C. 366 ; 71 P. R. 1886 Cr. 20 P. R. 1885 Cr. There is no abetment of an act after it has been committed. 10 C. L. R. 4 ; 11 P. R. 1860 Cr. The attempt to abet an offence is not legally impossible, and such an offence is punishable. 49 P. R. 1887 Cr. But a person cannot be charged both for abetting and attempting the same offence. 8 Bom. L. R. 855=4 Cr. L. J. 450. A man cannot be charged as an abettor by conspiracy as well as a perpetrator of the offence abetted cumulatively. 24 M. 523. A woman cannot be convicted with the abetment of her own abduction. Colm. Dig. Cr. No 4. The offence of abetment under the Penal Code is a substantive offence. 1 B. 51. Even if a public servant is corrupt and solicits a bribe directly or indirectly the giving him a bribe is none the less an abetment of his offence. U. B. R. (1892—1896) Vol. I, 158. A design to commit a specific offence must be proved before holding a person guilty of the offence of the abetment of such an offence by having conspired with others to commit it. 16 P. R. 1879 Cr. As regards what constitute abetment of dacoity, *vide*, 25 B. 90=2 Bom. L. R. 653 : A. W. N. 1903, 2 ; 15 P. R. 1901 Cr. : 1 Weir 48. A person cannot be convicted of the abetment of a false charge solely on the ground of his having given evidence in support of such a charge. 9 B. L. R. Ap. 16 ; 18 W. R. Cr. 28. In order to convict a person of abetting the commission of a Crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other, it is absolutely necessary to connect him with those steps of the transaction which are criminal. 20 W. R. Cr. 41. The mere fact of allowing an illegal marriage to take place at one's house does not amount to the abetment of an illegal marriage W. R. 1864 Cr. 13 ; 6 B. 126. If no one commits offence no body else can be said to abet that offence. A. I. R. 1930 Oudh. 505.

The act may be done by the hands of one person while another is present or is close at hand ready to afford help ; or the actual doer may be guilty agent acting under the orders of an absent person ; and besides these participators there may be other person who contribute less directly to the commission of the offence by advice, persuation, incitement or aid. It is proper to mark the nature and degree of participation which is essential to criminal liability, but it will be seen that the several gradations of action above referred to are not always treated as denoting necessarily different measures of guilt with a view to distinctions in respect of punishment.

The law concerning principal offenders and accessories or abettors is contained in sections 34 to 38 of Chapter II, and in the present chapter. The several definitions of offences throughout the Code, construed with reference to these provisions extend the operation of the Code to all who commit or abet the commisssion of an offence or who contribute to it in any degree which a penal law can notice.

"We have seen that if several persons, combining both in intent and act, commit an offence jointly each is guilty, as if he had done the whole alone ; and that so it is if each has his several part to do, all contributing to one result. When all thus combine each does the act so far as his own part extends and as to the residue may be regarded as procuring it to be done by means of guilty agents. All the parties so concerned stand in the mutual relation of principals and agents.

"The present chapter treats of criminal agency of a less direct and immediate kind ; the agent being urged forward by a person who will not himself act, but who procures or instigates another to put in execution his criminal intention.

"The offence of abetment must mainly depend on the guilty knowledge or intention of the abettor. The knowledge and intention of the person he employs to act for him, will not affect or alter the abettor's guilt although the acts of that person may have an important bearing in determining it. The measure of punishment which the Code awards to abettors depends on the effect of abetment ; a distinction being made between cases in which the abetment is successful, and those in which the effect intended is not accomplished. If the act abeted is done, the abettor is punished as if he had himself committed the offence. If the act abetted is not done, he is punished less severely, but regard is had to the result of his abetment, any hurt which may be caused being deemed an aggravation of his offence. But no distinction seems to be made, as regards the abettor's punisement, between cases in which the person abetted involuntarily fails, or is prevented from carrying his intention into execution, and those in which he resists altogether the solicitations of the abettor.

"Again, the person abetted may be guilty of a criminal act and his abettor may in no way be answerable for it, because the act done goes beyond or is quite distinct from the act intended by the abetor ; he must answer for any probable consequence or his abetment, notwithstanding that the act or result may not be precisely what he intended, but he is not further responsible. The question will be this. Is the act done, although not precisely the act intended to be done, yet substantially the same, or a probable result of that act ? If so, the abettor must answer for it. The sort of conduct which constitutes abetment is explained, but no rule is or could be laid down on the subject of the degree of incitement or the force of persuation used, which will suffice to make a person an abettor"—*Morgan and Macpherson.*

General exceptions.—The provisions of this and all succeeding chapters, must be read with the foregoing chapters of General Explanation and General Exceptions. Construed with reference to the latter chapter, it is clear that those who cannot commit offence cannot be abettors of offences ; therefore infants, insane persons and others excepted from criminal liability cannot be abettors.—*Morgan and Macpherson.*

Scope of the Section.—This section explains what acts or conduct of a person shall be deemed to constitute him an abettor of the doing of a thing whether such thing is in him an offence or not. The thing done may be criminal and yet no offence (in the language of the Code) attaches to the actual doer, because being an infant or an insane person, etc. no guilt can be imputed to him. To distinguish between things done by such persons and things done by guilty agents this form of expression is used—*Morgan and Macpherson.*

Clause (1)—'Instigation' necessarily indicates some active suggestion or support or stimulation to the commission of the act itself which constitutes the offence and advice can become 'instigation' only if it is found that it was meant actively to

suggest or stimulate the commission of an offence. Advice *per se* cannot necessarily be instigation under clause (1) and the conviction based upon the finding that the accused must have advised etc. is wrong. 5 P. L. J. 129=1 P. L. T. 60. Abetment by aiding or instigation necessarily means some action, suggestion or support or stimulation to the commission of the offence itself; negligence does not amount to abetment. 2 Pat. L. T. 73. Mere intention or preperation to instigate is not abetment. To complete abetment as crime, there must be abettor and he must abet an offence. A. I. R. 1932 Cal. 760=36 C. W. N. 982=60 C. 982=1932 Cr. C. 803=34 Cr. L. J. 78. The placing of a temptation is not instigation, but actively stimulating a person is instigation. 12 M. L. T. 373=19 Cr. L. J. 29=42 Ind. Cas. 989. Mere presence on the occasion of the commitment of the offence does not amount to an abetment. 43 Ind. Cas. 95. Abetment may be committed by instigation through letters sent by post. 16 A. 389. When the accused encourages the committing of a crime he can be rightly convicted under this section. 1 Weir, 50. A man cannot be convicted for abetment for sympathy with an unlawful assembly. 4 C. W. N. 500; see also 1 Weir 47. Informing husband against intriguing wife and her lover by virtue of which murder is committed does not amount to abetment. 30 P. R. 1872 Cr.

Concealment.—As to mere omissions, such as an omission by a private person to give the police information respecting an offence, they cannot amount to instigation by concealment or otherwise, unless they are illegal,—that is unless the law has imposed the duty of giving such information on the persons charged with the omission.—*Morgan and Macpherson*; 4 B. L. R. A. Cr. 7. Abetment by omission is punishable only if the omission is illegal omission. 9 Bom. L. R. 159.

Clause (2)—Two or more persons may be said to engage in a conspiracy, or for the doing of a thing when they combine and agree to do it or to cause it to be done; but this combination alone will not make them abettors, though they may have discussed plans, adopted resolutions and interchanged promises of fidelity, unless an act in pursuance of the conspiracy has taken place.—*Morgan and Macpherson*: see also A. W. N. 1887, 236; 17 Cr. L. J. 233; 18 P. R. 1179 Cr.; 36 A. 26. A knowledge on the part of the abettor that the offence is intended to be committed is essential. 17 Cr. L. L. 175; A. W. N. 1896, 194. In the case of conspiracy prosecution may be either for abetment of the offence or under substantive offence under s. 120 B. 17 Cr. S. J. 366=10 S. L. R. 69=35 Ind. Cas. 620.

Clause (3).—Concealment which is wilful and relates to a fact which a person is bound to disclose, constitutes abetment by aid, the aid being given by this illegal omission.—*Morgan and Macpherson.* 86; 14 Cr. L. J. 610; 24 W. R. Cr. 7. A person who knowingly aids in disposal of stolen property is one accomplice. 67 M. L. J. 693=A. I. R. 1934 Mad. 721.

Cases.—A person aiding must know that he is aiding a criminal act. 1928 Nag. 257. A person who identified another, who intended to cheat the treasury officer by personation, made the identification on the assurance of another in whom he had confidence, but did not tell Treasury Officer that he identified only on such assurance, could not be convicted of abetting the offence unless it is definitely proved that he knew that the offence was being committed, that is to say, that the man whom he identified was not the same. 10 Pat. L. T. 657. A licensed driver of a motor car who allows an unlicensed driver to drive a car is not guilty of an offence of abetment under s. 107, if the car is driven rashly and negligently by the unlicensed driver. 30 Cr. L J. 1077=119 Ind. Cas. 536. A person cannot be convicted on mere suspicion. 44 B. L. J. 317=99 Ind. Cas. 236=28 Cr. L. J. 108. An offence of abetment falls through if the personal offence is not substantiated. 32 C. L. J. 478=22 Cr. L. J. 448. The finding that the accused No. 1 could not have acted in the illegal way without the approval and connivance of the accused No. 2 is not sufficient to prove abetment under s. 107 I. P. Code, which also requires the existence and proof of criminal intention against the latter. 2 Pat. L. T. 193. In case of abetment of murder, knowledge of intention to murder must he proved. 17 Cr. L. J. 175=33 Ind. Cas. 655. A finding as to approval and connivance of the person accused of abetment is not sufficient to prove abetment under s. 107 I. P. Code. A. I. R. 1921 Pat. 304=2 P. L. T. 193. Person aiding should know that he is aiding a criminal act. In abetment of omission, the omission must be an illegal omission. A. I. R. 1928 Nag. 257=29 Cr. L. J. 561=109 Ind. Cas. 467. Mere presence when an offence is committed does not amount to an abetment within s. 107 unless there is legal obligation to prevent it. 19 Cr. L. J. 73=43 Ind. Cas. 95; see also A. I. R. 1925 All. 196=26 Cr. L. J. 470=85 Ind. Cas. 150. In cass of riot by servants in the

benefit of their master, master cannot be convicted of abetment of the riot merely on suspicion. A. I. R. 1925 Nag. 372=26 Cr. L. J. 1679=88 Ind. Cas. 13. Mere giving of aid without knowing that an offence is being committed is not abetment. A. I. R. 1925 All. 230=47A 268=22 A. L. J. 1106=26 Cr. L. J. 362=84 Ind. Cas. 714 : see also A. I. R. 1929 Pat. 157=30 Cr. L. J. 642=19 P. L. T. 657=116 Ind. Cas. 753 ; 18 Cr. L. J, 327=10 Bur. L. T. 252=38 Ind. Cas. 439. A man cannot be found guilty of abetment of an offence on a charge of committing the offence itself. A. I. R. 1927 All. 35=24 A. L. J. 998=27 Cr. L. J. 118=49A. 120=97 Ind Cas. 430. It is not a general proposition that in every case that an abettor must be acquitted if the principal is acquitted. 52 C. 112=40 C. L. J. 843=28 C. W. N. 1046=26 Cr. L. J. 11. Statement to public servant "X wished to pay you Rs. 5,000" may, taken with the context, amount to instigation to receive a bribe. A. I. R. 1923 Bom. 44=24 Bom. L. R. 534=23 Cr. L. J. 476=67 Ind. Cas. 818. A man cannot be found guilty of abetment of an offence on a charge of committing the offence itself. A. I. R. 1927 All. 35 =84 A. L. J. 908=27 Cr. L. J. 1118=49A. 120=27 Ind. Cas. 430. The accused is guilty under ss. 325 and 109 I. P. Code where by his mere presence he abetted the offence, though himself not inflicting any of the injuries, A.I.R. 1933 Oudh. 274=8 O. W. N. 755. A proprietor of a news-paper or an editor cannot be convicted under this section for publishing defamatory article. 12 P. R. 1883 Cr. The offence of kidnapping a minor is complete as soon as he or she is enticed or taken out of the keeping of his or her lawful guardian ; consequently a person who assists a kidnapper after the enticement in keeping the minor, cannot be convicted of the abetment of kidnapping, unless the kidnapping was itself an outcome of a pre-concert. 27 A. 197=A. W. N. 1903. 233 ; see also 13 P. R. 1893 Cr ; 6 P. R. 1894 Cr ; 8 P. R. 1894 Cr. There can be no conviction for abetment of murder without proof of murder. W. R. 1864 Cr. 12.

Abettor.

108. A person abets the commission of an offence who abets either the omission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is, therefore subject to the punishment of death.

(*c*) A, instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of

setting fire to a dwelling house, and is liable to the punishment provided for that offence.

(*d*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possesson. A induces B, to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustrations.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder ; and, as A instigated B to commit the offence, A is also liable to same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abbettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning A's name. C. agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison ; Z dies in consequence. Here though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered, C has therefore, committed the offence defined in this section, and is liable to the punishment for murder.

Intention.—To constitute a man the abettor of a crime committed by another, it must be clearly established that both intended to commit or further the same crime. —Rat. Un. Cr. Cas. 93. When the accused sold to another trees which in fact and to his knowledge, though not to the knowledge of the vender, belonged to a third person, with the intention that they should be cutdown and taken away by the vendee, held that the accused had committed the offence of abetment. A. W. N. 1898, 147. In case of abduction by motor, owner of motor is not necessarily an abettor. A. I. R. 1933 Rang. 297=1933 Cr. C. 1128.

Explanation (1)—If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, he abets the offence of which such public servant is guilty although the abettor, being a private person, could not himself have been guilty of that offence.=*Morgan and Macpherson.*

Explanation (2).—In the punishment of abetment regard is had to its effect ; but the offence is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow.—*Ibid* ; see also A. I. R. 1935 Sind. 78.

Explanation (3).—Under explanation 3, it makes no difference in the guilt of the abettor that the agent carries out the desired object under a mistaken belief that the act which he is employed to do is an innocent act. 14 C. P. L. R. 192. Explanation (3) appiies to abetment generally and not only to abetment by instigation only. 34 Cr. L. J. 623=1933 Cr. C. 853=A. I. R. 5933 All 513.

Explanation (4).—The words "when the abetment of offence is an offence in this explanation, do not mean "when the abetment of an offence is actually committed." They mean when the abetment of an offence is by definition or description an offence under the Code, that is when an offence is punishable under s. 109 or s. 116 or some other provisions of one Code, than the abetment of such abetment is also an offence. 22 C. W. N. 1945 ; see also A. I. R. 1934 Pesh. 110=1934 Cr. C' 1315=152 Ind. Cas. 893.

Explanation (5)—Under this explanation, it is not necessary to the commission of the offence of abetment of conspiracy that the abettor shall concert the offence with the person who commit it. 21. W. R. Cr. 35.

108A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

Abetment in British India of offences outside it.

Illustrations.

A, in British India instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

Amendment.—This section has been added by the Indian Penal Code (Amendment) Act (IV of 1898) s. 3.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, or punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

Explanation. An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustration.

(*a*) * A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions, B accepts the bribe. A has abetted the offence defined in section 161.

(*b*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison, and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Omission.—Abetment by omission is punishable only if the omission is an illegal omission. 9 Bom. L. R. 159. Illegal omission has reference to intention of aiding the doing of a thing. A. I. R. 1933 Cal. 36=36 C. W. N. 722=56 C. L. J. 231=140 Ind. Cas, 550=1933 Cr. C. 71.

Conspiracy.—Under the Indian Criminal Law, conspiracy, except in certain cases is a mere species of abetment, when an act or illegal omission takes places in pursuance of the conspiracy, and amounts to a distinct offence for each distinct offence abetted by the conspiracy. But under the English law, the agreement or combination to do an unlawful thing by unlawful means amounts, in itself, to a criminal offence. The Penal Code follows the English law of conspiracy only in a few exceptional cases which are made punishable under ss. 311, 400, 402 and 121 A of the Penal Code. In these cases whether an act is done or not or an offence committed in furtherence of the conspiracy, the conspirator is punishable and he can also be punished separately for every offence committed in furtherance of the conspiracy. In all other cases, conspiracy is only one species of "abetment of an offence" and stands on the same footing as abetment by intentional aiding. 24 M. 523. A conspiracy is a mere species of abetment and every time the commission of that offence is abetted, a separate offence of the abetment of that offence is committed and a separate charge lies. U. B. R. (1897—1901) Vol. I. 249. But a man cannot be charged as an abettor by conspiracy as well as a perpetrator of the offence abetted cumulatively. 24 M. 523. See also, 24 Ind. Cas. 976. But now see Chapter VA, *infra* which was enacted following the English law of conspiracy. An agreement to commit the offence of criminal intimidation amounts to a criminal conspiracy. L. R. 4 A. 145 Cr.

Cases.—The abetment of a breach of the bye-laws framed by a District Council under the authority of the Burma Rural Self-Government Act is not punishable under

* Vide 33, C. L. J. 379.

s. 109 I. P. Code. 115 Ind. Cas. 791=115 Ind. Cas. 664=30 Cr. L. J. 509. A person who aids in a subsequent stage of abduction cannot be convicted for the abetment of the original offence of abduction, in as much as an abduction is a continuing offence. 2 O. W. N. 17=12 O. W. N. 17=12 O. L. J. 27=86 Ind. Cas. 71=26 Cr. L. J. 696. Act abetted should result from abetment. 1 Ind. Jur. O. s. 105. The Court is not justified in saying that the words "punishment provided for the offence" in s. 109 mean punishment provided or the offence either in the Penal Code or in some special or local law. A. I. R. 1929 Rang. 203=7 Rang. 329=30 Cr. C. R. 961=118 Ind. Cas. 637 (F. B.). Recovering of stolen articles from the house of one is not enough to convict under ss. 190, 380 read with s. 457 of the Penal Code, unless their identity is strictly established. A. I. R. 1921 Pat. 499=Pat. L. T. 125=68 Ind. Cas. 707. Where it is found that two accused and the approver conspired to commit theft and in pursuence of that conspiracy to kill and there was no direct evidence as to who dealt the fatal blow, the accused are guilty of abetment of murder under s. 302 read with s. 109. A. I. R. 1930 Pat. 364=127 Ind. Cas. 566. Where master orders servants to beat and in consequence death occurs, the master is guilty of abetment of murder. A I R. 1928 Cal. 750=30 Cr. L. J. 621=116 Ind. Cas. 372. Sending false claim papers as to quantity of paddy final amounts to attempt. A. I. R. 1924 Rang. 241=2 Rang. 53=3 Bur. L. J. 1=25 Cr. L. J. 1175=82 Ind. Cas. 39. Assistance in the preperation of an offence which ultimately was not committed is not an abetment A. I. R. 1925 Oudh. 158=25 Cr. L. J. 1162=11 O. L. J. 690=11 Ind. Cas. 986. Knowingly helping in the commission of an offence is abetment of it. 18 Cr. L. J. 443=19 Ben. L. R. 54=38 Ind. Cas. 1003. A Superior Officer who sets a trap to catch a subordinate is technically guilty of abetment. 22 M. L. T. 373=19 Cr. L. J. 29=42 Ind. Cas. 989. There can be no abetment of kidnapping after the minor has been completely removed. 38 A. 664=17 Cr. L. J. 498=14 A. L. J. 765=36 Ind. Cas. 466. =17 Cr. L. J. 498=14 P. L. J. 765=36 Ind. Cas. 966. Offer of bribe afrer dismissal of prosecution is not abetment of an offence under s. 161 of the Penal Code. 23 Cr. L. J. 1=33 C. L. J. 379=64 Ind. Cas. 369. A person charged under s. 379 cannot be convicted under s. 109 for abetment of theft if he is not charged with abetment. 22 Cr. L. J. 311=60 Ind. Cas. 999. A person who instigates a raider, or a leader of the raid in which death has been caused is guilty of abetment of murder. 35 Cr. L. J. 334=147 Ind. Cas. 32=A. I. R. 1934 Cal. 221 (F. B.). Section 109 refers only to action abetment at time of occurrence while s. 114 refers only to abetment before any steps for commission of offence are taken. A. I. R. 1933 Bom. 162=34 Cr. L. J. 559=35 Bom L. R. 24=57 B. 329.

Section 196 Cr. Pro. Code, applies only to a prosecution for conspiracy punishable under s. 120 B of the Penal Code, and not for abetment by conspiracy punishable under s. 109 of the Penal Code. 89 Ind. Cas. 305=26 Cr. L. J. 1329. The offence of abetment by way of conspiracy does not require sanction, though criminal conspiracy itself requires it. 35 C. L. J. 279=69 Ind. Cas. 145=23 Cr. L. J. 657=49 C. 573=26 C. W. N. 680. Instigation, engaging in a conspiracy and intentionally aiding by an act or illegal ommission make a person an abettor, even though he is not present when the offence, the commission of which he has instigated, conspired to effect, or intentionally aided by an act or illegal omission, is committed, and if he is present, though merely as a spectator, he is punishable under s. 114. 5 P. L. R. 1900 Cr.=15 P. R. 1899 Cr.; see also 32 M. 3=9 Cr. L. J. 130. A person will be convicted under ss. 109 and 193 of the Penal Code where he instigates a witness to give false evidence. Rat. Un. Cr. C. 632. Making over counterfeit Queen's coins for being changed into good money is an offence under s. 240 of the I. P. Code read with a s. 109. 8 C. W. N. 717=31 C. 1007. A person in possession of a house can be convicted under this section if he allows persons to gamble in his house and thereby causes annoyance to the public. 14 M. 364=1 Weir 241. A person who merely says "beat" but does not take any part himself, can only be convicted of abetment of an offence under s. 352 I. P. Code. 16 Cr. L. J. 456=29 Ind. Cas. 88. Mere consent to be present at an illegal marriage or presence therein will not constitute abetment of an offence under s. 494 I. P. C., unless consent of any of the persons present was necessary for the performance of the marriage ceremony. Nor would the grant of accommodation in a house for an illegal marriage, which could equally be celebrated elsewhere, be such an act towards facilitating the marriage as would constitute abetment. 6 B. 126. To establish abetment, the accused must be proved either to have instigated or aided some other person, or to have conspired with another for the commission of an offence. 4 C. 10; Rat. Un. Cr. C. 303. Section 109 has no application where offence is never committed. A.

I. R. 1933 Rang. 297=1933 Cr. C. 1128. By mere leasing tank for fishing, lessor does not become abettor in absence of proof of instigation, conspiracy or aid. 1933 Cr. C. 1138=A. I. R. 1933 Sind. 316. Though a female cannot be guilty of committing substantive offence under s. 6 of Calcutta Suppression of Immoral Traffic Act, 1923, yet she can be guilty of abetting such offence. A. I. R. 1932 Cal. 457=33 Cr. L. J. 68=55 Cr. L. J. 435=36 C. W. N. 650=1932 Cr. C. 438.

Procedure.—Cognizable, if the offence abetted is cognizable—Warrant of summons as to the offence abetted—Bailable or not as in the offence abetted—compoundable or not as in the offence abetted—and the offence is triable by the Court by which the offence abetted is triable.

Charge.—I (*name and office of magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That X, Y (*the name ofethe principal, and if the person is unknown in that case say, that an unknown person*) on the day of at committed the offence of , and that you at abetted the said X Y (*or the said unknown person*) in the commission of the said offence of which was committed as a result of your abetment, and you have thereby committed an offence punishable under section 109 and of the Indian Penal Code, and within my cognizance (or within the cognixance of the Court of Session).

And I hereby direct that you be tried on the said charge (by the said Court).*

In case of joint trial of the principal offender and the abettor, the charge should be as follows :—That you , on or about the day of at abetted the commission of the offence of by which was committed as a result of your abetment, and that you have thereby committed an offence punishable under section 109 and , of the Indian Penal Code, and within the cognizance of my Court *or within the cognizance of the Court of Session.*

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed, if the act had been done with the intention or knowledge of the abettor, and with no other.

Punishment of abetment of person abetted does act with different intention from that of abettor.

Procedure :—Vide Procedure under s. 109.

111. When an act is abetted, and a different act is done, the abettor, is liable for the act done, in the same manner and to the same extent as if he had directly abetted it.

Liability of abettor when one act abetted and different act done.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment.

Proviso.

Illustrations.

(*a*) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation. and the act done was, under the circumstances, a probable consequence of the abetment, A is liable in the same manner, and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b*) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A though guilty of abetting the burning of the house, is not guilty of abetting the theft ; for the theft was a distinct act, and not a probable consequence of the burning.

* Where the offence is tried by a Magistrate omit the words in the brackets.

(*c*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Guilty knowledge.—The test in such a case, must always be whether having regard to the immediate object of the instigation of conspiracy the act done by the principal is one which according to ordinary experience and common sense, the abettor must have foreseen as probable. 6 A. 491 ; see also 43 Ind. Cas. 827=19 Cr. L. J. 235 ; Rat. Un. Cr. C. 207.

Act.—The word "act" in this section means criminal act. A. I. R. 1931 Pat. 52.

Probable consequence.—Probable consequence is one which is likely or which can reasonably be expected to follow. *Held* that stabbing cannot be deemed to be probable consequence of instigation to thrash. A. I. R. 1935 All. 346.

Procedure.—Vide Procedure under s. 109.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted, and for act done.

Illustration.

A instigates B to resist by force a distress made by a public servant, B, in consequence, resists that distress. In offering the resistance B, voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offences of resisting the distress and the offence of voluntarily causing grievous hurt. B is liable to punishment for both these offences ; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Notes.—As to the application of ss. 112, 114 and 115 to offences under special or local laws, see s. 40 *supra*.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and on act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner, and to the same extent, as if he had abetted the act with the intention of causing that effect ; provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Procedure.—Vide Procedure under s. 109.

114. Whenever any person, who if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act of offence.

Abettor present when offence is committed.

Scope.—This section implies that abetment had been completed before the actual offence was committed. The section deals with a person who would be guilty of abetment independent of any act done at the time of the offence, *i, e* , a person whose abetment is complete apart from his presence. It denies the liability of such a person if he happens to be present when the offence is committed. 82 Ind. Cas. 262 ;

1924 P. C. 1 ; see also A. I. R. 1927 Mad. 1115=53 M. L. J. 760=39 M. L. T. 589=29 Cr. L. J. 72=106 Ind. Cas. 584 ; 82 Ind. Cas. 262=25 Cr. L. J. 1254 ; A. I. R. 1934 Lah. 813=36 P. L. R. 37=A. I. R. 1934 Lah. 833. Section 114 is evidentiary and not punitive. It establishes irrebutable presumption that presence plus prior abetment amounts to participation. 134 Ind. Cas. 57=1930 M. W. N. 694=A. I. R. 1931 Mad. 247=32 Cr. L. J. 1116 ; see also A. I. R. 1933 Rang. 236=11 Rang. 354=1933 Cr. C. 907 ; A. I. R. 1933. Mad. 123=1933 Cr. C. 154=34 Cr. L. J. 90=63 M. L. J. 906=140 Ind. Cas. 767. For conviction under ss. 114 and 377 commission of offence and presence of abettor must be proved. A. I. R. 1935 Sind 78. The effect of this section is that, if a man is present at the commission of an offence, he is deemed to have committed it, not that he has actually committed it. 10 Bom. L. R 26. See also 29 C. 496 ; 4 L. B. R 271 ; 1 Weir, 49 ; 27 C 566 ; 7 W. R. Cr. 49 ; 8 B. H. C. Cr. 64 ; 11 C. P. L. R. 2 Cr. ; Rat. Un. Cr. 303 ; 5 C. W. N. 250 ; 23 M. L. J. 722 ; 42 C. 422 ; 9 C. W. N. 69 ; 3 C. W. N. 605 ; 118 Ind. Cas. 637=30 Cr. L. J. 961=A. I. R. 1929 Rang. 203 (F. B) ; 2 C. W. N. 49 ; 1 W. R. Cr. Letters, 2 ; A. W. N. 1883, 29 ; 5P. R. 1900 Cr ; L. B. R. (1893-1900), 269.

When an accused person is charged under ss. 114 and 302 and tried therefor he must be convicted under ss. 114 and 302. 50 C. 41=74 Ind. Cas. 267. This section implies that the abetment had been completed before the actual offence was committed. 82 Ind. Cas. 26=25 Cr. L. J. 1254. This section is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved and then the presence of the accused at the commission of the crime is proved in addition. 1925 P. C. 1. Abetment is crime in itself, while along with presence it is an offence under s. 114. 52 C. 197=52 I. A. 40=29 C. W. N. 181=27 Bom. L. R. 148 P. C. ; 40 C. L. J. 541=52 C. 253 ; 21 L. W. 19. In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. 26 Cr. L. J. 1069=88 Ind. Cas. 13. If a person is convicted of an offence under a particular section of the Indian Penal Code read with section 114 of that Code, and if the offence under the particular section of the Code renders the offender liable to whipping in lieu of or in addition to any other punishment either under the Whipping Act or under Burma Act VIII of 1927, the person so convicted is punishable with whipping in lieu of or in addition to any other punishment. 118 Ind. Cas. 637=30 Cr. L. J. 981=A. I. R. 1929 Rang. 203 (F. B.) Where a person who abets the commission of an offence is present and helps in the commission of the offence he is guilty of the offence and not merely of abetment, except in a few cases like rape or bigamy, where the person committing the offence alone can be guilty of the offence. This section is applicable to a case where a person abets the commission of an offence sometimes before it takes place and happens to be present at the time, when the offence is committed, and is not applicable to a case where the abetment is at the time when the offence takes place and the abettor helps in the commission. 97 Ind. Cas. 958=27 Cr. L. J. 1198=A. I. R. 1927 Mad. 97. To come within section 114 of the Penal Code, the abetment must be complete apart from the presence of the abettor. 39 M. L. T. 589=26 L. W. 649=53 M. L. J. 760 ; 21 L. W. 19=A. I. R. 1925 Mad. 364. Presence and instigation on the part of the abettor constitute an offence under this section. 8 Lah. L. J. 509=27 P. L. R. 716 ; 28 Bom. L. R. 1029=97 Ind. Cas. 737=27 Cr. L. J. 1153=A. I. R. 1926 Bom. 512 ; see also 23 Bom. L. R. 1199=23 Cr. L. J. 93=46 B. 429=65 Ind. Cas. 445 ; 68 Ind. Cas. 17=23 Cr. L. J. 481=9 O. L. J. 190 ; A. I. R. 1926 Bom. 512=28 Bom. L. R. 1029=27 Cr. L. J. 1153=97 Ind. Cas. 737. This section rather regulates procedure and punishment than creates an offence. 28 C. W. N. 170=38 C. L. J. 411=25 Cr. L. J. 817=81 Ind. Cas. 353 (F. B) ; see also A. I. R. 1931 Mad. 247=32 Cr. L. J. 1116. Being present and approving of an offence come under this section. A. I. R. 1927 All. 730=25 A. L. J. 149=28 Cr. L. J. 313=100 Ind. Cas. 537 ; see also 8 L. L. J. 509=27 P. L. R. 716=28 Cr. L. J. 85=99 Ind. Cas. 117 ; A. I. R. 1927 Oudh. 321=2 Luck. 605=28 Cr. L. J. 802=104 Ind. Cas. 242 ; A. I. R. 1931 Mad. 247=1931 Cr. C. 367 ; Section 109 refers to active abetment at the time of occurrence while s. 114 refers only to abetment before any steps for commission of offence are taken. A. I. R. 1933 Bom 162=57 B. 329=34 Cr. L. J. 559=35 Bom. L. R. 559. Abetment must be complete apart from presence. A. I. R. 1932 Lah. 483=33 Cr. L. J. 564=1932 Cr. C. 621=33 P. L. R. 679.

Where a riot is committed by some persons for the benefit of their master, the latter cannot be convicted of abetment of the riot merely on suspicion. 26 Cr. L. J.

1069=88 Ind. Cas. 13=A. I. R. 1925 Nag. 372. A husband cannot be convicted under this section, for being a spectator, while his wife was beating their daughter-in-law. 85 Ind. Cas. 150=26 Cr. L. J. 470. Unintentional aiding is not abetment. 47 A. 268=84 Ind. Cas. 714=26 Cr. L. J. 362. Where conspirator is sought to be made liable as principal under s. 114, I. P. Code that section must be mentioned with the main offence in the charge. 40 C. L. J. 541=52 C. 253=29 C. W. N. 173. To be present and be aware that an offence is about to be committed does not constitute abetment unless the person thus present holds some position or rank or influence such that his countenance to what takes place may, under the circumstances, be held a direct encouragement or unless some specific duty of prevention rests on him which he leaves unfulfilled. Rat. Un. Cr. C. 303; Rat. Un. Cr. 844.

Procedure.—*vide* procedure under s. 109.

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Abetment of offence punishable with death or transportation for life. if offence not committed;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

if act causing harm be done in consequence.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and, if any hurt be done to Z in consequence of the abetment he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Scope.—The present section punishes the abetment of certain offences which are either not committed at all, or not committed in consequence of abetment, or only in part committed—*Morgan and Macpherson*; see also A. I. R. 1931 Cal. 757 (S.B.)=35 C. W. N. 573=58 C. 1228=33 Cr. L. J. 79=134 Ind. Cas. 896. Abetment need not be offence by particular person against particular person. A. I R. 1933 Cal. 47=60 C. 427=34 Cr. L. J. 164=37 C. W. N. 91=141 Ind. Cas. 578. "Express provision" in section 115 refers to s. 121 or s. 131 and not to s. 117 I. P. Code. A. I. R. 1933 Cal. 47=60 C. 427=34 Cr. L, J. 164=37 C. W. N. 91.

Procedure.—*Vide* procedure under s. 109, only it is not bailable.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused person*) as follows:—

That you on or about the day of , at , abetted the commission by one A of an offence of punishable with death or transportation for life although the said offence was not committed in consequence of the abetment and thereby committed an offence punishable under s. 115 of the Indian Penal Code, and within my cognizance (*or* the cognizance of the Court of Session.)

And I do hereby direct that you be tried "by the said court"* on the said charge.

116. Whoever abets an offence punishable with imprisonment shall if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment be punished with imprisonment of any description provided for that offence for a term which may extend to one fourth part

Abetment of offence punishable with imprisonment. if offence be not committed;

* In cases triable by Magistrate these words should be omitted.

of the longest term provided for that offence, or with such fine as is provided for that offence or with both ;

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

if abettor or person abetted be a public servant whose duty it is to prevent offence.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe, A is punishable under this section.

(*b*) A instigates B to give false evidence. Here, if B does not give false evidence A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*) B abets the commission of a robbery by A a police-officer, whose duty it is to prevent that offence. Here though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Notes.—A mere offer to pay an illegal gratification to a public servant is an attempt to bribe and money or other consideration need not be proved to have been actually produced at the time. 3 Pat. 647=83 Ind. Cas. 679 ; see also 109 Ind. Cas. 681=A. I. R. 1928 Lah. 840=10 L. L. J. 364=29 Cr. L. J. 601 ; A. I. R. 1930 Mad. 671=32 M. L. W. 17=126 Ind. Cas. 603. Persons who abet the celebration of a bigamous marriage among Muhammadans to which the woman does not consent are guilty under s. 16 and not under s. 114. 18 Cr. L. J. 478=10 S. L. R. 17=39 Ind. Cas. 318. The principle of the illustration applies as much to the other purpose set out in s. 116 as to doing or forbearing to do any official act. A. I. R. 1927 Mad. 1011 =51 M. 86=53 M. L. J. 723=28 Cr. L. J. 1005=105 Ind. Cas. 829. Bribe-givers are not exonerated merely because Judge takes money without any guilty intention. A. I. R. 1933 All. 513. Abortive attempt to give bribe is offence. A. I. R. 1935 Pesh. 26.

Procedure.—*Vide* procedure under s. 109.

Charge.—*I* (*name and office of Magistrate, etc.,*) hereby charge you (*name of the accused person*) as follows :—

That you, on or about the day of at , abetted the commission by one A of an offence of punishable with imprisonment, although the said offence was not committed in consequence of the abetment, and thereby committed an offence punishable under s. 116 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session.)

And I direct that you be tried "by the said court"* on the said charge.

117. Whoever abets the commission of an offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetting commission of an offence by the public or by more than ten persons.

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members, to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

* In cases triable by Magistrate these words should be omitted.

Scope.—Section 117 applies to abetment of offence under the Salt Act by public generally or more than 10 persons. A. I. R. 1931, Bom. 143; but see A. I. R. 1930 Oudh. 497. Section 117 is not superseded by Madras Salt Act, 1890, s. 74. A. I. R. 1932 Mad. 371=34 M. L. W. 92=55 M. 90=32 Cr. L. J. 1131=61 M.L. J. 987=134 Ind. Cas. 187. If section 117 applies the offence would not fall under s. 115. 146 Ind. Cas. 222=A. I. R. 1933 Lah. 660=1933 Cr. C. 882. Where speech is addressed to large audience inciting it to murder, offence falls under ss. 302 and 117. *Ibid.* Instigating railway workers to lie on line in the event of strike is an offence under this section. A. I. R. 1933 Mad. 279=34 Cr. L. J. 524=1933 Cr. C. 346=1932 M. W. N. 1153=143 Ind. Cas. 107. A charge under both ss. 117 and 120 B is not wrong. A. I. R. 1933 Cal. 603=37 C. W. N. 426=145 Ind. Cas. 814. "Express provision" in s. 115 refers to s. 121 or s. 131 and not to section 117. A. I. R. 1933 Cal. 47=60 C. 427=34 Cr. L. J. 164=1933 Cr. C. 61=37 C. W. N. 91=141 Ind. Cas. 578. Offence under this section is not committed by posting leaflet at night for inciting public to commit crime. where leaflet was removed shortly after posting and no one either saw or read it. A. I. R. 1932 Cal. 760=36 C. W. N. 982=60 C. 327=34 Cr. L. J. 78=1932 Cr. C. 803. Where at a meeting revolutionary songs were sung but President did neither encourage nor persuade singers to sing, nor conspire with him to do so, the President does not commit any offence. A. I. R. 1932 Cal. 549=33 Cr. L. J. 699=1932 Cr. C. 549=36 C. W. N. 191=138 Ind. Cas. 763. Instigating the formation of an unlawful association and contributing towards it is an abetment of an offence under s. 17 (1) of the Criminal Law Amendment Act and if it is by a class of persons exceeding 10, it is an offence under s. 117 I. P. Code. A. I. R. 1924 Lah. 440=5 Lah. 1=26 Cr. L. J. 1352=89 Ind. Cas. 392. Exhorting the Sikhs to enlist themselves for Shahidi Jathas is an offence under s. 117, Penal Code, as the accused instigated people to become members of a Jatha which Jatha would be an unlawful association within the meaning of s. 10 of the Criminal Law Amendment Act. A. I. R. 1926 Lah. 115=26 Cr. L. J. 1374=26 P. L. R. 412.

Notes,—3 W. R. Cr. 24; A. I. R. 1923 Lah. 1.

Procedure.—*Vide* procedure under s. 109.

Charge.—I (*name and office of Magistrate*), *etc* hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of at , abetted the commission of an offence of by numbering more than ten persons, by (*state the act done by the accused in instigation*) and thereby committed an offence punishable under s. 117 of the Indian Penal Code and within my cognizance (or the cognizance of the Court of Session).

And I hereby direct that you be tried "by the said Court"* on the said charge.

Concealing design to commit offence punishable with death or transportation for life.

118. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

If offence be committed; if offence be not committed.

Illustration.

A, knowing, that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission

* In cases triable by Magistrate these words should be omitted.

of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

Procedure.—*Vide* procedure under s. 109. Only the offence is not bailable, if the offence is committed, otherwise bailable.

Charge—I (*name and office of Magistrate, etc.,*) hereby charge you as follows :—

That you, on or about the day of , with intention of facilitating or knowing it to be likely that you will thereby facilitate, the commission of the offence of (*name the act*) [or omit to do...(*name the omission*)] to conceal the existence of the design to commit the said offence, and thereby committed an offence punishable under s. 118 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session.)

And I do hereby direct that you be tried "by the said Court' * on the said charge.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, which it is his duty as such public servant to prevent, voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

Public servant concealing design to commit offence which it is his duty to prevent—

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence or with both ;

If offence be committed ;

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years ; or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If offence be punishable with death, &c ;

if offence be not committed,

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and, knowing that B designs to commit robbery, omits to give such information. with intent to facilitate the commission of that offence. Here A has, by an illegal omission conceals the existence of B's design, and is liable to punishment according to the provision of this section.

Procedure.—*Vide* procedure under s. 109. If the offence be punishable with death or transportation for life, it is not bailable and if the offence be not committed it is bailable,

Charge.—I (*name and office of Magistrate ; etc.*) hereby charge you as follows ;—

That you, on or about the day of at being a public servant whose duty as such public servant was to prevent the commission of such offence of with intention of faciliatating, or knowing it to be likely that you will thereby facilitate, the commission of the offence of (*name the* act [or omit to do (*name the omission*)] to conceal the existence of the design to commit the said offence and thereby committed the offence punishable under s. 119 of the Indian Penal Code, and within my cognizance for the cognizance of the Court of Session).

And I do hereby direct that you be tried "by the said Court"* on the said charge.

* In cases triable by a Magistrate these words should be omitted.

Concealing design to commit offence punishable with imprisonment :—

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence or with both.

if offence be committed ;

if offence be not committed.

Procedure.—*Vide*, procedure under s. 109. If the offence has not been committed then it is bailable.

Charge.—Same charge as under s. 118.

CHAPTER VI.

CRIMINAL CONSPIRACY.

Object of the chapter.—"The sections of the Indian Penal Code which directly deal with the subject of conspiracy are those contained in Chapter V and s. 121 A. of that Code. Under the latter provision it is an offence to conspire to commit any offences punishable by s. 121 of the Indian Penal Code or to conspire to deprive the King of the sovereignty of British India or of any part thereof, or to overawe, by means of criminal force or show of criminal force, the Government of India or any Local Government, and to constitute a conspiracy under this section it is not necessary that any act or illegal commission should take place in pursuance thereof. Under s. 107 abetment includes the engaging with one or more person or persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing. In other words, except in respect of the offences particularized, in s. 121 A, conspiracy *per-se* is not an offence under the Indian Penal Code.

"On the other hand, by the Common Law of England if two or more persons agree together to do anything contrary to law, or to use unlawful means in carrying out of an object not otherwise unlawful, the persons, who so agree, commit the offence of conspiracy. In other words, conspiracy in England may be defined as an agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means, and the parties to such conspiracy are liable to indictment.

"Experience has shown that dangerous conspiracies are entered into in India which have for their object aims other than the commission of the offences specified in s. 121 A of the Indian Penal Code, and that the existing law is inadequate to deal with modern conditions. The present Bill is designed to assimilate the provisions of the Indian Penal Code to those of the English law with the additional safeguard that in the case of a conspiracy other than a conspiracy to commit an offence some overt act is necessary to bring the conspiracy within the purview of the criminal law. The Bill makes criminal conspiracy a substantive offence, and when such a conspiracy is to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, and no express provision is made in the Code, provides a punishment of the same nature as that which might be awarded for the abetment of such an offence. In other cases of criminal conspiracy the punishment contemplated is imprisonment of either description for a term not exceeding six months or with fine or with both." *Statement of Objects and Reasons.*

The law of conspiracy is no longer in fluid state in India and recognises the principle that a conspiracy need not be established by evidence of an actual agreement between the conspirators and that overt acts raise a presumption of an agreement and knowledge of the purpose of the conspiracy. The connec-

tion has to he established with the conspiracy and not with the separate set of different conspirators which are the overt acts of the different individuals in proof of the conspiracy. 20 O. W. N. 760=90 Ind. Cas. 706=26 Cr. L. J. 1602. Conspiracy is a substantive offence and has nothing to do with abetment. An overt act, though it may be specified in the charge, is not necessary. It is not necessary that each conspirator should be aware of all the acts done by each of the conspirators in the course of conspiracy. 92 Ind. Cas. 462=27 Cr. L. J. 286=A. I. R. 1926 Sindh. 174. To constitute criminal conspiracy there must be a common intention, but it is sufficient if it originated with some and others had subsequently joined the original conspirators. Criminal conspiracy might be proved by direct or circumstantial evidence. In a charge for the offence of conspiracy the overt acts by which the object of the conspiracy is sought to be attained need not be given. 20 S. L. R. 18=92 Ind. Cas. 419=A. I. R. 1926 Sindh. 171=27 Cr. L. J. 243; 101 Ind. Cas. 458=28 Cr. L. J. 426=A. I. R. 1927 Sind. 161. The overt act for the conspiracy consists in the agreement of the parties. 31 C, W. N. 239=109 Ind. Cas. 113 (2)=28 Cr. L. J. 241.

CHAPTER VA.

CRIMINAL CONSPIRACY.

120A. When two or more persons agree to do or cause to be done—

Definition of criminal conspiracy.

(1) an illegal act, or

(2) an act which is not illegal by illegal means,

such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Amendment—Inserted by Act 8 of 1913.

Principle.—"The general principle on which the crime of conspiracy is founded is this, that the confederacy of several persons to effect any injurious object creates such a new and additional power to cause injury as requires criminal restraint; although none would be necessary were the same thing proposed or even attempted to be done by any person singly." 7th Rep. Cr. Law. Com., 1843, p. 90.

Scope.—Where the proof of a conspiracy depends upon the proof of the participation of the accused in an overt act which itself amounts to an offence, the proper course is to put the accused on their trial for that offence. Where all that is shown against a person is evidence of his association with any of the conspirators that would not be sufficient to convict him of being one of the parties to the conspiracy and he comes within this section. 39 C. L. J. 151.

Conspiracy.—A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means. So long as much a design rests in intention only, it is not indictable. When to agree to carry it into effect the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced if lawful, is punishable, if for a criminal object or for the use of criminal means. 14 A. L. J. 688. When the proof of a conspiracy depends upon proof of the participation of the accused in an overt act which itself amounts to an offence the proper course is to put the accused on their trial for that offence. 83 Ind. Cas. 513=39 C. L. J. 151. Actual commission of an illegal act need not be proved. 1928 Rang. 118. The offences of conspiracy and offences committed in pursuance of that conspiracy form one and the same transaction. A. I. R. 1926 Rang. 53=4 Bur. L. J. 213=27 Cr. L. J. 669=94 Ind. Cas. 717. Conspiracy is a substantive offence and has nothing to do with abetment. Though an overt act may be specified in the charge yet this is not necessary. The acts done by any of the conspirators in furtherance of the purpose of the conspiracy are relevant as merely indication of what the object of the conspiracy was. A. I. R. 1926 Sind. 174=20

S. L. R. 140=27 Cr. L. J. 280=92 Ind. Cas. 462; see also 94 Ind. Cas. 717=A. I. R. 1926 Rang. 53=4 Bur. L. J. 213=27 Cr. L. J. 669. Conspiracy may be established by evidence of the conduct of the accused and surrounding circumstances both before and after the commission of the offence without proving any of his overt acts. 17 Cr. L. J. 233=9 S. L. R. 223=34 Ind. Cas. 649; see also A. I. R. 1926 Sind. 171=20 S. L. R. 18=27 Cr. L. J, 243. A person should not be convicted under s. 120A. for an offence committed before the section was put in the Act. 17 Cr. L. J. 439=20 C. W. N. 292=35 Ind. Cas. 999. Gist of conspiracy is agreement between parties. Place of conspiracy and not act in pursuance of conspiracy determines jurisdiction. A. I, R. 1933 Sind. 333=1933 Cr. C. 1130. Direct proof of agreement between several members is difficult. Question is matter of inference deduced from act of persons concerned. A. I. R. 1933 Lah. 977. Merely because agreement to do illegal act is of itself criminal conspiracy, it cannot be said that offence begins and ends at same time. It may continue so long as person constituting conspiracy remain in agreement. A. I. R. 1935 Cal. 316. A finding that conspiracy existed arrived at by Lower Court is binding on High Court. *Ibid.*

English law—Conspiracy is the agreement of two or more persons to effect any unlawful purpose whether as their ultimate aim or only as a means to it. This definition presents three points for notice :—(1) the act of agreement, (2) the persons agreeing, (3) the purpose agreed upon.—*Kenny's Outlines of Criminal Law* p. 287. According to English law, "agreement is an act in advancement of the intention which each person has conceived in his mind." *Per Lord Chelmsford* in *Mulcahy* v. *The Queen*, L. B. 3 H.L. at p. 328. It is not mere intention, but the announcement and acceptance of intentions. Bodily movement, by word or gesture, is indispensable to effect it. In order of time, it comes intermediate between the intention and the act agreed. upon. But the mere fact of the parties having come to such an arrangement suffices to constitute a conspiracy. *Rex* v. *Gill*, 2 B. & Ald. 205. Hence it is not necessary, under the English law to show that they went on to commit some overt act towards carrying it out (*Rex* v. *Eccles*, 6 T. R. 628) ; though this would be necessary in an action of tort for conspiracy. *Mogul Steamship* v. *Mc Gregor*, L.R. 21 Q. B. D. 549). So there the offence is complete as soon as the parties have agreed as to their unlawful purpose, although nothing has yet been settled as to the means and devices to be employed for effecting it. *Rex* v. *Gill*, *supra* ; *Kenny's Outlines of Criminal Law* pp. 287-288. But under this section in case of a conspiracy other than a conspiracy to commit an offence some overt act is necessary to bring the conspiracy within the purview of the criminal law. *Vide proviso.*

Following the English law, in the United States it is also held that "agreeing together" constitutes a sufficient act, no steps pursuant to the agreement being required. *Bishop's Cr. Law. Voll. II § 1-72.*

Two elements—We find two elements, in case of conspiracy,—each distinct from the other, and not commonly operating together but, each in its own separate class of cases, dominate the law of conspiracy. The one is combination, and the other attempt. *Bishop's Cr. Law Vol. § 173.*

Combination.—The very name of the crime indicates that it is essentially one of combination ; one man cannot by himself conspire. *Kenny's Outlines of Cr. Law* p. 288. Criminal conspiracy consists in an unlawful combination of two or more persons to do that which is contrary to law, to cause a public mischief (*R.* v. *Brailsford*, 1905, 2 K. B. 730, 745), or to do that which is wrongful and harmful towards another person. *Quinn* v. *Leathem*, (1901) A. C. 495. In *R.* v. *Vinsent*, 9 C. & P. 91, *Anderson B*, laid it down that conspiracy is "a crime which consists either in a combination and agreement by persons to do some illegal act, or a combination and agreement to effect a legal purpose by illegal means." *Russ Cr. p. 146* ; see also *O' Connel* v. *R*, 11 Cl. & F. 155 ; *R.* v. *Peck*, 9 A. & E. 686 ; *R.* v. *King*, 7 Q. B, 782 ; *R.* v. *Jones*, 4 B. & Ad. 345. In many circumstances, if two or more combine to do a wrong,—whether as a means or as contemplated end,—such mere combining endangers or disturbs the community more than would the executed wrong accomplished by a single will. This is the central idea in the law of conspiracy. *Bishop's Cr. Law* Vol. II § 173 see also *Mogul S. Co.* v. *Mc. Gregor*, 21 Q. B. D. 544. Under the English law husband and wife are considered as one person and as such an unlawful combination by him and her alone does not amount to a conspiracy. 1 Hawking's P. C. C. 72 s. 8. But they can severally or jointly conspire with other persons. *R'* v. *White house*, 6 Cox. 38. One alone cannot conspire. *Harrington* v. *Errington*, 5

Mood. 221 ; *R.* v. *Thorp*, 5 Mood. 221. A person may however be charged to conspire with a person either known or unknown. 1 Hawk. C. 72, s. 8 ; 3 Chit. Cr. L. 1141 ; *R.* v. *Hearne*, cited in *R.* v. *Kinnersley*, 1 Str. 195, 196. But where two persons were indicted for conspiring together (no other parties being alleged), and one was convicted and the jury disagreed as to the other, it was held that the conviction of the one cannot stand. *R.* v. *Manning*, 12 Q. B. D. 341=53 L. J. M. C. 85 ; see also 39 C. L. J. 264 ; 45 C. L. J. 204. Similarly where three were charged jointly with conspiring together, and one pleaded guilty, but the other two were tried and acquitted, it was held that the sentence imposed on the one who had pleaded guilty could not stand, *R.* v. *Plummer* (1902) 2 K. B. 339 ; *Robinson* v. *Robinson*, 1 Sw. & Tr. 362, 392, 393 ; *Russ Cr.* p. 147 ; 30 C. W. N. 94. But a person may be charged with conspiring with a dead person. *R.* v. *Nichols*, 2 Str. 1227 ; *R.* v. *Scott*, 3 Burr. 1262 ; *R.* v. *Kenrick*, 5 Q. B. 339.

Attempt.—In other circumstances, there is no special evil in the combination, and its indictable quality does not consist in this linking of wills for wrong. Then the thing contemplated must be such as would be indictable if performed by one, and the conspiracy is punishable simply because it is an attempt. *Bishop's Cr. Law* Vol. II § 173. So few things are left so doubtful in the criminal law as the point at which a combination of serveral persons for a common object becomes unlawful. 3 Chit. Cr. L. 1130 ; *Russ Cr. 146.* On this point, *Willes J.* observed : "A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as a design rests in intention only it is not indictable. When two agreed to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced if lawful, punishable if for a criminal object or for the use of criminal means. And so far as proof goes conspiracy, as *Grose J.*, said in *R.* v. *Brisac*, 4 East. 171 is generally a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them. The number and the compact give weight, and cause danger, and this is more especially the case in a conspiracy like that charged in this indictment. *Mulcahy* v. *R.*, L. R. 3 H. L. 306, 317 and accepted by *Lord Cairns* in the House of Lords at p. 374 ; see also *Quinn* v. *Leathem*, (1901) A. C. 495, 529 ; see also *R.* v. *Brailsford*, (1905) 2 K. B. 730, 746. So except in cases provided in the proviso, the gist of the offence of conspiracy lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. *Russ Cr.* 147 citing 1 East. P. C. 462 ; *R.* v. *Best*, 2 Ld. Raym. 1167 ; *R.* v. *Spragg*, 2 Burr. 993 ; *R.* v. *Rispal*, 3 Burr. 1320; *O' Connel* v. *R.*, 11 Cl. & F. 155. The external or overt act of the crime is concert by which mutual consent to a common purpose is exchanged. *R.* v. *Plumer*, (1902) 2 K. B. 339, 348 ; *Mulcahy* v. *R.*, L. R. 3 H. L. 306, 328 ; 42 C. 957 ; 31 C. W. N. 239.

Illegal Act.—The word "illegal" is applicable to every thing which is an offence or which is prohibited by law, or which furnishes ground for a civil action, (Vide, S. 43). The words illegal and unlawful have the same meaning under the Code. Vide, 1st Rep. s. 658. In the English common law the words used are "unlawful purpose." In connection with the definition of conspiracy under the English Common Law, *Mr. Kenny says* : "The term 'unlawful' is here used in a sense which is unique ; and, unhappily, has never yet been defined precisely. The purpose which it comprises appear to be of the following species :—(1) Agreements to commit a substantive crime (*Reg.* v. *Daritt*, 11 Cox. 676 ; *Reg.* v. *Whit Church*, L. R. 24 Q. B. D. 420.) (2) Agreements to commit any tort that is malicious (*Reg.* v. *Druitt*, 10 Cox. 592. (3) Agreements to commit a breach of contract under circumstances that are peculiarly injurious to the public. (*Virtue* v. *Lord Clive*, 4 Burr. 2473). (4) Agreements to do certain other acts, which (unlike all those hitherto mentioned) are not breaches of law at all, but which nevertheless are outrageously immoral or else are in some way, extremely injurious to the public" *Outlines of Criminal Law* p. 289. According to the American Jurists the word "unlawful" signifies neither "indictable" nor "criminal" though it includes both ; but it means "contrary to law", which may refer either to the criminal or civil law. *Bishop's Cr. Law.* Vol. II § 171. "It is enough" to quote the words of *Cockburn C. J.* "if the acts agreed to be done, although not criminal are wrongful ; that it amount to civil wrong." *Reg.* v. *Warburton*, L. R. 1 C. C. 274, 276. It need not affect the community or public as such as distinguished

from an individual. This principle however must not be overestrained. *Bishop's Cr. Law.* Vol. II § 178.

"The crime of conspiracy is complete if two or more than two should agree to do an illegal thing, that is to effect some thing which is in itself unlawful or to effect by unlawful means some thing which in itself may be indifferent or even lawful. It has accordingly been always held to be the law that the gist of the offence of conspiracy is the bare engagement or association to break the law, whether any act be done in pursuance thereof by the conspirator or not." *R.* v. *O' Connel*, 11 Cl. & F. 155 (233, 235) cited in 42 C. 957=19 C. W. N 676=29.Ind. Cas. 513 ; see also 31 Bom. L. R. 515.

Conspiracies to commit offence.—Every conspiracy to commit an offence punishable by law is an indictable offence. Where the conspiracy is executed, it appears to merge in the completed offence. Conspiracies of this kind are merely auxiliary to the law which creats the principal crime. *Wright on Conspiracy*, 80 ; *Russ. Cr. Law* 150. A person may be convicted of conspiracy to commit a crime of which he could not, if he stood alone, be convicted. Thus, a woman has been held to have been properly committed of conspiring with others to administer drugs to herself, or use instruments to herself, with intent to procure abortion, when it was proved that she believed erroneously that she was with child. *R.* v. *Whit Church*, 24 Q. B. 420 ; *Russ. Cr. 151.*

Illegal means.—When an indifferent or lawful act is done by unlawful means, the agreement to do such act amounts to conspiracy. *R.* v. *O' Connel*, 11 Cl. & F. 155, 233

Proviso.—The gist of the offence of criminal conspiracy is the agreement itself and when the object of the agreement is to do an unlawful act and not to do a lawful act by unlawful means, it is sufficient to specify the unlawful object without specifying the means adopted by all or any of the conspirators to gain this object. 101 Ind. Cas 458=28 Cr. L. J. 426=A. I. R. 1927 Sind. 161. Where it was found that the accused with another person went to a place and met the second accused for the purpose of purchasing from him fire arms and ammunition, but the arms themselves were not produced at any of the meetings and there was not evidence that the second accused possessed the goods at the time of the negotiations. *Held*, that the accused may be convicted under s. 120B, I. P. Code, because the overt act for the conspiracy consists in the agreement of the parties and the same was proved. 31 C. W. N. 239=28 Cr. L. J. 241.

120B. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Punishment of criminal conspiracy.

(2) Whoever is a party to a criminal conpiracy other than a criminal conspiracy to commit an offence, punishable as aforesaid shall be punished with imprisonmet of either description for a term not exeeding six months or with fine or with both.

Scope.—The words "where no express provision is made in this Code for the punishment of such a conspiracy," refer entirely to the quantum of the punishment to be inflicted in the event of conviction under the section and do not lay down any limitation against a charge under this section even when the accused has actually committed an offence under some other section of the Penal Code. 2 Mys. L. J. 11. The above expression does not mean that when there is proof of an abetment of an offence the charge should be for abetment. It only includes cases where there is express provision for the punishment ef the particular conspiracy alleged, and the only such case in the Code is under section 121 A, Indian Penal Code. 10 S. L. R. 69=17 Cr. L. J. 366=35 Ind. Cas. 670. The mere fact that the transactions alleged were independent and occurred on different dates, is not inconsistent with a general conspiracy. 27 C. W. N. 821. Conspiracy may be proved by circumstances. When one of two accused has been acquitted the other one cannot be convicted. 81 Ind. Cas. 824=39 C. L. J. 264 ; 45 C. L. J. 204 ; 28 Cr. L. J. 419. Omission to specify in the charge the persons who were parties to the conspiracy is an irregularity curable

by s. 537 Cr. Pro. Code. A. I. R. 1927 Sind. 161=28 Cr. L. J. 426=101 Ind. Cas. 458. When once there has been a conviction under s. 121 A, a fresh conviction under s. 120B. cannot be founded on the same facts. A. I. R. 1925 Lah. 157=25 Cr. L. J. 1241=82 Ind. Cas. 169. Where there is proof of an abetment of the offence, it is optional for the Crown to proceed with abetment or with conspiracy. A. I. R. 1926 Sind. 171=20 S. L. R. 18=27 Cr. L. J. 243=92 Ind. Cas. 419. The offence of conspiracy may be complete, although the particular means are not settled and resolved on at the time of the conspiracy. A. I. R. 1927 Sind. 161=28 Cr. L. J. 426=101 Ind. Cas. 458. Where two of three persons charged for conspiracy are acquitted, the third is entitled to an acquittal. A. I. R. 1926 Cal. 345=30 C. W. N. 94=27 Cr. L. J. 147=91 Ind. Cas. 883. A conspiracy consists not in the intention but in the agreement of two or more persons to do an unlawful act, or a lawful act by unlawful means. It is not indictable as long as the intention does not come into action. But the agreement of two or more persons to give effect to it, is an act and itself becomes punishable if unlawful or for criminal object. 17 Cr. L. J. 431=14 A. L. J. 868=35 Ind. Cas. 991 ; see also A. I. R. 1927 Cal. 265=31 C. W. N. 239=28 Cr. L. J. 241=100 Ind. Cas. 113 ; A. I. R. 1926 Oudh. 161=2 O. W. N. 760=25 Cr. L. J. 1602=90 Ind. Cas. 706 ; A. I. R. 1927 Sind. 161=28 Cr. L. J. 426=101 Ind. Cas. 458 ; A. I. R. 1924 All. 233=27 Cr. L. J. 103=92 Ind. Cas. 145. A conspiracy need not be established by evidence of an actual agreement between the conspirators. Overt acts raise a presumption of an agreement and knowledge of the purpose of the conspiracy. 25 Cr. L. J. 1602=2 O. W. N. 760=A. I. R. 1926 Oudh. 161=90 Ind. Cas. 706. Section 71 does not apply to conspiracy under s. 120 B. 1933 Cr. C. 936=A. I. R. 1933 Nag. 25. Prosecution must prove agreement between two or more persons to do or cause to do illegal act. If agreement is other than one to commit offence, prosecution must prove some act in pursuance of agreement. But if agreement is to do offence, no overt act need be proved. But proof of overt acts will help to prove agreement. A. I. R. 1935 All. 162. In cases of criminal conspiracy evidence of approver must be corroborated. *Ibid.*

Charge to the jury—what it should contain—*Vide*, 25 Cr. L. J. 751=81 Ind. Cas. 249.

Procedure—The offence under sub-section (1) is cognizable, if the offence which is the object of the conspiracy is cognizable, but not otherwise. A warrant or summons should issue according as a warrant or summons may issue for the offence which is the object to the conspiracy. Bailable or not bailable according as the offence which is the object of the conspiracy is bailable or not. It is not compoundable. It is triable by the Court of Session when the offence which is the object of the conspiracy is triable exclusively by such Court : but in the case of all other offences it is triable by the Court of Session, Presidency Magistrate or Magistrate of the first class.

If it falls under sub-section (2) it is—Non-cognizable—Summons should issue—Bailable—Not compoundable and is triable by the Presidency Magistrate or Magistrate of the first class.

Charge—I (*name of offence of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of at , agreed with (name of the conspirator), to do (or caused to be done) an illegal act, to wit [or an act to wit (which is not illegal) by illegal means to wit] and you did some acts, to wit besides the agreement in pursuance of the said agreement to commit the offence of punishable with death (or transportation, etc.) and thereby committed an offence punishable under s. 120B of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session or High Court.)

And I hereby direct that you be tried (by the said Court, on the said charge.)

Sanction.—*Vide* s. 196 A. of the Criminal Procedure Code ; see also 15 A. L. J. 841 ; 35 C. L. J. 279=69 Ind. Cas. 145=23 Cr. L. J. 657=49 C. 573=26 C. W. N. 680 ; 54 C. 155 ; 33 C. W. N. 834 ; 25 C. W. N. 357=22 Cr. L. J. 455.

Separate Charge.—*Vide* 1 Luck. C. 339.

Sentence.—32 C. W. N. 1004.

Cases.—When the charge against the accused was under s. 120B and s. 364 read with s. 34 a conviction for an offence under s. 364 read with s. 120B is not valid if there was no prejudice to the accused by the trial. 26 Cr. L. J. 356=84 Ind. Cas. 708=A. I. R. 1925 Cal. 581. In a charge of conspiracy, general evidence of an existing conspiracy may in the first instance be received as a preliminary step to the more particular evidence by which it is to be shown that the individual defendants were guilty participators in such conspiracy. The conspiracy may be proved by substantial evidence. 101 Ind. Cas. 453=28 Cr. L. J. 421. Recital of specific offences in conspiracy are surplusage and may be ignored. A. I. R. 1930 Sind. 164. That a person known to be an associate was trying to extricate himself from being accused of anything connected with offence is not enough for conviction. A. I. R. 1930 Cal. 647 (F. B.). That immediately after concurrence, person was anxious to escape observation and was doing his best to conceal his whereabouts is enough to infer complicity. A. I. R. 1930 Cal. 647. For conspiracy to fabricate evidence to obtain capital conviction all conspirators should show that charge is false. 57 C. L. J. 177=34 Cr. L. J. 322=64 M. L. J. 466=1933 M. W. N. 409=35 Bom. L. R. 507=37 C. W. N. 514=1933 A. L. J. 645=A. I. R. 1933 (P. C.). 124. Charge under both ss. 117 and 120 B. is not wrong. 37 C. W. N. 426=1933 Cr. C. 967=A. I. R. 1933 Cal. 603. In case of prosecution under ss. 193 and 120 B, previous sanction is necessary. 139 Ind. Cas. 89=33 Cr. L. J. 657=1932 Cr. C. 881=A. I. R. 1932 Cal. 850. Where police officers take bribes from both sides, this fact does not afford evidence of conspiracy with one side. 57 C. L. J. 177=34 Cr. L. J. 322=64 M. L. J. 466=35 Bom. L. R. 507=37 C W. N. 514=1933 A. L. J. 645=A. I. R. 1933 P. C. 124 (P. C.). In case of separate sentence for act constituting conspiracy, separate sentence for offence under s. 120 B is not necessary. A. I. R. 1933 Lah. 977 ; but see 35 Bom. L. R. 985=A. I. R. 1933 Bom. 447=1933 Cr. C. 1406. Where there is no charge or complaint under s. 120 B a conviction under this section is not legal. 13 Pat. 729=15 P. L. T. 523=A. I. R. 1933 Pat. 561. The onus is upon the prosecution to prove a conspiracy. But under certain circumstances it is upon the accused. A. I. R. 1934 Pat. 575=152 Ind. Cas. 285=1934 Cr. C. 1240 ; see also A. I. R. 1934 Sind. 57=28 S. L. R. 119=151 Ind. Cas. 494=35 Cr. L. J. 1337. The place where the conspiracy was formed or made which determines the jurisdiction of the Court. 1933 Cr. C. 113=A. I. R. 1933 Sind. 333. A conspirator need not know all the acts of his fellow conspirators. 28 S. L. R. 119=151 Ind. Cas. 494=35 Cr. L. J, 1337=A. I. R. 1934 Sind. 57. For mere sheltering the accused one cannot be convicted. A. I. R. 1934 Cal. 368 ; see also A. I. R. 1934 Nag. 71 ; A. I. R. 1934 Sind. 57. Proof of one offence of dacoity or robbery is not sufficient to support a charge of conspiracy to commit robberies and dacoites. 148 Ind. Cas. 929=11 O. W. N. 208=35 Cr. L. J. 796=A. I. R. 1934 Oudh. 106 ; see also 150 Ind. Cas. 1056=35 Cr. L. J. 1180.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

Waging or attempting to wage war, or abetting waging of war, against the Queen.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death or transportation for life, "and shall also be liable to fine."

Illustrations.

(*a*) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(*b*) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

Amendment.—The words within quotations have been substituted by Act 16 of 1921.

Waging War.—A person who takes part in an organised armed attack on the constituted authorities, that attack having for its object the subversion of British Raj and the establishment of another Government is guilty of an offence under this section. 42 Mad. L. J. 108. Where in order to establish a republic in this country the

accused actively suggested to his audience that they should use violence or stimulated them to use violence to achieve that purpose, he is guilty under this section. 24 Bom. L. R. 885. Under the English law, mere words spoken or written, however wicked and abominable, if they do not relate to any act or design then actually on foot against the life of the king, or the levying of a war against him, and in contemplation of the speaker, do not amount to treason under the Indian Penal Code, the waging or levying of war and the abetting of it are put upon the same footing by section 121. That is the abetting of the waging of war is under the Code as much an offence of treason as the waging of war itself. According to the general law as to abetment (s. 108, Expl, 2), to constitute the offence of abetment, it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused. This applies to the abetment of the waging of war against the king, as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offence is that, while, under the general law as to abetment, a distinction is made, for the purposes of punishment between abetment which is succeeded and abetment which has failed, section 121 does away with that distinction so far as the offence of war is concerned, and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken. no effect whatever. *Per Chandra Varkar J* in 12 Bom. L. R. 105=5 Ind. Cas. 854=34 B. 394. So long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of any thing more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore of abetting the waging of war. *Per Heaton J. in ibid.* Attack on officers in pursuance of conspiracy to overthrow Government amounts to waging war. 14 Cr. L. J. 514=20 Ind. Cas. 994=6 Bur. L. T. 146. If a conspirator has formed the intention to leave a conspiracy and ceases to be a conspirator by his own act and intention when the other conspirators wage war, he cannot be held guilty under section 121 of the Penal Code. 6 Bur. L. T. 153=21 Ind. Cas. 658=14 Cr. L. J. 610. The law contained in this section is not a reproduction of the English law of treason in its entirety, nor did the framers of the section intend it to be so. 37 C. 467=14 C. W. N. 1114=7 Ind. Cas. 359=11 Cr. L. J. 458. If it is only inflaming of the feelings it is only sedition. But when there is a clear incitement to action, then there is instigation and consequently of abetting the waging of war. A. I. R. 1922 Bom. 284=24 Bom. L. R. 885=24 Cr. L. J. 923=75 Ind. Cas. 299 ; see also A. I. R. 1922 Mad. 126=42 M. L. J. 108=30 M. L. T. 125=123 Cr. L. J. 203=65 Ind. Cas. 859. 'Waging war" is synonymous with "levying war" in statute. 25 Edward 3, ch. 2. 135 Ind. Cas. 849=33 Cr. L. J. 205=9 Rang. 404=A. I. R. 1931 Rang. 235 (S. B.). Deliberate and armed attack on Crown forces and thereby to prevent general collection of taxes is "waging war." 135 Ind. Cas. 849=33 Cr. L. J. 205 ; see also A. I. R. 1933 Rang. 116=34 Cr. L. J. 929=6 R. R. 32=1933 Cr. C. 641. Compulsion cannot be pleaded as defence to action under s. 121. 135 Ind. Cas. 849=33 Cr. L. J. 205.

The validity of a conviction under s. 121 is not affected by the striking off of the convictions of other offences, forming component parts of the offence of waging war. 90 Ind. Cas. 297=26 Cr. L. J. 1513.

Punishment.—As regards principle and measure of punishment, *vide* U. B. R. (1897—1901) Vol. I. 252. Confiscation of property may be ordered under this section. 34 C. 986=11 C. W. N. 1046=6 C. L. J. 754=6 Cr. L. J. 293. In the case of a speech coming under ss. 121 and 124 A accused would be liable to only one punishments. A. I. R. 1922 Bom. 284=24 Bom. L. R. 885=24 Cr. L. J. 923=75 Ind. Cas. 299.

Procedure.—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of accused person*) as follows :—

That you, on or about the day of , at, waged war (or attempted to wage war, or abetted the waging of war) against His Majesty the King Emperor of India and thereby committed an offence punishable under s. 121 of the Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

In a trial under this section the sanction of the Local Government required under s. 196, Cr. Pro. Code must be strictly proved in the manner as laid down in section 78 of the Evidence Act. L. B. R. (1872—1892), 389 ; 37 C. 467=14 C. W. N. 1114=11 Cr. L. J. 453 ; 16 P. R. 1890 Cr.

Where the several persons were charged under ss. 121, 121 A, 123, I. P. Code, and when the charge merely purported to place before the Court different aspects of the same transaction, the joint trial of the several accused on different charges was not bad for multifariousness. 37 C. 467=14 C. W. N. 1114=7 Ind. Cas. 359. In a case under s. 121 I P. Code, even if the charge does not set out the speeches alleged to be seditious, it would not vitiate the proceedings. A. I. R. 1925 Mad. 106=25 Cr. L. J. 401=77 Ind. Cas. 481.

Conspiracy to commit offences punishable by section 121.

121A. Whoever, within or without British India, conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years "and shall also be liable to fine."

Explanation.—To constitute a conpiracy under this section it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Amendment—This section has been added by Act 27 of 1870.

Scope—The provisions of the law however,are, comprehensive and no formidable elements either in men or means are required to satisfy the definition of conspiracy to wage war. No act or illegal omission is necessary for such a conspiracy, the mere agrement of two or more being sufficient. 38 C. 569. The essence of an offence under this section is the agrement to do all or any of the unlawful acts mentioned in the section. It is not necessary that any act or illegal omission should take place in pursuance of the agreement. 35 M. 247. See also 16 C. W. N. 1105. Conspiraiy to change form of Government without criminal force is no offence under s. 121 A. But conspiracy to establish complete independence or perfectly democrative Government outside the British Empire comes within s. 121 A. 1933 A. L J. 799=34 Cr. L. J. 967=1933 Cr. C. 1202=A. I. R. 1933 All. 690. Conspiracy to deprive King-Emperor of sovereignty of British India is sufficient. It is immaterial whether conspiracy is expected to succeed in life time of the present king Emperor. *Ibid.* Conspiracy is to be inferred from beliefs, associations and activities of the accused and from their statement in Court. When identity of beliefs and association are established much evidence is not necessary to prove conspiracy. *Ibid.* Mere agreement to do illegal act is sufficient. Actual act or omision in pursuance of conspiracy is not necessary. *Ibid.* To prove correspondence with particular person in foreign county it is not necessary to prove actual fact of written by such person. Proof of correspondence with some men in conspiracy with such person is sufficient. *Ibid.* Regard should be had to provisions of Penal Code and not to doctrines of political philosophers. Violence cannot be resorted to, to overthrow constitution established by law. A. I. R. 1933 All. 498=1933 Cr. C. 433. Where accused does not belong to party adopting programme of Communist international and not believing in Communism ; mere taking part in Trade-union activities raises no presumption of their entering into conspiracy under s. 121 A. 145 Ind. Cas. 481=1933 A. L. J. 799=34 Cr. L. J. 967=1933 Cr. C. 1202=A. I. R. 1933 All 690. Even if facts fall under this section it is not incumbent upon Government to prosecute under this section. 30 N. L. R. 269=A. L. R. 1934 Nag. 186=150 Ind. Cas. 628=35 Cr. L. J. 1079. Intention to use violence is necessary. A. I. R. 1934 Cal. 221 (F. B.)=35 Cr. L. J. 334=1934 Cr. C. 315=147 Ind. Cas. 32. Conviction under ss. 85, 121 and 121 A held proper when accused since release were plotting against Government and when he was personally responsible for death of innocent persons. *Ibid.*

Procedure—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge—I (*name aad office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you , on or about the day of , at [within British India (or without British India) conspired to wage war (or abet the waging of war) against His Majesty the King-Emperor of India, or conspired to deprive the King-Emperor of the sovereignty of British India or any part thereof, or conspired to overawe by means of criminal force or show of criminal force the

Government of India or any Local Government, and thereby committed an offence punishable under s. 121 of the Indian Penal Code and within the cognizance of the Court of Session (or High Court.)

And I hereby direct that you be tried by the said Court on the said charge.

Sanction—Under s. 196 of the criminal Procedure Code no Court shall take cognizance of an offence under this section unless the prosecution is instituted under the authority of Government. 15 C. W. N. 98=8 Ind. Cas. 1059. The requirement of law that no complaint under s. 121 A of the Penal Code should be made without special authority from Government is no doubt due in part to the fact that a charge framed in terms of that section is calculated to produce an impression that a political situation of the gravest character has arisen. 15 C. W. N. 592=38 C. 569.

Evidence—When once the existence of conspiracy is established, the sayings and doings of conspirators, though in the absence of each other, are evidence against fellow conspirators, according to section 10 of the Evidence Act. U. B. R. (1892-1896) Vol. I. 148. It is not necessary to establish by direct evidence that the accused persons did enter into an agreement to conspire. The criminality of the conspiracy lies in the concerted intention, and once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused, the acts of each conspirator in futherence of its object are evidence against each of the others ; and this, whether such acts, were done before or after his entry into the combination in his presence, or in his absence. 16 C. W. N. 1105=15 Cr. L. J. 517 ; see also 37 C. 467=4 C. W. N. 1114=11 Cr. R. L. J. 453. Severity of sentence varies with seriouness of acts of each accused. 135 Ind. Cas. 113=1931 A. L. J. 94= =54 All. 115=A. I. R. 1931 All. 304 (S. B.). Section 497 (1) does not apply to application for bail by persons accused under s. 121 A. A. I. R. 1931 All. 356=32 Cr. L. J. 1271=53 A. 931=1931 A. L. J. 515=134 Ind. Cas. 842. Where accused is not alleged to be dangerous criminals nor charged with having done any illegal act in pursuance of conspiracy, and there is no probability of accused being sentenced to transportation for life, be should be released on bail. A. I. R. 1931 All. 356=53 A. 231. Where complaint mentions names of conspirators, charge need not contain names. 1933 Cr. C. 433=A. I. R. 1933 All. 498. Where Cawnpore is one centre of conspiracy and correspondence was carried from and to Cawnpore, conspirators can be tried at Cawnpore. A. I. R. 1933 All. 498.

Collecting arms &c., with intention of waging war against the Queen.

122. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, "and shall also be liable to fine."

Amendment.—The words within quotations have been substituted by Act XVI of 1921.

Scope.—The acts made punishable by this section cannot be considered as attempts ; they are in truth preparations made for committing the offence of waging war. Such acts would seem to constitute the doer an abettor, if done in aid of others who are waging or who intended to wage war.—*Morgan and Macpherson.*

Procedure.—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge.—I (*name and office of Magistrate*, etc.), hereby charge you (*name of the accused*) as follows :—

That you on or about the day of , at collected men (or arms or ammunition) with the intention of waging war (or being prepared to wage war) against His Majesty the King Emperor, and thereby committed an offence punishable under s. 122 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court.)

And I hereby direct that you be tried by the said Court on the said charge.

Concealing with intent to facilitate design to wage war.

123. Whoever, by any act, or by any illegal ommission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprison-

ment of either description for a term which may extend to ten years, and shall also beliable to fine.

Scope.—The persons hereby comprised are the same as those in the previous sections. The offence punished by this section is like a species of abetment by aid, such as is mentioned in section 118 of the preceding Chapter. The concealment here may be either by an act or by an illegal omission ; but must be a concealment with an intention and knowledge which show a wish to facilitate the execution proved in to wage war : and the existence of the design must be of desi.—*Morgan and Macpherson* 103.

Procedure.—Non cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge.—I (*name and office of Magistrate*, etc.) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of , at , concealed the existence of a design of waging war against the King Emperor, intending by such concealment to facilitate for knowing it to be likely that such concealment would facilitate) the waging of such war, and that you have thereby committed an offence punishable under s. 123 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court.)

And I hereby derect that you be tried by the said Court on the said charge.

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or, the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force, or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Non cognizable—Warrant—Not-bailable—Not compoundable—Triable by a Court of Session.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of , at , with the intention of inducing (or compelling) the Right Hon'ble A. B., the Governor General of India (or the Governor of the Presidency, or the Lieutement Governor of ' or the Hon'ble A. B., a Member of the Council of the Governor-General of India, or the Council of the Governor of the Presidency) to exercise (or refrain from exercising) a lawful power as such assaulted (or wrongfully restrained or attempted wrongfully to restrain ; or overawed by means of criminal force or by the show of criminal force) such , and that you have thereby commited an offence punishable unders. 124 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court,)

And I hereby direct that you be tried by the said Court on the said charge.

Sedition.

124A. Whoever, by words, either spoken or written, or by signs, or by visible presentation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

Amendment—S. 124A has been substituted by the Indian Penal Code Amendment Act (IV of 1898) s. 4, original s. 124 as inserted by the Indian Penal Code Amendment Act. 22 of 1870 s. 5.

Gist of the offence—The gist of the offence of sedition lies in the intention of the writer and that intention is not to be gathered from isolated or stray passages here and there. It must be gathered from a fair and generous reading of the article in respect of which the charge has been laid. In gathering the intention allowance must be made for a certain amount of latitude to writers in the public press. The section is in such wide terms that unless it is very strictly or narrowly construed there is real danger that legitimate criticism may be stifled altogether. 46 C. L. J. 156=105 Ind. Cas. 228=28 Cr. L. J. 900=A. I. R. 1927 Cal. 751 ; 45 C. L. J. 638=103 Ind. Cas. 771=28 Cr. L. J. 723=A. I. R. 1927 Cal. 698 ; A. I. R. 1930 Lah. 870 ; 9 Pat. L. T. 784 ; 9 Pat. L. T. 766 ; A. I. R. 1929 Lah. 817 ; 108 Ind. Cas. 372=29 Cr. L. J. 381. In a case under s. 124A, the mere authorship of a seditious leaflet which has been published by others would be sufficient to constitute the offence. A. I. R. 1928 Rang. 276. An article attacking the police comes within the purview of section 124A since the police is one of the human agencies through which Government acts. 19 Bom. L. R. 211 ; 117 Ind. Cas. 834=30 Cr. L. J. 850=A. I. R. 1929 Cal. 277. A writer can discuss policy of Government but attributing base motives to Government amounts to offence. A. I. R. 1930 Lah. 186. Publication bringing British Government into hatred, etc., in any form whatever amounts to offence. A. I. R. 1930 Lah. 153 ; A. I. R. 1930 Lah. 156 ; A. I. R. 1930 Lah. 86 ; A. I. R. 1230 Cal. 244 (F. B) ; A. I. R. 1930 Cal 210. Allegations against Home Government do not amount to offence under s. 124A. A. I. R. 1930 Lah. 156. To say that bullets were showered on a Gurdwara, under cover of maintaining law and order is to bring the Government into hatred and contempt. A. I. R. 1931 Lah, 31=1931 Cr. C. 95. Government established means executive power in action and not merely constitutional framework. It means both Local and Central Government. 138 Ind. Cas. 766=59 C. 1197=33 Cr. L. J. 690=36 C. W. N. 510=A. I. R. 1932 Cal. 547 ; see also 142 Ind. Cas. 292=1933 Cr. C 201=34 Cr. L. J. 309=A. I. R. 1933 Cal. 140 ; 32 Cr. L. J. 538=A. I. R. 1931 Lah. 31. To advocate expulsion of Englishman from India is tantamount to asking for subversion of Government established by law. A. I. R. 1930 Lah. 309. "War" and "warning against Government" do not necessarily make speech seditious. *Ibid.* Speech in which speaker approves of violence as means of achieving self-government amounts to offence under s. 124A. A. I. R. 1930 Lah. 306. So long as a man only tries to inflame feeling, he is guilty of sedition. It is only when he incites to action that he is guilty of instigation and therefore of abetting the waging of war. A. I. R. 1922 Bom. 284=24 Bom. L. R. 135=24 Cr. L. J. 923=75 Ind. Cas. 299 ; see also A. I. R. 1930 Cal. 230=56 C. 1085=31 Cr. L. J. 313=121 Ind. Cas, 749 ; A. I. R. 1930 Cal. 244=34 C. W. N. 277=127 Ind. Cas. 73 (F. B.). Life sketches ending with comments approving conduct of persons convicted for murder and dacoity and inducing others to behave in similar manner constitute an offence under this section. A. I. R. 1931 Lah. 156. It is the duty of a historian to make an endeavour to be impartial and not to make a presentation only of the evil deeds of those in whom he is dealing. A. I. R. 1930 All. 401. Persons villifying the British by contrast, by holding up an admired character is guilty under s. 124A. A. I. R. 1930 Cal. 363.

Intention.—"Intention" is an essential ingredient of the offence under s. 124A. A. I. R. 1931 Lah. 182=1931 Cr. C. 302 ; see also A. I. R. 1230 All. 324=31 Cr. L. J. 429=122 Ind. Cas. 596. Meaning of language used as understood by the reader is the meaning of the writer. A. I. R. 1927 Cal. 998=45 Cr. L. J. 638=28 Cr. L. J. 103 Ind. Cas. 771 ; see also A. I. R. 1929 Lah. 817=1929 Cr. C. 442 ; A. I. R. 1925 Pat. 99=26 Cr. L. J. 78=83 Ind. Cas. 638 ; 18 Cr. L. J. 567=19 Bom. L. R. 211=39 Ind. Cas. 807 ; A. I. R. 1929 Pat. 10=9 Pat. 784=30 Cr. L. J. 213=113 Ind. Cas. 696 ; A.I.R. 1930 All 401=1930 A.L.J. 713=125 Ind. Cas. 470 (F.B.) A book

or report intended to educate the public opinion can have no intention of causing disaffection. A. I. R. 1925 Pat. 99=26 Cr. L. J. 78=83 Ind. Cas. 638. Articles published in the same issue of a paper and forming the subject-matter of one or other of the charges may be admitted to prove intention. 34 C. W. N. 1095=A. I. R. 1931 Cal. 337. Intention should be inferred after reading articles in a fair, free and liberal spirit. *Ibid.* When the speech as a whole is not calculated to bring Government into hatred or contempt an offence under this section is not committed. 139 Ind. Cas. 696=33 Cr. L. J. 831=33 P. L. R. 911=A. I. R. 1932 Lah. 559. Court has to look at whole speech to gather its effect. 34 Bom. L. R. 1642=34 Cr. L. J. 231=57 B. 253=A. I. R. 1933 Bom. 65 ; see also 142 Ind. Cas. 293=1933 Cr. C. 202=34 Cr. L. J. 310=A. I. R. 1933 Cal. 141.

Disaffection and disapprobation.—Any one who by any of the means referred to in the section excites or attempts to excite feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of "disaffection" as that term is used in this section, no matter how guardedly he may attempt to conceal his real object. The word 'disaffection' means disloyalty. 20A. 55 (F. B.) The meaning of the Explanation in this section is that a loyal subject who disapproves of Government measures is not to be deemed disloyal or disaffected on that account if, notwithstanding his disapprobation of such measures, he is ready to obey and support government. If he is at heart loyal, he is not disaffected, merely because he disapprobates certain measures of Government. 22B 152 (F. B.). Disaffection means a feeling contrary to affection, in other words dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiment or action and to like him. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling. 19 C. 35. Disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will towards the Government. Disloyalty is perhaps the best general term comprehending every possible form of bad feeling towards the Government. The amount or the intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment. It is also absolutely immaterial whether any feelings of disaffectien have been excited or not by the publication in question. The section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them. The offence consists in exciting or attempting to excite in others certain that feelings towards the Government. 22B. 112. See also 30B. 421 ; 7 C. L. J. 49 ; 35 C. 945 ; 32 M. 384 ; 32 M. 338 ; 12 Bom. L. R. 675 ; 7 C. 467 ; 1 P. R. 1905 Cr. ; 39 C. 522 ; 35 C. 141. 16 C. W. N. 812 ; 15 C. W. N 141 ; 37 P. W. R. Cr. 1907 ; 10 Bom. L. R. 848 ; 14 P. W. R. 1907 Cr. ; 38 C. 214. In order to decide whether or not a speech constituted an attempt to excite hatred, contempt or disaffection, it should be viewed from the stand point of the type of persons to whom it was primarily addressed. 74 Ind. Cas. 954. Although conditions in India now are much more in favour of free expression than about 20 years ago, yet to say that the object of the Government is to divide and rule and to destroy the language, culture, art etc of the people and to describe the Government as based upon brute force, cannot fail to cause feeling of disaffection and contempt if not hatred in the mind of Indian readers. A. I. R. 1925 Pat. 99=26 Cr. L. J. 78=83 Ind Cas. 638 ; see also A. I. R. 1929 Pat. 10=9 P. L. T. 784=30 Cr. L. J. 213=113 Ind. Cas. 696 ; A. I. R. 1929 Lah. 817=1929 Cr. C. 442 ; 31 P. L. R. 918 ; 31 Cr. L. J. 201=A. I. R. 1930 Lah. 306=121 Ind. Cas. 76. To make charge of gross partiality against Government such as that Government was siding with capitalist is to inspire feelings of enmity. 34 Bom. L. R. 1642=1933 Cr. C. 182=34 Cr. L. J. 231=57 B. 253=A. I. R. 1933 Bom. 65. Sedition in 1897 is different from one in 1932. 37 C. W. N. 166=140 Ind. Cas. 304=33 Cr. L. J. 949=56 C. L. J. 157=A. I. R. 1932 Lah. 738 (F. B.). Journalist expressing disapprobation of measures of Government to obtain their alteration by lawful means must do so without attempting to excite hatred or disaffection. 138 Ind. Cas. 790=33 Cr. L. J. 702=A. I. R. 1932 Cal. 758.

A writer cannot commit offences both under s. 124 A and s. 153 A in the same article published in a paper. 25 Cr. L. J. 614=81 Ind. Cas. 102. In a case under this section the Court is to consider the state of the country and the minds of the people. 83 Ind. Cas. 638=1925 P. 99. Intention is an essential element in an offence of sedition. 82 Ind. Cas. 574=25 Cr. L. J. 1342. The law will presume

intention whether good or bad from the language and conduct of the accused. A. I. R. 1925 Lah. 16=6 L. L. J. 379=25 Cr. L. J. 1342=82 Ind. Cas. 574.

The knowledge by a printer of the contents is a question to be determined on the particular facts of each case. 84 Ind. Cas 446=26 Cr. L. J. 302=A. I. R. 1925 Lah. 298 ; 12 Bom. L. R. 675=11 Cr. L. J. 546 ; 69 P. L. R. 1905 ; 6 Cr. L. J. 411 ; 38 C. 227. Mere fact of the accused's name appearing on title page of a pamphlet is insufficient to prove his authorship. 88 Ind. Cas. 356=26 P. L. R. 403. In sedition cases, as a general rule, evidence of previous seditious speeches is inadmissible. 16 S. L. R. 156=84 Ind. Cas. 448=26 Cr. L. J. 304. A trial for sedition should be by a special jury. 1928 A. I. R. Bom. 74=30 Bom. L. R. 313=29 Cr. L. J. 411=108 Ind. Cas. 509. The fact that article was not written by editor does not affect question of guilt whatever effect it may have on question of sentence. A. I. R 1930 Lah. 875. To represent that Penal Code enforced by Government attacks every religion amounts to offence under s. 124A. A. I. R. 1930 Lah. 885.

The gist of the offence under this section is the bringing or attempting to bring into hatred or contempt or the exciting or attempting to excite disaffection towards His Majesty or Government established in British India. The opening words of the law in section, "whoever by words, either spoken or written or by signs, or by visible representation or otherwise" merely indicate the various means by which the offence may be committed. The whole sentence might have been shortly expressed by saying "whoever by any means brings etc." Words of any kind are by no means a necessary element of the offence. It may be committed without any words being spoken or uttered. 5 M. L. T. 393=9 Cr. L. J. 456=32 M. 384=2 Ind. Cas. 33. It is not enough that a person writes certain words. He may write a seditious pamphlet and keep it locked up in his drawer. He has not thereby committed an offence. Similarly, it is not enough that he entertains an intention to excite disaffection, to bring him within the scope of the section. The offence constituted by it requires an act coupled with a distinct intention. 32 M. 384=9 Cr. L. J. 456.

Strictly speaking, the publication of a seditious article in a newspaper is not ordinarily the work of either of the writer alone, or of the proprietor alone or of the editor alone, or even of all the three together. The maxim *qui facit per alium facit per se* applies and the publication is held to be the act of the person or persons who authorized it, and the grant of the authority may be proved by direct evidence, or as a reasonable inference from the conduct of the parties and all the surrounding circumstances. In each case it is a pure question of fact, to be proved like any other fact by direct evidence or as a reasonable inference from facts proved or admitted, and considered in relation to all the circumstances of the particular case. 32 M. 338=2 Ind. Cas. 193=5 M. L. T. 415=9 Cr. L. J. 506. The owner of the press is presumed to know contents of seditious book that is being printed in his press. 131 Ind. Cas. 671=53 C. L. J. 182=32 Cr. L. J. 742=A. I. R. 1931 Cal. 349. But proprietor of press who is away and is not aware of the publication cannot be convicted under s. 124A. A. I. R. 1931 Lah. 182=32 P. L. R. 740=12 Lah. 483=32 Cr. L. J. 681=131 Ind. Cas. 273.

The fact of the accused making manuscript copies of seditious printed articles and posting them with a covering letter requesting the addressee and others to circulate the same amongst others, when the packet was intercepted by another person and never reached the addressee, amounts only to an attempt of an offence under section 124A. I. P. Code. 39 C. 522=16 Ind. Cas. 327=13 Cr. L. J. 679. But sending a seditious matter by post addressed not to a private individual but to the representative of a large number of men (*e. g.*, captain of a school) amounts to publication if it is opened by anybody. 16 C. W. N. 812=39 C. 606=13 Cr. L. J. 289. Mere printing is sufficient and publication is not necessary. A I. R. 1928 Rang. 276=30 Cr. L. J. 707=117 Ind. Cas. 49. It cannot be said that the speech even if it brought the Government into hatred and contempt can be considered to be innocuous because contempt in existence cannot be further increased. A. I. R. 1930 All. 324=31 Cr. L. J. 429=122 Ind. Cas. 596. If certain alleged facts are used as a peg on which to hang seditious comments, the truth of the facts does not excuse the seditious commentary. A. I. R. 1930 Lah. 371=31 Cr. L. J. 168=120 Ind. Cas. 798 ; see also 34 C. W. N. 1095=1931 Cr. C. 401. Mere reference to exploitation of India will not constitute an offence under the section. A. I. R. 1930 Lah. 892=31 P. L. R. 688=129 Ind. Cas. 700.

In order to use articles than that complained of as seditious for the purpose of showing the meaning of certain expressions used in the article complained of and

also to show the intention of the writer, it is necessary to show who the writer was and that all the articles produced were by the same hand. The writer may be guilty of exciting or attempting to excite feelings of "disaffection" as that term is used in s. 124A of the Penal Code, no matter how guardedly he may attempt to conceal his real object, but the printer and publisher cannot be punished if the concealed objects is not established by evidence on the record. A man may comment upon any measure or act of Government, whether legislative or executive, and freely express his opinion upon it. He may express the strongest condemnation of such measures and he may do so severely, and even unreasonably, perversely, or unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes beyond, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred of his readers—as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling on its foreign origin and character, or imputing to it base motives or accusing it of hostility or indifference to the people—then he is guilty under s. 124A and the explanation will not save him. 22 B. 112 ; 15 C. W. N. 141=11 Cr. L. J. 667 ; 10 Bom. L. R. 348=8 Cr. L. J. 583.

There can be separate conviction and sentence for attempting to promote feeling of hatred between different classes of His Majesty's subjects and for attempting to excite disaffection against the Government established by law in British India. 4 S. L. R. 55=8 Ind. Cas. 203=11 Cr. L. J. 583.

The essence of the crime of sedition consists in the intention with which the language is used. But this intention must be judged primarily by the language itself. Intention for this purpose is really no more than meaning. When a man is charged in respect of anything he has written or said, the meaning of what he said or wrote must be taken to be his meaning, and that meaning is what his language would be understood to mean by the people to whom it is addressed. 10 Bom. L. R. 848=8 Cr. L. J. 28. If a particular article is charged as being seditious on the ground that it says more than appears on the face of it, it is the duty of the prosecution to show that it has in fact the guilty meaning or intention attributed to it. 38 C. 214=12 Cr. L. J. 348.

Where the publication of articles in a newspaper evinces a clear attempt to create feelings of hostility to Government, it cannot be urged in defence that the accused had failed in his endeavour. If the attempt is made, the accused cannot shelter himself behind the fact that those to whom he may have addressed himself have either been too discreet or too temperate to act upon the obvious meaning of the teaching. 2 Bom. L. R. 286.

To determine whether an attempt to commit the offence mentioned in section 124A is committed by the publication of certain articles, it is necessary to determine what is their meaning, what is the innuendo they convey, and what is the covert meaning, if any, they have. The probable or natural effect of the words used must then be decided, that is, whether they are calculated to bring into hatred or contempt the Government, or excite against it feelings of disloyalty or enmity. 2 Bom. L. R. 304. When a compilation is made with the determination to corrupt the minds of the children and thus comes within the terms of s. 124A, it can be proscribed by the Government. 47A. 298=86 Ind. Cas. 55. A publisher of an article must be deemed to intend that which is the natural result of the words used having regard to the character and description of people expected to read them. 30 Cr. L. J. 850=117 Ind. Cas. 834=A. I. R. 1929 Cal. 277. Intention is co-related with natural consequence. A. I. R. 1931 All. 324 ; see also A. I. R. 1931 Lah. 31. Memory of witness's testimony as to actual words should not be relied on. A. I. R. 1931 Lah. 371. Truth does not excuse seditious commentary. *Ibid.*

Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge.—I (*name and office of Magistrate etc.,*) hereby charge you (*name of accused*) as follows :—That you—on or about—day of,—at—, by writing (or speaking) the words (*mention them*) (or by signs or visible representation, or otherwise) brought or attempted to bring) into hatred or contempt (or excited or attempted to excite disaffection towards) His Majesty the King Emperor (or the Government established by law in British India) and thereby committed an offence punishable under s 124A, and within my cognizance (or the cognizance of the Court of Session or High Court).

And I hereby direct that you be tried [by the said Court (in cases tried by Magistrate omit these words)] on the said charge.

Evidence.—It is not open to a Magistrate to admit any evidence with regard to speeches other than those for which an accused is prosecuted. A. I R. 1930 Lah. 870=1930 Cr. C. 914=31 P. L. R. 625=127 Ind. Cas. 218. Previous speeches forming part of a series of speeches are admissible. A. I. R. 1930 Lah. 867=127 Ind. Cas. 209. In a case under s. 124A whatever the memory of witnesses, their memories as to actual words used should not be relied upon after a considerable time. A. I. R. 1930 Lah. 371=1930 Cr. C. 331=31 Cr. L. J. 168=120 Ind. Cas. 798. Little reliance should be placed on the evidence of such stock witnesses who are habitual police-witnesses. Where the police have given a highly coloured and exaggerated statement with regard to the whole affairs, convictions on their oral evidence alone is bad. A. I. R. 1923 Lah. 333=25 Cr. L. J. 279=76 Ind. Cas. 871.

Other Procedure.—It can be tried in the place it is printed though it is published elsewhere. A. I. R. 1928 Rang. 276=30 Cr. L. J. 707=117 Ind. Cas. 49. Where in a complaint under s. 124A Penal Code, the alleged speech is not attached, nor mentioned in complainant's statement, complaint is not proper. A. I. R. 1929 Lah. 284=30 Cr. L. J. 1129=120 Ind. Cas. 10. Where in a trial under s. 124A, Penal Code, the substance of the speech made by accused was not mentioned in charge, the charge was held to be defective. A. I. R. 1931 Lah. 186=32 P. L. R. 13=1931 Cr. C. 306. Opportunity should be given to the accused to cross-examine the prosecution witnesses even after his refusal to take part in the proceeding. A. I. R. 1931 Lah. 186=32 P. L. R. 13.

High Court.—High Court will not interfere with the discretion of Magistrate especially empowered to try offence under s. 124A. A. I. R. 1932 Bom. 63=56B. 61=33 Bom. L. R. 1575.

Privy Council Appeal.—Question whether law was properly applied to language used by accused in a seditius case partakes so much of the nature of a question of fact that P. C. will not revise the conclusions of facts arrived at by the Lower Court, because there it will be constituting itself, a Court of Appeal in criminal matters which role it is its policy to decline to assume. A. I. R. 1921 P. C. 29=2 Lah. 34=19 A. L. J. 65=23 Bom. L. R. 709=33 C. L. J. 124=25 C. W. N. 701=40 M. L. J. 101=48 I. A. 96=59 Ind. Cas. 641=22 Cr. L. J. 129.

Sentence.—The fact that an article was merely copied from publications in regard to which there was no prosecution as well as the primary intention of the accused, to get members to leave council should be considered in awarding sentence. A. I. R. 1930 All. 836. Inexperienced author should be treated leniently. A. I. R. 1931 Lah. 106. Sentence which is severe may be reduced. A. I. R. 1931 Lah. 97 ; see also A. I. R. 1931 Lah. 52. While sentencing accused circumstances and atmosphere of the time must be considered. A. I. R. 1930 Lah. 885. Where speech is not in temperate language and accused is an old man severe punishment should not be given. A. I. R. 1930 Lah. 874. The object of the Crown in instituting proceedings of this nature, is not to take vindictive action. A. I. R. 1927 Cal. 698=45 C. L. J. 638=28 Cr. L. J. 723=103 Ind. Cas. 771. Where the offence is a first offence and committed by a person of peaceful character on the impulse of the moment,the sentence of 12 month's rigorous imprisonment and a fine of Rs. 500, is somewhat severe and should be reduced. A. I. R. 1930 Lah. 306=31 Cr. L. J. 201 ; see also A. I. R. 1930 Lah. 892=129 Ind. Cas. 700 ; A. I. R. 1931 Lah. 97=31 P. L. R. 990 ; A. I. R. 1931 Lah. 52=31 P. L. R. 918 ; A. I. R. 1931 Lah. 97 ; A. I. R. 1930 Lah. 870=31 P. L. R. 625=127 Ind. Cas. 218 ; A. I. R. 1930 Lah. 885=129 Ind. Cas. 20. Circulation of the paper, age and education of accused are considerations in a warding sentence. A. I. R. 1933 Cal. 140=34 Cr. L. J. 309=142 Ind. Cas. 292.

Waging war against any Asiatic Power in alliance with the Queen.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge—I (*name and office of Magistrate etc.*,) hereby charge you (*name of accused person*) as follows :—That you,——on or about the——day of—, at—, waged war,

attempted to wage war (or abetted the waging of war) against the Government of an Asiatic Power in alliance (or at peace) with the King Emperor of India, and thereby committed an offence punishable under s. 125 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

Committing depredation on territories of Power at peace with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation on the territories of any Power in alliance, or at peace with the Queen shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

Procedure.—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge.—I (*name and office, of Magistrate, etc.*), hereby charge you (*name of accused,*) as follows :—

That you—, on or about the—day of—, at—, committed (or made preparations to commit) depredation on the territories of—, a Power in alliance (or at peace) with the King Emperor, and that you have thereby committed an offence punishable under s. 126 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

127. Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of the property so received.

Procedure.—Non-cognizable——Warrant——Not bailable——Not compoundable——Exclusively triable by the Court of Session.

Charge.—That you on or about the day of at received (*specify the property*) knowing the same to have been taken in waging war, against, an Asiatic Power in alliance (or at peace) with the King-Emperor [or knowing the same to have been taken in the commission of depredation on the territories of , a power in alliance (or at peace) with the King-Emperor] and thereby committed an offence punishable under s. 127 of the Indian Penal Code, and within cognizance of the Court of Session (or High Court).

And I do hereby direct that you be tried by the said Court on the said charge.

Public servant voluntarily allowing prisoner of State or war to escape.

128. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure.—Non-cognizable——Warrant——Not bailable——Not compoundable——Triable by a Court of Session.

Charge.—I (*name and office of Magistrate etc.,*) hereby charge you (*name of accused*) as follows :—

That you , being a public servant (*mention the office*), and as such having the custody of a state prisoner (or prisoner of war), on or about the day of , at voluntarily allowed such prisoner to escape from , the place in which such prisoner was confined, and thereby committed an offence punishable under s. 128 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

129. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape.

Procedure.—Non-cognizable——Warrant——Bailable——Not compoundable ——Triable by the Court of Session, Presidency Magistrate or Magistrate of the First Class.

Charge.—I (*name and office of Magistrate, etc.,*) hereby charge you (*name of accused*) as follows :—

That you , being a public servant (*mention the office*), and as such having the custody of , a state prisoner (or prisoner of wars on or about the day of at voluntarily allowed (or negligently suffered) such prisoner to escape from the place in which such prisoner was confined, and thereby committed an offence punishable under s. 129 of the Indian Penal Code and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescues any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers, or attempts to offer, any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Aiding escape or rescuing or harbouring such prisoner.

Explanation.—A State prisoner or prisoner of war who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

Procedure.—Non-cognizable ——— Warrant ——— Not bailable ——— Not compoundable———Triable by Court of Session.

Charge.—I (*name and office of Magistrate, etc.,*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of , at , knowingly aided (or assisted) or rescued (or attempted to rescue) a state prisoner (or prisoner of War) in escaping from lawful custody (or knowingly harboured or concealed) a state prisonor (or prisoner of War) who had escaped from lawful custody [or knowigly offered or attempted to offer resistence to the re-capture of . a state prisoner (or prisoner of war) who had escaped from lawful custody], and thereby committed an offence punishable under s. 130 of the Indian Penal Code, and within the cognizance of the Court of Session (or the High Court.)

And I hereby direct that you be tried by the said Court on the said charge.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY "NAVY AND AIR FORCE."*

Notes.—The present chapter punishes persons who, not being themselves soldiers or sailors, abet soldiers and sailors in committing gross breaches or discipline. The laws which govern the Army and Navy cannot generally reach such offenders ; and the other provisions of this Code do not reach such offenders because the act of insubordination, etc, which they abet, however grave as a breach of military discipline, may be no offence, or a very trivial one, under this Code. Hence the necessity of this Chapter which punishes, but not with the severity of military Penal law, the abettors of soldiers and sailors in certain breaches of dicipline.—*Morgan and Macpherson.*

* Substituted by Act X of 1927.

Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier, "sailor or airman",* in the army, "navy or air force," of the Queen, or attempts to seduce any such officer, soldier, "sailor or air man"* from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—In this section the words "officer" "soldier" "sailor"† and "air man" include any person subject to the "Army Act, the Indian Army Act, 1911, 'the Naval Discipline Act or that Act as modified by the Indians Navy (Discipline) Act, 1934'† 'or the Indian Air Force Act, 1932'‡ the Air Force Act. as the case may be."‡

Procedure.—Cognizable——Warrant——Not bailable——Not compoundable ——Triable by a Court of Session.

Charge.—I (*name and office of Magistrate, etc.,*) hereby charge you (*name of accused*) as follows ;—

That you on or about the day of, at abetted the commission of mutiny by an officer (or soldier, or sailor or airman) in the Army (or Navy, or Airforce) of the King Emperor from his allegiance (or his duty, and thereby committed an offence punishable under section 131 of the Indian Penal Code, and within the cognizance of the Court of Session (or the High Court).

And I hereby direct that you be tried by the said Court on the said charge.

Note.—The first part of this section relates to offence of abetting mutiny. The offence contemplated is an abetment which is not followed by actual mutiny or which, supposing actual mutiny follows, is not the cause of mutiny. The offence of mutiny consists in extreme insubordination, as if a soldier resists by force, or if a number of soldiers raise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature. Acts of a riotous nature directed against the Government of civil authorities rather than against military superior seem also to constitute mutiny. A charge brought under this section must be supported by proof of instigation or other mode of abetment (section 107), and of the object, i. e. to excite the mutiny.—*Morgan and Macpherson.*

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier, "sailor or airman"* in the army, navy "or airforce"* of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes.—The offence here punished is abetment when actual mutiny is the consequeuce of it. The evidence should show that mutiny has been committed and the previous abetment.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

Charge—I (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows :—

That you, —on or about the———day of——at——, abetted the commission of mutiny by———, an officer (or soldier. sailor or air man in the Army [(Navy or Air force) of the King Emperor] and mutiny was committed in consequence of that abetment, and thereby committed the offence under section 132 of the Indian Penal Code, and within the cognizance of the Court of Session (or the High Court).

And I hereby direct that you be tried on the said charge.

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* Substituted by Act X of 1927. † Added by Act 35 of 1934.
‡ Substituted by Act XIV of 1932.

133. Whoever abets an assault by an officer, soldier "sailor, or airman,"* in the army, navy "or airforce"* of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of assault by soldier, sailor or airman on his superior officer when in execution of his office.

Notes.—The very comprehensive definition of assault given in section 351 may be referred to in order to ascertain the offence ; (as defined by this Code) of which the abetment is made punishable by this and the following section. The assault here meant may probably be that which the Mutiny Acts and Articles of War provide against, namely the striking a superior officer, or using or offering any violence against him when he is on duty. The words "any superior officer" of course exclude from this provision such assaults as one private soldier may commit on another. But they clearly comprehend all officers whether commissioned or non-commissioned,————for a non-commissioned officer is a superior officer in relation to a private soldier, as a Captain is to a subaltern, and the Commanding Officer of a Regiment to all the officers and men under his comand. It is an inseparable part of this offence, that the officer should be assaulted while in the execution of his office. An officer is in the execution of his office not only when he is performing a prescribed duty, but also when he is discharging a duty arising out of the exigency of the moment. Thus an officer seeing a soldier out of quarters after-hours or improperly dressed or drunk in the streets of a town or transgressing any order or usage of the service, would at all times be in the execution of his duty, and therefore of his office, in ordering the soldier to his barracks or directing such other measure as might be necessary. It must, however, be remembered, that an important ingredient in the soldier's offence is that he offers violence knowingly to his officer. If he strikes a person whom he or his abettor really does not know to be an officer, the offence of abetment which is here made punishable so severely has not been committed by the person who abets the blow.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session, Presidency Magistrate or Magistrate of the first class.

Charge.—I (*name and office of Magistrate, etc*) hereby charge you (*name of accused*) as follows :—That you——on or about the——day of——, at——, abetted an assault by——an officer (or soldier, or sailor or airman) in the Army (or Navy or Air force) of the King Emperor on—a superior officer being in the execution of his office, and thereby committed an offence punishable under s. 133, of the Indian Penal Code and within my cognizance (or within the cognizance of the Court of Session).

And I hereby direct that you be tried [by the said Court (*in cases tried by Magistrate omit these words*)] on the said charge.

134. Whoever abets an assault by an officer, soldier, "sailor or air man"* in the army, "navy or air force"* of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

Notes.—An enhanced punishment is given, if the assault is actually committed.

Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at , abetted an assault by an officer (or soldier or sailor or air man) in the Army (or Navy or Air force) of the King-Emperor on a superior officer being in execution of his office, and which he committed in consequence of such abetment, and thereby committed an offence punishable under section 134 of the

* Substituted by Act X of 1927.

Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session or the High Court), etc.

Abetment of desertion of soldier, sailor or airman.

135. Whoever abets the desertion of any officer, soldier, "sailor or air man"* in the army "navy or air force"* of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Notes.—The offence of desertion from the Army or Navy consists in this, that the officer, soldier or sailor is unlawfully absent from his duty, and has no intention of returning to it. Whether he departs without leave from his regiment or whether, having leave of absence, he over-stays his leave, if his intention is not to return to his duty and his regiment, he is a deserter. This intention not to return is essential to desertion, and without it, the offence becomes one which is known in military law as "absence without leave," an offence of a much lighter kind. This section, it seems, punishes the abetment of desertion only when the desertion actually takes place. *Morgan and Macpherson.* The word "soldier" in section 135 I. P. Code must be interpreted as in the Explanation to s. 131 of the Code. The definition of the word "soldier" given in the Indian Articles of War is expressly confined to those Articles and is a very limited one. 56 Ind. Cas. 671=21 Cr. L. J. 511. Thus a person may be guilty of the offence of abetting the desertion of a regimental sepoy, under s. 135 of the Penal Code although such sepoy may not have any intention of deserting. 10 S. L. R. 159.

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the First or second class.

Charge.—I (*name and office Magistrate etc.*) hereby charge you (*name of accused*) as follows :—

That you on or about the day of , at abetted the desertion of an officer [or soldier, or sailor or air man) in the Army (or Navy or Air force) of the King Emperor, and thereby committed an offence punishable under s. 135 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried of the said charge.

Harbouring desertor.

136. Whoever, except, as hereinafter excepted, knowing or having reason to believe, that an officer, soldier, "sailor or airman"* in the army "navy or air force"* of the Queen has deserted, harbours such officer, soldier, sailor, "or airman"* shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by a Presidency Magistrate or Magistrate of ths First or Second class.

Charge.—I (*name and office of Magistrate. etc.,*) hereby charge you (*name and accused*)—as follows :—

That you—on or about the—day of, at—, knowing, or having reason to believe that—, an officer (or soldier, or sailor, or airman) in the Army (or Navy or Air force) of the King-Emperor had deserted, harboured such officer, (or soldier or sailor or airman), and thereby committed an offence punishable under section 136 of the Indian Penal Code, and within any cognizance.—

And I hereby direct that you be tried on the said charge.

Deserter concealed on board merchant-vessel through negligence of master.

137. The master or person in charge of a merchant-vessel, on board of which any deserter from the army "navy or air force"* of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as

* Substituted by Act X of 1927.

such master or person in charge, or but for some want of discipline on board of the vessel.

Notes.—This stringent provision, which was not in the Code as originally prepared, is taken from an Act directed against the mischief and loss to the Government occasioned by the engagement given to desertion by the Masters of merchant-vessels. This section enacts as a part of the definition of an offence what, at the most, is only evidence of an offence. When a deserter is found "concealed on board a vessel," it is not unreasonable to presume that the master, or person in charge knows that he is there, and that he harbours the deserter. If the master can satisfactorily rebut this presumption by proving that he really knew nothing of the matter, it seems just to allow him to do so ; but, according to this provision, his ignorance, however honest, will not save him if there has been "neglect of duty" or "want of discipline" on board—vague expressions, the proof or disproof of which are equally difficult—*Morgan and Macpherson.*

Procedure.—Non-cognizable—Summons—Bailable—Non-compoundable—Triable by a Presidency Magistrate or Magistrate of the first or second class and is triable summarily.

Charge.—I (*name and office of Magistrate*, etc.) hereby charge you as follows :—

That , a deserter from the Army (or Navy or Air force) of the King Emperor, and concealed himself on or about the day of at on board a merchant vessel of which you are the master (or person in charge) through your neglect of duty as such master (or person in charge) [or through want of discipline on board the said vessel] and that you have thereby committed an offence punishable under s. 137 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Abetment of an act of insubordination by soldier, sailor or airman.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, "sailor or airman"* in the army "Navy or Airforce"* of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Notes.—Provision is only made for those cases of abetment which are actually followed by acts of insubordination. In the present section it is expressed as part of the definition of the offence that the abettor knows the quality of the act abetted, that is he knows it to be an act of insubordination. The expression "act of insubordination" is not, as it appears, used in the Mutiny Acts or in the Articles of War, and it seems to have no definite meaning. Conduct of a like nature with that which, when carried to an actual resistance to superior military authority, amounts to mutiny, must, when not carried to such a length, be held to be "insubordinate". Any wilful breach of the discipline by a soldier or sailor will constitute an act of insubordination within the meaning of this clause. *Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by a Presidency Magistrate or Magistrate of the first or second class and may be tried summarily.

Charge.—I (*name and office of Magistrate*, etc.,) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at abetted what you knew to be an act of insubordination by , an officer (or soldier or sailor or airman) in the Army (or Navy or Airforce) of the King Emperor and such act of insubordination was committed in consequence of the said abetment and you thereby committed an offence punishable under s. 138 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Application of foregoing sections to the Indian Marine Service.

138A. [Repealed by Act XXXV of 1934]

* Substituted by Act X of 1927.

139. No person subject to "the Army Act, the Indian Army Act, 1911, the Naval Discipline Act 'or that Act as modified by the Indian Navy (Discipline) Act 1934'"* "the Air Force Act or the Indian Air Force Act 1932"† is subject to punishment under this Code for any of the offences defined in this chapter.

Persons subject to articles of War.

140. Whoever, not being a soldier, "sailor or airman"‡ in the military, "naval or air"‡ service of the Queen wears any garb, or carries any token resembling any garb, or token used by such a soldier, "sailor or airman" with the intention that it may be believed that he is such a soldier "sailor or airman", shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Wearing garb or carrying token used by soldier, sailor, or airman.

Notes.—This section, assuming that soldiers and airmen only and not sailors wear a distinguishing dress, accoutrements, etc, provides a punishment for those who personate soldiers or airmen. No fraudulent intention is made a part of the definition. An innocent assumption of their character, if it must be deemed an offence, is one which will probably be thought deserving of lenient sentence,—*Morgan and Macpherson.*

Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate and may be tried summarily.

Charge.—I (*name and office of Magistrate* etc.) hereby charge you (*name of accused*) as follows :—

That you , not being a soldier in the Military (or Naval) service of the King Emperor, on or about the day of at , wore (*mention the garb* [or carried a token resembling (*mention it*)' [or used by such soldier] with the intention that it might be believed that you were such a soldier, and thereby committed an offence punishable under s. 140 of the Indian Penal Code, and within my cognizance, And I hereby direct that you be tried on the said charge.

CHAPTER VIII.

Of Offences against the Public Tranquility.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

Unlawful assembly.

First.—To overawe, by criminal force, or show of criminal force, the Legislative or Executive Government of India or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant ; or

Second.—To resist the execution of any law or of any legal process ; or,

Third.—To commit any mischief or criminal trespass, or other offence ; or,

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

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* Inserted by Act 35 of 1934. † Substituted by XIV of 1932.
‡ Substituted by Act X of 1927.

Scope of Chapter III.—"These offences hold a middle place between State offences on the one hand crimes against person and property on the other. Many of the offences made punishable by other Chapters of the Code in their commission a disturbance of the public peace. But the present Chapter punishes especially unlawful assemblies of persons who, whether they assemble tumultuously or otherwise, have a common unlawful purpose in their minds, the execution of which will disturb public order and excite alarm.

"The essence of these offences is the unlawful assembly. This is more or less aggravated by other circumstances which attend or follow it,—as being armed, the making preparations to execute the common unlawful object, or the actual execution of such object. But there must be an unlawful assembly. Merely conspiring together by writing or other means of correspondence, without any meeting, is not therefore the offence hereby made punishable.

"The Chapter of General Exceptions shall be carefully borne in mind, especially the exceptions concerning acts done by the direction of public servants, or in the exercise of the right of private defence, etc. A gathering of persons for objects such as those contemplated by the above exceptions would of course not be unlawful." *Morgan and Macpherson.*

The common object etc.,—The five or more persons met together must have in view a common unlawful object of the description specified. Whether the object is in their minds when they come together, or whether it occurs to them afterwards is not material. But it is necessary that the object should be common to the persons who compose the assembly, that is, that they should all be aware of it and concur in it. It seems also that there must be some present and immediate purpose of carrying into effect the common object; and that a meeting for deliberation only, and to arrange plans for future action, is not an "unlawful assembly."—*Morgan and Macpherson.* The onus is on the prosecution to prove that the common object of a crowd is such as will constitute it an unlawful assembly. 30 Cr. L. J. 38=A. I. R. 1929. Nag. 43=112 Ind. Cas. 902. Committing an offence and abetment of it can both be the common object of an unlawful assembly. 26 Cr. L. J. 594=85 Ind. Cas. 818=A. I. R. 1925 Cal. 903. The mere fact that a party of 20 or 30 persons are armed with sticks and assembled together is not sufficient to prove that their common intention is to use criminal force or commit any other offence. The common intention must be established as a fact by legal evidence. (1925) M. W. N. 666=A. I. R. 1925 Mad. 1213. An unlawlul assembly must already have a common object to carry out. A. I. R. 1925 Rang. 362=4 Bar. L. J. 169=27 Cr. L. J. 337=92 Ind. Cas. 849. The law does not declare every assemblage of men however large, illegal. What it requires is that in order to be illegal it must be inspired by an illegal object as specified in s. 141 I. P. Code. 85 Ind. Cas. 731=26 Cr. L. J. 587=A. I. R. 1925 Nag. 260; see also 23 A. L. J. 68=86 Ind. Cas. 25=26 Cr. L. J. 669. Where once a party entitled to possession forcibly takes possession, his retaining possession, subsequently by force is not with the common object of taking possession by force and the opposite party has no right to eject them forcibly. 26 Cr. L. J. 946=87 Ind. Cas. 98=A. I. R. 1925 Cal. 1235; 24 Cr. L. J. 89=45 A. 250. The essence of the offence defined in section 141 I. P. Code is the common unlawful purpose, and an accused person cannot be convicted, if the common object proved is different from the common object in the charge or for which he has been tried. 6 M. L. T. 17=11 Cr. L. J. 30=4 Ind. Cas. 700. Where a person was killed by a member of an unlawful assembly, in prosecution of the common object of that assembly, the common object being the abduction of that person's mother, *held*, that all those who were members of the assembly at the time when such person was killed were guilty of the offence of killing her. 4 B. L. R. App. 47=13 W. R. Cr. 33; see also A. I. R. 1934 Lah. 209=35 Cr. L. J. 1462=1934 Cr. C. 444. Acts taking place after the accomplishment of the object of an unlawful assembly is over are not to be deemed as acts done towards the furtherance of the common object of the assembly, or as the acts which the rest knew would be likely to be committed in prosecution of that object. 24 W. R. Cr. 66. It must be proved for a valid conviction for being members of an unlawful assembly that the accused were inspired by a common object and that their acts fall under s. 141 I. P. Code. 9 W. R. Cr. 19; 20 W. R. Cr. 78.

Clause 1, to overawe etc.—A person kept by superior influence in awe, so that he fears to do that which he has a mind and will to do, and which the law empowers him to do, is overawed. But the common object which makes an assembly "unlawful" is an intent to overawe, by or by show of criminal force. The Court must

determine upon view of the whole facts, not whether a public servant has in fact been overawed, but whether the assembly had that end in their minds as the common object of their meeting. *Morgan and Macpherson.*

Second clause.—The respondent was reported to have made a speech at a public meeting in which he suggested that the imposition of capitation tax was peculiar to Burma and illegal and to have advised the people to plead proverty and evade payment. The proposal was put to the meeting and accepted by all present. *Held*, that the facts stated did not constitute an offence under section 143 I. P. Code as there was no suggestion whatever that the assembly should make use of its members and jointly resist any law or legal process. 4 Bur. L. J. 169=A. I. R. 1925 Rang. 362. Where a person is charged with contravening an order of the Superintendent of Police prohibiting the collection of an assembly without licence, overt act must be proved to show resistance under section 141. Mere words when there is no intention of carrying them into effect will not be sufficient. 3 Pat. L. T. 585=68 Ind. Cas. 945=28 Cr. L. J. 625 (F. B.). Resistance to a warrant which is being executed in excess of its provision is no offence. 29 C. 244=6 C. W. N. 164. Disobedience of notification under Police Act is resistance to execution of legal process. 134 Ind. Cas. 1226=33 Cr. L. J. 64=55 B. 725=33 Bom. L. R. 1169=A. I. R. 1931 Bom. 520. When order prohibiting possession has been carefully made, resistance to police trying to execute it brings it under s. 141. 35 C. W. N. 716=32 Cr. L. J. 844=58 C. 1303=A. I. R. 1931 Cal. 410. Where the immediate object of the assembly is to obstruct the police the members can be charged. A. I. R. 1924 All. 233=27 Cr. L. J. 193=92 Ind. Cas. 145.

Third clause.—Where it is established that the five accused have assembled at the water-head to take water by force and had armed themselves with deadly weapons to strike and vanquish any body who should stand in their way and prevent them from accomplishing their purpose, these five constituted an unlawful assembly and became guilty of rioting when they used their deadly weapons in pursuance of their common object. 7 Lah. L. J. 576=26 P. L. R. 820. Where the common object with which members of an unlawful assembly were charged was that of "harassing Hindus" the charge is not too general, but falls within s. 141 (3). 18 L. W. 350=74 Ind. Cas. 1044=24 Cr. L. J. 852. The immediate object of an assembly, as it reached the Police Station, was to threaten and obstruct the police in the discharge of its duty ; *Held*, that the object in itself and apart from any other clauses of section 141 of the I. P. Code was sufficient to bring the case within the purview of the 3rd clause of s. 141. L. R. 4 A. 145 Cr.

Fourth clause—By means of criminal force etc.,—Here, as in the first instance, a necessary part of the common object is that it should comtemplate "force or show of force," as the means to be used to carry out the object into effect. The cases coming under these two heads are not necessarily, and apart from the use of force, of a criminal nature ; for the right may actually be on the side of those, or some of those, who compose the unlawful assembly. It is the use of force or show of force in the attempt to recover what may be justly their property that brings the persons assembled within the definition.

"The greater part of the fourth clause relates to the possible dispossession of property. Movable property seems to come within the terms used, and may perhaps be within the contemplation of the clause. What shall amount to possession of property whether movable or immovable, is a matter which the civil law must determine. For the present purpose, it will not be difficult to determine what is that possession of law which it is the common object of an unlawful assembly to take or obtain. The first and usual case is where the common purpose is to take possession of property by dispossessing the present actual occupant. Where the property is in the actual possession of no person, the possession being vacant,—as in the case of a deserted or unoccupied house, or a newly formed *chur* upon which no acts of ownership have been exercised, and which. from its position does not become by law annexed to any particular property,—an assembly of persons whose common object is to obtain possession by force or show of force to be used against others who are prepared to resist them, is unlawful whether the property right-fully belongs to the persons or any of the persons assembled or not."—*Morgan and Macpherson.* A charge under clause (4) of s. 141 I. P. Code, can only be sustained if the party claiming the right has not possession. It is therefore necessary for the prosecution to show that the accused in such a case was not in actual possession at the time of the occurrence. For to maintain possession by repealing an aggression or resisting

another in his attempt to take possession is not to enforce a right but to defend a right or prevent a wrong, and a party of persons who use force to defend the property in their possession, do not constitute themselves into an unlawful assembly. If a party in possession reasonably apprehends that the opposing party is going to disposses them and for repelling such an aggression they collect upon the subject of the dispute in force they are not to enforce any right but for the maintenance of their own right. 7 Mys. L. J. 116 ; 23 Ind. Cas. 181=15 Cr. L. J. 232. Maintaining right as distinct from enforcing supposed right is not unlawful object. A. I. R. 1933 Oudh. 279=34 Cr. L. J. 748=1933 Cr. C. 604=10 O. W. N. 788 ; see also A. I. R. 1934 Oudh. 108=11 O. W. N. 288=35 Cr. L. J. 740=148 Ind. Cas. 696=A. L. R. 1934 Oudh. 227. Where the decree-holder purchaser has got into possession of the property peacefully the ejected person has no right to re-enter and use force for that purpose. 35 Cr. L. J. 1313=151 Ind. Cas. 409=38 C.W.N. 77=A. I. R. 1934 Cal. 273. Collecting people to resist trespass is not unlawful. A.I.R. 1923 Oudh. 167=26 Cr. L. J. 43=81 Ind. Cas. 67 ; 83 Ind. Cas. 523 ; 44 Ind. Cas. 40. The object of forcibly maintaining possession which already exists does not render assembly unlawful. A. I. R. 1925 Lah. 49. Where, however, a party goes out armed for the express purpose of having a fight and its object is not so much to conduct a religious procession as to have a fight, the members of the party constitute an unlawful assembly within s. 141 (4) of the Penal Code and if they use force or violence, they are guilty under s. 147 of the code. 2. O. W. N. 583=89 Ind. Cas. 269 =26 Cr. L. J. 1325=A. I. R. 1925 Oudh. 656. Persons who are assembled together to resist a trespass over property in their possession, which has been expected for a long time do not constitute an unlawful assembly. Persons in such a position are not enforcing rights, but preventing wrongs. 1923 Oudh. 167. From the mere fact that the accused went to the land prepared to overcome any resistance, their common object could not be said to come within the purview of s. 141. 8 S. L. R. 343=16 Cr. L. J. 536=29 Ind. Cas. 664. There is no unlawful assembly when the common object is to maintain undisturbed the actual enjoyment of a right, section 141, sub-section (4), not applying to such a case. 36 C. 865=13 C. W. N. 801=4 Ind. Cas. 19=10 Cr. L. J. 471.

Or to deprive etc.—Property is frequently subject to certain rights and privileges which may be exercised over it by those who have lands adjacent to it and by others, such as rights of way, rights of common or pasturage, rights of fishing etc., Such rights are known to the English law as "incorporeal" rights. And as they consist, not in the actual possession of tangible property but in the enjoyment or use of the way or other right, the word "possession" as applied to them means only the undisturbed use and exercise of the privilege. An assembly, with the common intent forcibly to interfere with or prevent the enjoyment of the right, is unlawful. So likewise is it, where the common purpose is to enforce such a privilege on behalf of the person who has or claims it. Thus, A having enclosed certain land, B and four or more persons assemble with a common intent to enforce a right or supposed right claimed by B, that his cattle should pass over the land enclosed, to be watered. This is an unlawful assembly, although A may have unjustly deprived B of his lawful right by the enclosure of the land.—*Morgan and Macpherson.*

Any right or supposed right.—The words "any right or supposed right" may also extend to a right unconnected with immovable property, though they seem from the context to be meant especially to include rights connected with land. *Morgan and Macpherson.* "Enforce any right" relates only to an initial act in furtherance of a right. 27 O. C. 292=26 Cr. L. J. 513=85 Ind. Cas. 353=A. I. R. 1925 Oudh. 425. In order to sustain a conviction under section 147, I. P. Code, it must first be shown that the common object of the accused was to enforce any right or supposed right by the use or show of criminal force, and criminal force must be such as is defined in s. 349 and 350 I. P. Code. 3 Mys. L. J. 25. This clause is meant to prevent the resort to force in vindication of supposed rights. It makes a distinction between an admitted claim or an ascertained right and a disputed claim. 11 Bom. L. R. 849=3 Ind. Cas. 958=10 Cr. L. J. 427. Persons forcibly preventing a possession on the ground that they had a right to do so, because it was a nuisance or annoyance to them or to their community, constitute an unlawful assembly within the meaning of section 141 clause 4. 5 M. H. C. App. 6=1 Wier 58.

Clause (5).—The fifth clause seems comprehensive enough to apply to all the rights a man can possess, whether they concern the enjoyment of property or not,

Whatever thing a man may lawfully do or omit to do at his choice, the law will not allow that he shall be compelled to do or prevented from doing that thing by force or show of force. And an assembly of those who intend so to compel or prevent him is unlawful, whether the object concerns land (e. g. to compel a person to sow or not to sow his land with a particular crop), or is distinct from the land, (e. g. to prevent a religious procession, or to deter a person from marrying under the provision of Act XV of 1856, or to compel a person or persons to go to a new market or to keep away from an old one)—*Morgan and Macpherson.* Mere compulsion to omit to do act is not enough. Person prevented must be legally entitled to do the act. 85 Ind. Cas. 353=26 Cr. L. J. 513. In order to constitute an unlawful assembly under clause (5) of s. 141, it is not enough that the common object of one party is to compel the other party by means of force to omit to do a certain thing but it must be shown that the act omitted is one which the party is legally entitled to do. The true import of the expression "to enforce any right" used in this clause relates to an initial act when it is done in furtherance of any right and not to an act when it is done to maintain a position already achieved in the lawful exercise of that right. 10 O. W. N. 588 ; see also 11 O. L. J. 40 ; 9 O. L. J. 291 ; 25 A. 259 ; 25 Cr. L. J. 625= 81 Ind. Cas. 113. The phrase "to enforce a right" can only apply when the party claiming the right has not possession over the subject of the right, and therein lies the distinction between "enforcing a right" and "maintaining a right" 17 C. W. N. 1132=14. Cr. L. J. 463. The mere use of criminal force or show of criminal force to any person to take possession of any property is not sufficient to bring the case with the clause, unless some criminal intent is proved against the person so using force or making a show of force. 12 C. W. N. 96=6 Cr. L. J. 393.

Cases.—Where one of five or more persons forcibly enters into possession of the property belonging to another and the rest resist the re-entry of the original owner by show of force, all the persons constitute an unlawful assembly within s. 141 I. P. Code. 6 Pat. 794=106 Ind. Cas. 691. It is impossible to look into the minds of men who assembled on a particular day, but what their object was must be judged by the surrounding circumstances. 109 Ind. Cas. 503=29 Cr. L. J. 507=A. I. R. 1928 Pat. 562. An agreement was entered into between the leaders of the Hindu community and the Mahomedan community by which the Mahomedans declared that they would not publicly sacrifice cows and the Hindus declared that they would not sacrifice or kill pigs. The Hindus on a subsequent day having an apprehension in their minds that a cow sacrifice was about to be performed assembled with lathis and garanas and spears and as a result of this there was a rioting. *Held,* that the object of the assembly came within clause (4) of s. 141 of the I. P. C. and that therefore the members of the assembly could be convicted of the offence. 109 Ind. Cas. 503=29 Cr. L J. 567=A. I. R. 1928 Pat.562. Where a crowd has dispersed without taking any action, the intention and common object of that crowd can only be inferred from the surrounding circumstances and among these circumstances the attitude and demeanour is one of the points which must be taken into consideration. 105 Ind. Cas. 234. In order to sustain a conviction under section 141 it is necessary to find that the person accused of that offence was a member of an unlawful assembly, and that he used force or violence in prosecution of the common object of such assembly. Where two out of five accused are acquitted the conviction of the others cannot stand. A. I. R. 1923 Lah. 692. Where a person is charged with contravening an order of the Superintendent of Police prohibiting the collection of an assembly without a licence, overt act must be proved to show resistance under s. 141 I. P. Code. Mere words where there is no intention of carrying them into effect will not be sufficient. 1 Pat. L. R. 199 Cr.=2 Pat. 134=1923 P 1. No person can have a right to prevent by force another person dealing with his own land merely because he may have some right of easement or customary right over a portion of that land of which right he was not at the time in actual enjoyment. 9 O. L. J. 291=4 U. P. L. R. O. C. 74=1922 Oudh 228. When there was no sufficient ground for the conclusion that the common object of the accused was to effect their object by force or show of force, they do not constitute an unlawful assembly. U. B. R. (1897—1901) Vol I, 252. Actual participation in violence is not necessary to convict a person of rioting. Those who encourage by signs, symbols or shouts, the unlawful object of the assembly are also rioters. Rat.Un. Cr. C. 99 ; 7 W. R. Cr. 58. Where out of 15 persons complained against only five persons were found guilty and convicted of the offence of rioting under s. 141 I. P. Code and it appeared that only three out of the five convicted persons might have had a common object. *Held,* that the conviction could not be upheld because it was necessary to find that all of

the five persons who were convicted had one of the common objects mentioned in section 141 I. P. Code, before they could be found guilty of the offence of rioting. Before there can be an unlawful assembly and rioting, there must be five persons who have a common object. *In re Vyapuri Chetti*, 5 M. L. T. 285=4 Ind. Cas. 1142=11 Cr. L. J. 197. Where the acts of the accused and his party amounted to a show of criminal force, he and his party constituted an unlawful assembly. 1 P. L. R. 1870.

Ingredients.—In order to sustain a conviction under this section it is necessary to find that the person accused of that offence was a member of an unlawful assembly, and that he used force or violence in prosecution of the common object of such assembly. 1923 Lah. 692. The intention indicated by the heading of Ch. VIII in which this section is inserted, was to constitute certain acts, which endangered the public peace, into offences against public tranquility, but it does not follow from it either that a person may do what he is entitled to do or prevent another from doing what he is not entitled to do by means of criminal force or show of criminal force. In construing this section regard must be had not only to the general intention deducible from the heading of the chapter, but also to the specific mode in which the Legislature intended to carry out the intention. 14 M. 126. The mere use of criminal force or show of criminal force to any person to take possession of any property, is not sufficient, to bring the case within the clause, unless some criminal intent is proved against the person so using force or making a show of force. 12 C. W. N. 96. Clause (2) cannot have the effect of making an assembly of persons unlawful assembly if object with which the assembly was a perfectly legal one. 29 C. 244=6 C. W. N. 164 ; 1 Wier 64 ; 7 N. W. P. 209. The mere fact that the accused went to the land prepared to overcome any resistance, their common object could not be said to come within the purview of s. 141, cl. 4. 16 Cr. L. J. 536=29 Ind. Cas, 664. The essence of the offence is that the members of the assembly must have some common object. 84 P. R. 1868. To constitute an unlawful assembly within the meaning of this section it is not necessary that the persons composing the assembly should have assembled with a previously arranged common object. It is sufficient if from their actions a common object may be inferred, and such object falls within the purview of section 141. Committing an offence and an abetment thereof can both be the common object of an unlawfull assembly. 85 Ind. Cas. 818=26 Cr. L J. 594. An assembly which was lawful when assembled may subsequently become an unlawfull assembly. 18 W. R. Cr. 2 ; see also 2 Bom. L. R. 1129 ; 1 W. R. 19 Cr. ; Weir 66 ; 30 Cr. L. J. 38= A. I. R. 1929 Nag. 43. But common intention must be established by positive proof. 91 Ind. Cas. 540=A. I. R. 1925 Mad. 1243 ; see also 85 Ind. Cas. 731=26 Cr. L. J. 587 ; 27 Cr. L. J. 337=92 Ind. Cas. 849=A. I. R. 1925 Rang. 362 ; 31 Cr. L. J. 849. Clause 4 is meant to prevent the resort to force in vindication of supposed rights. 11 Bom. L. R. 849=3 Ind. Cas. 958=10 Cr. L. J. 427. The common object of an unlawful assembly is to be ascertained from the acts and language of the members composing it and from a consideration of all the surrounding circumstances. 24 M. 124=1 Wier, 53. An accused is liable for acts done in furtherance of common object of all. 2 P. R. 1887 Cr. The object of clause 4, is to prevent the resort to force in vindication of a supposed right. 11 Bom. L. R. 819 ; see also 16 C. 206 ; 17 C. W. N. 1132. But a person is justified in protecting his own rights. 3 C. 572 ; 28 W. R. 25 ; 9 W. R. 66 ; 5 C. W. N. 368 ; 24 C. 686 ; 81 Ind. Cas. 113 ; 25 Cr. L. J. 625 ; 14 B. 441 ; 3 P. L. J. 419 ; 105 Ind. Cas. 657 ; 28 Cr. L. J. 945 ; 35 C. 368 ; 20A. 459. The opinions and impressions of witnesses except what they actually saw and heard what the mob was doing and saying, are not admissible in evidence. 105 Ind. Cas. 234.

Being member of unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Scope.—The previous section having explained what an unlawful assembly is, this section declares who may be said to be a member of such an assembly. The persons who meet together may not at first be five in number or may not have when they first assemble any such "common object" as to make their meeting unlawful. In either case as soon as five or more are met together and entertain a common unlawful object, they constitute an unlawful assembly. And as soon as other persons, whether present from the beginning or after-

wards joining the assembly, become informed of the common object and adhere to it (intentionally join, etc.) they also are members of an unlawful assembly.—*Morgan and Macpherson.* No one who intentionally joins or continues in an unlawful assembly can be allowed to say that he was merely a harmless spectator. He must prove that he was there owing to no fault of his own and that he could not get out of the crowd. 9 Pat. L. T. 167=6 Pat. 828=106 Ind. Cas. 591=29 Cr. L. J. 79=A. I. R. 1928 Pat, 115 ; see also A. I. R. 1933 All. 535=1933 Cr. C. 870. The essence of an offence defined in s. 141 is the common unlawful purpose and an accused person cannot be convicted if the common object proved is different from the common object in the charge or for which he has been tried. Persons to be tried jointly for an offence under s. 142, must have been associated from the first in the series of acts which form the same transaction. 11 Cr. L. J. 30=4 Ind. Cas, 700=6 M. L. T. 17 ; see also 5 C. W. N. 31 ; 15 C. 388. This section has no application where a person goes to a place where members of the unlawful assembly have gathered to protect their own rights. 19 W. R. Cr. 66.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both.

Punishment.

Scope.—There are several degrees of criminality in the offences subsequently made punishable, but the point of the offence in each case is that which is here made punishable, *viz*, the unlawful assembly. *Morgan and Macpherson.*

Elements of conviction.—Where there is no evidence that any of the accused entered into or upon the property with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property he cannot be convicted of an offence under this section. A. W. N. 1886, 254. When one of the parties entitled to joint possession is out of possession he has no right under the law to attempt to take joint forcible possession. 11 C. W. N. 176=5 Cr. L. J. 19 ; see also 25 M. 624=1 Weir, 65=12 M. L. J. 403. To convict a person under this section the common object as mentioned in s. 141 must be proved. 9 W. R. Cr. 19 ; 23 W. R. Cr. 73 ; 100 Ind. Cas. 817=28 Cr. L. J. 337=A. I. R. 1927 Oudh. 151 ; 46 M. 257=71 Ind. Cas. 242=24 Cr. L. J. 114. Persons by simply passing close to the village of their enemies cannot be convicted under this section. 7 P. W. R. 1912 Cr.=67 P. L. R. 1912=15 Ind. Cas. 316=13 Cr. L. J. 476. In cases of rioting, the common object should be stated in the charge. 13 Cr. L. J. 218=39 C. 781=14 Ind. Cas 314. Where police order bars possessions without licence, taking out possession against such order is resistance to law. 131 Ind. Cas 844=32 Cr. L. J. 806=54 M. 1025=A. I. R. 1931 Mad. 484. Under certain circumstances common object may be presumed. 2 L. W. 185=1915 M. W. N. 203=16 Cr. L. J. 176=27 Ind. Cas. 560. No offence is made out when the accused acted in *bona fide* belief in the existence of right to land and in assertion of such right. 18 C. W. N.1245=15 Cr. L. J. 725=26 Ind. Cas. 173. Where persons jointly enter by force, they are members of an unlawful assembly. A. I. R. 1928 Pat. 124=6 Pat. 794=29 Cr. L. J. 99=106 Ind. Cas. 691. At least five must have been present at the same time. A. I. R. 1930 Lah. 1044=1930 Cr. C. 1220=129 Ind. Cas. 221. Accused in *bona fide* defending a right are not an unlawful assembly. A. I. R. 1927 Mad. 986=51 M. 91=53 M. L. J. 696=28 Cr. L. J. 945=105 Ind. Cas. 657 ; see also A. I. R. 1929 Mad. 833=1929 Cr. C. 481=1929 M. W. N. 711=31 Cr. L. J. 225=121 Ind. Cas. 154 ; A. I. R. 1925 Lah. 49=81 Ind. Cas. 113=25 C. L. J. 625. Application to be made by member after nine months before association declared unlawful is no proof of being member when it is so declared. 134 Ind. Cas. 782=32 P. L. R. 83=32 Cr. L J 1233=A. I. R. 1931 Lah 361. Where a Magistrate issued an injunction restraining the tenants from fishing in the tank but the tenants disregarding the same caught fish in that tank. they cannot be said to have acted under *bona fide* claim of right. 109 Ind. Cas. 229=29 Cr. L. J. 501=13 A. I. Cr. R. 209. Where the accused *bona fide* believed that he had a right to the tree, the mere fact that he went to the scene of occurrence with more than five persons and armed with lathis will not constitute an offence under s. 143 I. P. C. 54 C. 476=31 C. W. N. 527=101 Ind. Cas. 180=28 Cr. L. J. 404. Where an assembly is gathered together for a perfectly lawful purpose, the action of a few members cannot make the whole assembly unlawful. 26 Cr. L. J. 1186=A. I. R. 1925 Rang. 243=88 Ind. Cas. 706. A crowd of persons assembled together to see what was going on in

place where a Police Inspector attempted to re-arrest a certain accused person, without intending to prevent the re-arrest of the accused and without any show of force, cannot be convicted under s. 143 of the Penal Code. 23 A. L. J. 32=86 Ind. Cas. 350=26 Cr. L. J. 766 ; A. I. R. 1925 All. 308. The essence of an offence under s. 143 I. P. C. is the combination of several persons connected in the object of committing offence the purpose being an offence in itself. 17 L. W. 451=46 M. 257= 71 Ind. Cas. 242. But the number of persons joining in the assembly must be more than five. A. I. R. 1930 Lah. 1044. Where a number of persons assemble in a sandy tract used for planting *casurina* and there is nothing to show that they were there by chance or for any purpose other than that of assisting, if necessary, such of the members of the assembly as commit an offence by overt acts, *held*, that a common object can be presumed. 2 L. W. 185=16 Cr. L. J. 176=27 Ind. Cas. 560. An assembly lawful in itself does not become unlawful merely by reason of its lawful acts exciting others to do unlawful acts. Cr. L. J. 743=31 Ind. Cas 343. A large party of Hindus who assembled in a village threatening to take away from the Mahomedans of the village the cows which they intended to sacrifice at *Bakrid*, constitute an unlawful assembly, and the members thereof were guilty of an offence under section 143. 18 Cr. L. J. 110=37 Ind. Cas. 318. Where the accused carried away paddy sown by the complainant and alleged that the land on which the paddy was shown was theirs, *held*, that even, if they were owners of the land, they did not act in good faith in removing the crop and were, therefore, guilty of offences under s. 143 and 379. 4 C. W. N. 190. If ryot's crops are attached under the B. T. Act, but he goes and cuts them inspite of attaching officer's protest he is liable to be prosecuted under s. 143 and 424 of the I P. Code. 33 Cr. L. J. 24=27 Cr. L. J. 491= 25 C. W. N. 209=62 Ind. Cas. 187.

Where it was proved that there was a long standing dispute regarding the possession of land between the accused and other persons neither party having been in undisturbed possession of the land, and the accused sowed the land keeping off the opposite party by brandishing the weapons they had carried with them, *held*, the accused were rightly convicted of being members of an unlawful assembly. 9C. 639=13 C. L. R. 80.

Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate, and may be tried summarily.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you on or about the day of , at were a member of an unlawful assembly, the common object of which (*specify the common object*) and thereby committed an offence punishable under s. 143 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the, said charge.

Joining unlawful assembly armed with deadly weapon.

144. Whoever, being armed with any deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Scope.—The risk to the public tranquility——and therefore the offence,——is aggravated by the intention of using force evinced by carrying arms. "Weapon of offence," is a weapon which under present circumstances and at the present time (during the existence of the unlawful assembly), is an offensive weapon,——notwithstanding that it might be otherwise at a different time and place. The occasion and the persons must determine this.—*Morgan and Macpherson.*

Notes.—An offence under s. 144 is not one of which actual theft is a necessary ingredient. Therefore separate convictions for an offence under s. 144 and for theft could be awarded 8 C. W. N. 519=1 Cr. L. J. 449. Where a person instigates another to join an unlawful assembly armed with a deadly weapon, and afterwards joins it himself, he may be liable to be punished under s. 144 read with s. 114, even though he is not himself armed with deadly weapon. 5 C. W. N. 250. The common object which makes an assembly an unlawful assembly must be proved. 29 M. 124. As regards the meaning of deadly weapon, *vide*, 15A. 19 Ind. Cas. 586=12 Cr. L. J. 102. Assembly of twenty persons where some of them are armed at dead of night is an unlawful assembly. 16 Cr. L. J. 745=17 Bom. L. R. 906=31 Ind. Cas. 345. 345. Where accused are carrying guns it is not preparation but execution of common

object of shooting, and they could be convicted under s. 144 read with s. 149 I. P. Code. 1930 M. W. N. 377=127 Ind. Cas. 654. Acquittal of an accused under s. 430 will entitle to an acquittal under ss. 143 and 144. 1934 Cr. C. 1098=A. I. R. 1934 Pat. 505.

Procedure.—Cognizable———Warrant———Bailable———Not Compoundable———Triable by any Magistrate.

Charge.—I (*name and office of Magistrate., etc.*) hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of , at being armed with a deadly weapon, to wit , (or armed with, something which used as a weapon of offence, is likely to cause death, to wit), were a member of an unlawful assembly, and thereby committed an offence punishable under s. 144 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly knowing it has been commanded to disperse.

Notes.—If the offender still resolves, in defiance of this warning, to persist in the commission of an offence, he aggravates his crime and incurs a more severe punishment.—*Morgan and Macpherson.* To constitute an offence under this section, it is necessary that the prosecution should establish that there was an assemblage of at least five persons that the object of the meeting was any of the five objects mentioned in section 141, I. P. C., that the accused shared that object with a least four others of the meeting ; that the accused intentionally joined the meeting having knowledge of the meeting, or he continued therein after having had that knowledge, that such command to disperse was in the manner prescribed by law ; that accused joined or continued in such unlawful assembly after it had been commanded to disperse, and that he did so knowing that it had been commanded to disperse. 3. Lah. L. J. 529=64. Ind. Cas. 373=23 Cr. L. J. 5 ; see also 23 Bom. L. R. 350=60 Ind. Cas. 1008 ; 22 Cr. L. J. 320. Failure to specify common object is not fatal if there is ample evidence to prove common object. 134 Ind. Cas. 1226=33 Cr. L. J. 64=55 B. 725=33 Bom. L, R. 1169=1933 Cr. C. 952=A. I. R. 1931 Bom. 520. Congress processionists refuse take different route and refuse to disperse, conviction under s. 145 is proper. A. I. R. 1933 Cal. 361=34 Cr. L. J. 814=144 Ind. Cas. 691 ; see also 134 Ind. Cas. 1226=33 Cr. L. J. 64=55 B. 725=33 Bom. L. R. 1169=A. I. R. 1931 Bom. 520.

Procedure.—Cognizable———Warrant———Bailable———Not Compoundable———Triable by any Magistrate.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of accused*) as follows :—

That you on or about the day of , at , joined (or continued in) an unlawful assembly, knowing that such assembly had been commanded in the manner prescribed by law to disperse, and thereby committed an offence punishable under s. 145 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

146. Whenever force or violence is used by an unlawful assembly, or by any member therefore, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Rioting.

Notes.—The unlawful assembly having moved towards the execution of its common object, and having used force, has committed the higher offence of rioting. It will be noticed that the actual use of force, and not merely a show of force, is necessary, and that the force must be in prosecution of the common object. And in this case whether only one, or more than one, of the persons assembled used the force, the penal consequences apply equally to all. It will be otherwise, however, if the force or violence is used for a distinct purpose,—as if it consists of a mere affray or assault upon each other, or upon by-standers, by some members of the assembly.

Morgan and Macpherson. Violence cannot mean violence against inanimate object 40 C. 362 ; see also 44 M. L. J. 407=23 Cr. L. J. 350=A. I. R. (1923) Mad. 603. The words "use force" in the present section it seems, must be construed without reference to the explanation given in s. 349.—*Morgan and Macpherson.* The word "violence" in this section is not restricted to force against inanimate objects. 44 M. L. J. 307=17 L. W. 535=72 Ind. Cas. 356=24 Cr. L. J. 356. It is not necessary for the purpose of s. 146 I. P. Code that the force or violence referred to in the section should be directed against any particular person or object. 21 O. C. 134=46 Ind. Cas. 844=19 Cr. L. J. 828. Where the accused, not less than five in number, were all found to have assembled together in the fight which took place and it was also found that they and their opponents came armed with sticks prepared to fight and did fight, *held*, that the accused were properly convicted of rioting, as their common object was to assault their opponents. 5 N. W. P. 208. In a charge of rioting, it is necessary that the common object of the unlawful assembly should be set out. 11 C. 106. Where the accused, members of an unlawful assembly, in resisting the arrest of a judgment debtor, use force both to the Civil Court peon and to another, who accompanies him, the offence of rioting is complete by the assault on either of them and the assault on the other is a further offence under s. 235 of the Criminal Pro. Code. 12 C. 595. Common intention in s. 34 is not the same as common object in ss. 146 and 149 and if some of the assembly commit a criminal act then their criminal intent must be imputed to all of them. A. I. R. 1929 Pat. 11=7 Pat. 758=30 Cr. L. J. 205=113 Ind. Cas. 676=11 P. L. T. 111. Where deadly weapons such as five arms are used in a riot the only adequate sentence on the offender is transportation. A. I. R. 1925 All. 664=26 Cr. L. J. 997=87 Ind. Cas. 597. Where the members make a series of attacks with the same object only one riot is committed even of the assembly varies. A. I. R. 1925 Oudh. 65=11 O. L. J. 693=25 Cr. L. J. 1169.

Where both parties are armed and prepared for battle, it does not matter which is the first to attack unless it is shown that either of the parties was acting within the legal limits of the right of private defence. 1 C. L. R. 521. In order to convict a person of rioting, it must be found that there was an unlawful assembly, that the members constituting it had a common object and that force was exercised in prosecution of that common object. 2 C. L. R. 62. To constitute the offence of rioting a common object required. 1 L. B. R. 56.

Punishment for rioting.

147. Whoever is guilty of rioting shall, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Notes.—The alleged common object of an assembly which renders it unlawful must be established by evidence ; it is not a matter that can be inferred. 51 Ind. Cas. 494 ; 10 Lah. L. J. 291=29 Cr. L. J. 593 ; see also A. I. R. 1934 Sind. 164=152 Ind. Cas. 1061=1934 Cr. C. 1266. There must be a clear finding of common object. A. I. R. 1934 Sind. 164=152 Ind. Cas. 1067=1934 Cr. C. 1266. Where a person is constructively made liable for the acts of another under this section, it is specially necessary to set out in the charge the common object of the assembly. 53 Ind. Cas. 488. See also, 1 Pat. L. T. 623 ; 25 Cr. L. J. 1169, 3 C. W. N. 605. It is not necessary for the purpose of s. 146 that force or violence referred to in the section should be directed against any particular person or object. 21 O. C 134. In the absence of a finding as to the existence of an unlawful assembly a conviction under this section cannot be maintained. 1 Pat. L. T. 606. See also 14 L. W 588 ; 19 A. L. J. 487 ; 44 M. L. J. 437 ; 4 Lah. L. J. 448. In the case of a confused rioting, all that the prosecution need establish is that the accused were voluntarily members of the crowd of rioters who committed the offence. 112 Ind. Cas. 51=29. Cr. L. J. 963=A. L. R. 1923 Nag. 36. Where five people were charged under ss. 147, 149 and 325, *held*, that convictions for three separate offences were bad as it is perilously like convicting them twice over for the same offence and as it offence against the maxim "*nemo debet bis nemo debet bis Vaxari*, etc." A. I. R. 1929 Lah. 498. Where more than four persons were found to have forcibly stopped the construction of a wall alleging that they were thereby abetting a nuisance, but no easement of theirs was proved to have been interfered with but four of them only were convicted, *held*, that the conviction was proper as they took the law into their own hands. 114 Ind. Cas. 477=30 Cr. L. J. 305=A. I. R. 1929 Pat 44. Party in possession is entitled to resist by force any attack made on his property. 145 Ind. Cas. 794=14 P. L. T. 228=1933 Cr. C. 972=A. I. R. 1933 Pat. 434. Where complainant's party are aggressors accused party have right of private defence. *Ibid.*

In case of conviction under ss. 147 and 323, separate sentence is legal. A. I. R. 1933 Mad. 338=56 M. 481=1933 Cr. C. 441=34 Cr, L. J. 273=64 M. L. J. 314=1933 M. W. N. 254=37 M. L. W. 250 ; see also A. I. R. 1933 All. 819=1933 Cr. C. 1417=1933 A. L. J. 1178. So also when accused are charged under ss. 304 and 147, they can be convicted under both the sections. A. I. R. 1933 All. 565=1933 Cr. C. 897=34 Cr. L. J. 1064=1933 A. L. J. 1377 ; but see 35 C. W. N. 184=32 Cr. L. J. 890=1931 Cr. C. 602=A. I. R. 1931 Cal. 450. In case of communal riot it is unsafe to convict on the evidence of one witness alone, unless there is satisfactory circumstantial evidence in addition. A. I. R. 1933 All. 834. Formation of unlawful assembly is necessary as preliminary to commission of offence of rioting, A. I. R. 1933 Lah. 235=14 A. L. J. 786=144 Ind, Cas. 518 ; see also 132 Ind, Cas. 174=35 C. W. N. 716=32 Cr. L. J. 844=58 C. 1303=A. I. R. 1931 Cal. 410 ; A. I. R. 1932 Pat. 171=33 Cr. L. J. 706=1932 Cr. C. 347=13 P. L. T. 135. Where public officer are only carrying out official instructions and instructions are not patently illegal, resistance to him in carrying out orders amounts to offence. 142 Ind. Cas. 144=34 Cr. L. J. 263=13 P. L. T. 480=A. I. R. 1932 Pat. 276.

On a conviction for rioting and hurt under ss. 147 and 323 of the Indian Penal Code, separate sentences for the offences are not illegal. 114 Ind. Cas 331=30 Cr. L. J. 295. Where a charge under s. 147, I. P. Code, stated that the common object was to asault the accused, but it was proved that the common object was to set fire to the accused's house and not to assault him. *Held*, that the accused must be acquitted. 138 Ind. Cas. 421=19 Cr. L. J. 390=A. I. R. 1928 Pat. 405. But a trial need not be set aside merely because of some omission or error in the charge unless the accused has been misled in his defence or failure of justice has resulted. Where the Judge framed a charge under s. 147 I. P. Code but no common object was specified in the charge, the failure amounts to a mere irregularity. 30 Bom. L. R. 653=A. I. R. 1928 Bom. 286. In all cases under section 147, I. P. C. the principal and the prominent common object should form the subject of the charge and not the incidental happenings. 108 Ind. Cas. 421=29 Cr. L. J. 390=A. I. R. 1928 Pat. 405. Where it is found that the accused were members of an unlawful assembly having a common object and made an assault or preparation to use force or violence, they cannot, in the absence of proof that some members of the assembly which they joined used force or violence in prosecution of their common object, be convicted of rioting under s. 147, I. P. Code, but only of being members of an unlawful assembly under s. 143 of the code 100 Ind. Cas. 817=28 Cr. L. J. 337=A. I. R. 1927 Oudh. 151. Persons may riot without actually committing an offence under s. 352 I. P. Code, and the theory that one section embraces the other is fallacious. 39 M. L. T. 499. In order to establish the common intention of an unlawful assembly it is not necessary to prove that its members actually met and conspired to commit an offence but such intention can be inferred from the circumstances of the case. In the case of a concerted attack by five or more persons, it is a perfectly valid and reasonable inference that they all had a common intention and were the before members of an unlawful assembly. 100 Ind. Cas. 232=28 Cr. L. J. 264=A. I. R. 1927 Lah. 193=28 P. L. R. 273 ; see also A. I. R. 1927 Oudh. 70=99 Ind. Cas. 238=28 Cr. L. J. 110.

Where the existence of an unlawful assembly or its common object was not found as proved by evidence, the accused could not be convicted for having committed an offence under this section. 10 M. L. T. 115=1911 ; 2 M. W. N. 97=12 Cr. L. J. 496. The use of criminal force is a necessary ingredient in an offence under this section. 12 Cr. L. J. 82=9 Ind. Cas. 455 ; A. L. J. 632. A member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. 7 A. 414 =A. W. N. 1885, 106. Separate sentences under s. 147 and under s. 353, should not be passed, when the common object of the unlawful assembly committing the riot was the offence under s. 353. 4 C. W. N. 245 ; see also 104 Ind. Cas. 454= 28 Cr. L. J. 838 ; Omission to state the common object in a charge under s. 147 I. P. Code, does not vitiate the conviction, if there is evidence on record to show it. 99 Ind. Cas. 235=28 Cr. L. J. 107=A. I. R. 1927 Oudh. 35. The prosecution of the "common object" within s. 149 of the Penal Code means something immediately connected with the common object. 28 Cr. L. J. 61=99 Ind. Cas. 93=A. I. R. 1927 Sind. 108. Where five persons are charged for forming an unlawful assembly and four of them are acquitted as their presence at the place of offence was not satisfactorily proved, the conviction of one only under s. 147 is not illegal. 27 Cr. L. J. 824=A. I. R. 1926 Lah. 521 ; 29 Cr. L. J. 859 ; 99 Ind. Cas. 235=28 Cr. L. J. 107. Where in a case under s. 147 the evidence of the prosecution is all interested and a considerable amount of enmity exists

between the factions who are concerned in the affair it is necessary to scrutinize the evidence of the prosecution witness very carefully. A. I. R. 1927 Lah. 617. Properties belonging to judgment debtors were attached by a commissioner appointed by the Court. Immediately after the attachment the judgment debtors came armed with lathis and attacked the decree-holder in the presence of the commissioner felled him on the ground and inflicted injuries on him. In the circumstances separate convictions under ss. 147 and 323 read with s. 149 were not illegal. 24 A. L. J. 178=92 Ind. Cas. 463=27 Cr. L. J. 287=A. I. R. 1926 All. 225. Party with title gaining possession by force cannot have common object of retaining the possession by force. 43 C. L. J. 245=A. I. R. 1925 Cal. 1235. Where the act which converted the accused into an unlawful assembly is the same as rendered them liable to punishment under s. 353 I. P. Code, separate sentences cannot be passed on them. 95 Ind. Cas. 754=27 Cr. L. J. 834=A. I. R. 1926 Lah. 581. To sustain a conviction under s. 147, the common object stated in the charge must agree in essential particulars with the common object established by evidence. 4 Mys. L. J. 25. Where the accused has been punished for the specific acts which constituted the object and purpose of the riot, the sentence under s. 147 was cancelled. 26 Cr. L. J. 19=83 Ind. Cas. 499=A. I. R. 1923 Lah. 662. In a charge of rioting of which the common object is to enforce a right or supposed right to land, it is necessary for the prosecution only to show that the accused was not in actual possession at the time of the occurrence. A clear distinction must be drawn between undisturbed and actual enjoyment of a right. 85 Ind. Cas. 711=26 Cr. L. J. 567. In case of rioting, use of force or violence in prosecution of common object is essential. A. I. R. 1932 Mad. 501=36 M. L. W. 407=33 Cr. L. J. 598=138 Ind. Cas. 383=1932 Cr. C. 505. In an offence under this section the fact that the Judge is not able to convict five persons does not mean that the offence is not made out. 35 Cr. L. J. 1494=1934 A. L. J. 640=A. I. R. 1934 All. 881. Separate conviction under ss. 147 and 347 are legal, but aggregate sentences should not exceed that for graver offence. A. I. R. 1932 Pat. 335=1933 Cr. C. 852=13 P. L. T. 588=34 34 Cr. L. J. 81.

Charge for offence with one common object will vitiate conviction for offence with another common object. A. I. R. 1925 Pat. 152. If certain persons jointly enter on certain land in defiance of an order that has been passed under section 144, Cr. Pro. Code, though some may be guilty of the offence under s. 188 I. P. Code and others of abetment of that offence, nevertheless the common object of them all is one and the same. 26 Cr. L. J. 594=85 Ind. Cas. 818=A. I. R. 1925 Cal. 903. Where once a party entitled to possession forcibly takes possession, his retaining possession subsequently by force is not with the common object of taking possession by force and the opposite party has no right to eject them forcibly. 26 Cr. L. J. 946=87 Ind. Cas. 98=A. I. R. 1925 Cal. 1235. Certain persons who were found on the railway lines were arrested by the Police though they were not actually committing any criminal acts. They resisted the attempt to arrest, and a fight ensued. Subsequently they were convicted under s. 147 I. P. C. *Held*, the conviction was wrong, as the arrest was without any justification. 90 Ind. Cas. 712. A charge under ss. 147 and 323 I. P. Code cannot be altered into one under s. 160 without a proper charge being framed and accused tried thereunder. (1923) M. W. N. 814=18 L. W. 741. Where the common object as stated in charge is not proved, the Court of Appeal or reference cannot substitute another to sustain the conviction. 38 C.L.J. 379. Where the Court thinks that a large number of persons took part in a rioting but thare was doubt as to the identity of all except four, a conviction under s. 147 is not legal. 21 A. L. J. 839=L. R. 4 A. 240 Cr.=9 O. & A. L. R. 1085. When the offence committed by the accused is one offence, he cannot be convicted separately under ss. 147, 342 and 504 I. P. Code. 1923 Lah. 91. Where the accused were in the actual possession of the land, though some years back the land was sold at a rent sale the accused were held not te be guilty of the charge under s. 147 of being members of an unlawful assembly, their objects being to enforce their right to the standing crops, 1923 P. 299; see also 83 Ind. Cas. 523. Where there is a finding that first party never parted with possession of the disputed house and that the second party was not given actual possession of that house the men of the second party who dismantled the disputed house and ploughed it up in the absence of the servants of the first party are guilty of an offence under s. 147. I. P. C. 1 Pat, L. R. 242=1923 Pat. 361=763 Ind. Cas. 158=24 Cr. L. J. 542.

Where nine accused are charged with rioting and house-trespass and five of them are found to have had no common object, the conviction of the rest for rioting is unsustainable. 1923 Mad. 94 Where the accused has been punished for the

specific acts which constituted the object and purpose of the riot, the sentence under s. 147 we cancelled ; 1923 Lah. 160. Any member of an unlawful assembly can be convicted under ss. 149 and 302, where a murder has been committed by one member of that assembly in pursuance of the common object. L. R. 4 A. 145 Cr. Even though it was not proved that the object of the accused who were more than five in number was as suggested by the prosecution namely to take forcible possession of the house, yet when it is found that they came to the place and some of them assaulted the complainant the presumption is that the assault took place in prosecution of the common object, and that assault was not the original object with which the accused came to the place it must be presumed from the circumstances that it was formed at the time the assault took place. 69 Ind. Cas. 633=23 Cr. L. J. 745. Where there is a *bona fide* dispute, as to the title to the land, there cannot be a conviction under s. 147 for taking away the crops of that land. 81 Ind. Cas. 45=25 Cr. L. J. 557. To sustain a conviction of rioting there must be a clear finding as to the common object of the unlawful assembly and the same should have been specifically stated in the charge so that the accused may have an opportunity of meeting it. 75 Ind. Cas. 731=25 Cr. L. J. 43. A person cannot be convicted under this section for joining an unlawful assembly after common object ceases to exist. 81 Ind. Cas. 794=25 Cr. L. J. 1018. The accused cannot be convicted under this section for obstructing the cutting of of a *baund* which has been ordered to be maintained by a Civil Court. 28 C. W. N. 732=A. I. R. 1924 Cal. 936. A riot denotes a common object and where the common object of the accused person is expressed in the charge under s. 296 of the Indian Penal Code and the accused persons riot in prosecution of that object, they commit only one offence and not two. 25 Cr. L. J. 1169=11 O. L. J. 693= 1925 Oudh. 65. In cases of rioting under section 147 I. P. Code resulting in grevious hurt within the definition of section 325 I. P. Code, convictions and saparate sentences under s, 325 are legal against all the the accused who actually joined in the assault. 82 Ind. Cas. 473 ; but see 2 Mys. L. J. 51. Where the object of the accused who had been charged with being members of an unlawful assembly was to rescue a person who was being assaulted and in the course of rescuing him greivous hurt was caused, the assembly does not become an unlawful assembly. 1 Pat. 212=(1922) P. 498. Where nine accused are charged with rioting and house-trespass and five of them are found to have had no common object, the conviction of the rest for rioting is unsustainable. 16 L. W. 528 ; see also 26 C. W. N. 536=86 C. L. J. 353. Where it was proved that the accused carried away a woman not merely to bring pressure on her mother but also to marry her against her will they are guilty under s. 346 I. P. C. It was a necessary ingredient for completion of the offence under section 366 I. P. Code to use force and a separate sentence under s. 147 is not justified. 4 Lah. L. J. 322=1922 Lah. 410 ; see also 4 Lah. L. J. 448=67 Ind. Cas. 721 ; 67 Ind. Cas. 729= 23 Cr. L. J. 457 ; 1922 Lah. 405 ; 31 P. R. 1916 Cr. Separate sentences under s. 325 s. 147 of the Penal Code are not illegal, but the sentences imposed ought not to be heavier than are justifiable in the circumstances of the case. 2 Pat. L. T. 549=61 Ind. Cas, 844=22 Cr. L. J. 460. A person who is the leader of an unlawful assembly whose common object is to assault passers-by commits the offence of rioting punishable under s. 147 of the Penal Code. 24 Bom. L. R. 110=66 Ind. Cas. 192=23 Cr. L. J. 256. Where in pursuance of a decree of Court, the decree-holder was put in symbolical possession of property under Order 21, rule 85 C. P. Code, the judgment-debtor thereafter is only a trespasser, and in taking possession of the property and ousting the judgment-debtor by force, the decree-holder does not commit an offence under s. 147 I. P. Code. 3 Pat. L. T. 335=23 Cr. L. J. 321. Where the petitioner though outwardly pretending to try to pacify the mob, in reality incited the mob and took part in the doings of the mob to overawe the Government servants by attacking them and to cause loss to Government property without provocation, he committed an offence under section 147 though he personally did no violence. (1922) Pat. 311. Where the common object of the unlawful assembly was to cause grevious hurt and death is caused by any one of its members of the assembly who have not caused death can be punished under s. 325 read with section 149. 60 Ind. Cas. 679=22 Cr. L. J. 279. To substantiate a charge of arson under section 436, read with section 149, it is necessary to find that either from the inception or at any stage of the occurance the accused were actuated by the common motive to set fire to a house or that they knew that such an offence would be committed in prosecution of the common object. Their mere presence unless they did something to aid or

assist the principal culprit, would not make them guilty. 60 Ind. Cas. 667=22 C. L. J. 267. In the absence of a definite that five or more people took part in the occurence, a conviction for rioting cannot be sustained. 14 L. W. 588; see also 19 A. L. J. 487=63 Ind. Cas. 157=22 Cr. L. J. 621. In the absence of a finding as to the existence of an unlawful assembly a conviction under section 147 I. P. C. cannot be maintained. 1 Pat. L. T. 606=54 Ind. Cas. 773=21 Cr. L. J. 165. Such common object must be established by evidence and cannot be inferred. 52 Ind. Cas. 494. Where the Court found that the common object of an unlawful assembly was to commit theft, but not which of the persons composing the unlawful assembly removed the property stolen, it is illegal to convict them both under section 147 and s. 379 I. P. Code and to pass separate sentences for each offence. 1 Pat. L. T. 623=56 Ind. Cas. 512=21 Cr. L. J. 480. Where a person is constructively made liable for the acts of another under section 147, I. P. Code, it is specially necessary to set out in the charge, the common object of the assembly. 53 Ind. Cas. 488=20 Cr. L. J. 760. The burden of proving the charge substantially as drawn lies on the prosecution and if it is not established affirmatively that the land on which the alleged riot took place was in the actual possession of the Government the charge as alleged was not proved and the petitioners were not guilty of rioting with the common object stated in the charge. 23 C. W. N. 693=30 C. L. J. 19=52 Ind. Cas. 881=20 Cr. L. J. 721. The real difficulty in cases of charges under s. 147 of I. P. C. is to find whether individual accused who deny their presence at the offence were members of an unlawful assembly and consequently it is the duty of the Appellate Court to discus the evidence as against each of the accused. 40 C. 376; 19 Cr. L. J. 200=43 Ind. Cas. 616. Where the alleged common object of an unlawful assembly fails the accused persons cannot be convicted under s. 147, I. P. Code. 4 Pat. L. W. 120=46 Ind. Cas. 709=19 Cr. L. J. 789. Where a part of a tenant's holding was under water, and the landlord gave the right of fishing therein lease to a stranger who wanted to catch fish but was opposed by the tenant. *Held*, that it having been found that the tenant was in possession, he had a right of private defence, as against the landlord's lessee, and he and his party could not be convicted of rioting as the right of private defence had not been exceeded. 5 Pat. L. W. 101=46 Ind. Cas. 443=19 Cr. L. J. 733; see also 15 A. L. J. 47. Where the members of an unlawful assembly assaulted police-officers and rescued a woman arrested by police under a warrant, inaccurately issued, they can be convicted of an offence under s. 147. 19 Cr. L. J. 390=57 P. L. R. 1918=9 P. R. 1918 Cr.; see also 2 Pat. L. J. 18. A conviction under this section cannot be made on suspicion. 15 A. L. J. 850. Where a certain person was engaged in certain celebrations on the occasion of a recognised festival and a gentleman feeling annoyed by the noise interfered without any legal justification seized a drum belonging to those persons and otherwise interfered with them thereby provoking them into an assault on him, *held* that there was no riot but that persons who actually assaulted him were guilty of an offence under s. 352. 18 Cr. L. J. 543 =39 Ind. Cas. 687. Where the charge simply stated that the accused were guilty of rioting, and the accused complained during the trial that the charge did not state what the common object was, it cannot be said that they were not prejudiced by the omission in the charge. 16 Cr. L. J. 809=31 Ind. Cas. 825. The first reports made to the Police in riot cases are not safe guides to charge the persons named therein, for friends and relatives of the real culprits are more often than not promiscuously implicated. 107 P. L. R. 1916=43 P. W. R. 1916 Cr. =17 Cr. L. J. 450=36 Ind. Cas. 450. Where the accused were simply defending themselves against the attack made upon them by the opposite party, *held* that they were not guilty of an offence under s. 147. A. W. N. 1886, 254. Only persons actually armed with deadly weapons can be charged under s. 148. 146 Ind. Cas. 321=10 O. W. N. 557=1933 Cr. C. 780=A. I. R. 1933 Oudh. 333. In the absence of evidence to show conspiracy to kill or injure deceased accused cannot be held guilty under s. 147 and 109. 137 Ind. Cas. 65=35 P. L. R. 145=1932 Cr. C. 278=33 Cr. L. J. 375=A. I. R. 1932 Lah. 254. Some accused caused death of person but others were only members of unlawful assembly and did not take part in attack on murdered man former were sentenced to seven years' rigorous imprisonment while the latter were sentenced to five years. 134 Ind. Cas. 1041=35 C. W. N. 345=33 Cr. L. J. 1=A. I. R. 1931 Cal. 606.

In the case of a riot and fight between two opposing factions, the members of each party cannot be tried together in one trial on a charge under s. 247 I. P. C. The reason is that the common object of the two factions is not the same. L. B. R.

(1872-1892,) 275. Where a large number of men assembled with the common object of assaulting or using criminal force to police-officers and of resisting any action on the part of the police, and an unjustifiable assault takes place in the attempt of the police to make an arrest, which may not be lawful, the persons assembled may all be properly found guilty of riot. 28 C. 411=5 C. W. N. 134. Where a number of persons some of whom only were armed with deadly weapons and others are not, had been tried and convicted under section 148 of the I. P. C, held that only those who were armed could be convicted under s. 148 and that the others could only be convicted under s. 147. A person cannot be properly convicted of rioting, if the charge does not declare what was the common object of the assembly by which the riot was committed. 26 C. 630. Where the common object of an unlawful assembly is clearly set out in the charge and there is no question in the lower courts as to the common object so set out, a conviction for rioting with the object set out is good, even though there might be no express finding as to the common object, if the accused has not been in any way prejudiced by the absence of such finding. 8 C. L. J. 69=12 C. W. N. 944=8 Cr. L. J. 129=36 C. 158=1 Ind. Cas. 794. It cannot be laid down as a general proposition of law that a conviction under s. 147 of the Penal Code cannot be supported, whenever the common object of the assembly as stated in the charge is not precisely made out, the question in each case being whether the common object established, agrees in essential particulars with the common object as stated in the charge. 36 C. 865=13 C.W.N. 801=4 Ind. Cas. 19=10 Cr. L. J. 471. The degree of force which may be lawfully used in the suppression of an unlawful assembly depends on nature of such assembly, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be obtained. 21 M. 249. Where in a case of riot, a person is killed, all the members of the unlawful assembly i. e., those that were successful and those that were not, are guilty of culpable homicide not amounting to murder. 7 W. R. Cr. 103. The intention of the parties was not to enforce a right or a supposed right ; but they intended to maintain the actual subsisting enjoyment of a right then existing in an undisturbed condition ; *held* that they could no be convicted for being members of an unlawful assembly. 23 W. R. Cr. 25. The accused armed with lathies went to cut down certain trees, knowing that the other party claimed the right and title in those trees, and knowing also that the other party would resist them. A fight ensued and several people were injured. *Held*, that they were properly convicted under ss. 147 and 325. 24 A. 298=A. W. N. 1902, 58 ; see also 3 N. W. P. 174. Separate sentences passed upon persons for the offences of rioting and hurt are not legal where it is found that such persons individually did not cause hurt. 14 Cr. L. J. 66=18 Ind. Cas. 402 =40 C. 511 ; see also 9 U. L. T. 362=12 Cr. L. J. 124=9 Ind Cas. 727=1911, M. W. N. 130 ; but see 14 Cr. L. J. 625=17 O. C. 184=25 Ind. Cas. 633. The members of a religious community or denomination have every right to pass through the King's Highway in procession for purposes of religious worship. Assaulting a religious procession with the common object of disturbing it, amounts to rioting. 13 Cr. L. J. 532=15 Ind. Cas. 806. Where rioting is completely proved, and over and above that, the commission of another offence, either hurt or grievous hurt is also proved, separate convictions and separate sentences for each will be proper. S. C. 125, Oudh. It is doubtful whether separate convictions under ss. 147 and 327 I. P. Code, are legal. 8 C. L. R. 390. In cases of rioting, it is not permissible to base a conviction upon a hypothetical state of facts, which is quite unsupported by evidence, which was never put forward by the prosecution and was never suggested to the accused as being the case they had to meet. 11 C. L. J. 270=11 Cr. L. J. 245=5 Ind. Cas. 771. It is altogether improper for a Magistrate to deal with a charge of riot against seven different persons in the same proceedings, and at one and the same time, when it is obvious on the face of the evidence that there could not be "a common object" animating all of them. A. W. N. 1881, 28. Where a public servant received a blow from a stick while trying to quiet the riot, but the evidence to show who actually struck it is discrepant, it is not lawful to frame a separate charge under s. 332, Penal Code, against any one of the rioters in particular. 14 P. W. R. 1912 Cr.=111 P. L. R. 1912=15 Ind. Cas. 92=13 Cr. L. J 460. Where the accused was convicted under ss. 147 and 448 I. P. Code and the common object of the accused was to prevent complainant from entering into possession of the land. *Held*, that the conviction under s. 147 was right. 8 Ind. Cas. 880=9 M. L. T. 167=11 Cr. L. J. 727.

Procedure.—Cognizable———Warrant———Bailable———Not Compounable———Triable by any Magistrate.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of at were member of an unlawful assembly, and, in prosecution of the common object of such assembly, to wit, committed the offence of rioting, and that you thereby committed an offence punishable under s. 147 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Rioting, armed with a deadly weapon.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Lathi.—Whether a deadly weapon. *Vide* 15 A. 19.

Scope.—If one of the members of an unlawful assembly is armed with a deadly weapon, or a weapon of offence, the other members of the assembly cannot be charged under this section. It is only the actual persons, who are so armed, who can be charged under the section. 22 C. 276 ; 29 Ind. Cas. 78. A. I. R. 1934 Lah. 632=35 P. L. R. 518 ; A. I. R. 1933 Oudh. 333= 1933 Cr. C. 780=10 O. W. N. 557=146 Ind. Cas. 381. In order to convict a person under s. 148, it must be shown that each individual person charged was himself armed. 7 C. W. N. 512. In cases of rioting, the two parties must be separately tried, since each of them constitutes an assembly with a common object quite different from that of the other party. S. C. 75 Oudh. The only way in which one person can be made liable for the acts of another is under s. 149 23 C. 276. Where one of the several persons charged with rioting armed with deadly weapons only is proved to have been possessed of a gun, it is illegal to convict others who had no such dangerous weapon of an offence under s. 149. 16 Cr. L.J. 446=29 Ind. Cas. 78. Rioting armed with stout-made bamboos is rioting armed with deadly weapons 1 Weir. 70. Where there is conflicting and perjured evidence brought before Court, one sure ground for conviction or acquittal is to proceed by marks of injury on person of accused. 1931 Cr. C. 711=A. I. R. 1931 All. 439 ; see also 32 Cr. L. J. 1073= A. I. R. 1931 All. 712. Where substantive offence under s. 326 has been committed in prosecution of common object by some member of the unlawful assembly all can be convicted under s. 326 read with s. 149, even though no conviction under s. 148 is passed. 1933 M. W. N. 109=A. I. R. 1933 Mad. 842. If right of private defence is not established, claim of title though *bona fide* will not avail. A. I. R. 1932 Pat. 215=13 P. L. T. 288=1932 Cr. C. 496=33 Cr. L. J. 864=11 Pat. 523 ; see also 1933 Cr. C. 1426=A. I. R. 1933 Sind. 386. Force or violence may be directed against inanimate object. A. I. R. 1935 Pesh. 65. Proof of carrying deadly weapon is uecessary. Crow bar used merely to destroy bridge is not weapon. A. I. R. 1935 Pesh. 65. Spear or lathi is deadly weapon. A. I. R. 1933 Oudh. 52. Bamboo sticks two inches in thickness are deadly weapons if they are used on a vulnerable part of the body. 1929 M. W N. 583. Section 149, I. P. Code constitutes a separate offence of its own. Hence if persons who are not carrying deadly weapons themselves are rioting and are found to be guilty they can only be found guilty where s. 148 is coupled with s. 149 I. P. Code. 1929 M. W. N 888 ; see also 114 Ind. Cas. 449=30 Cr. L. J. 307=A. I. R. 1929 Nag. 14. A person who is a member of an unlawful assembly is guilty under s. 148, Indian Penal Code, when he himself is not armed with a deadly weapon, but some other member of the assembly is so armed. Section 148 does not merely provide for a heavier punishment in certain cases, but deals with an aggravated form of rioting. 96 Ind. Cas. 158=27 Cr. L. J. 894=A. I. R. 1925 Mad. 741. A conviction under s. 323 I. P. Code while the charge was one under s. 148 is not illegal. 73 Ind. Cas. 932=24 Cr. L. J. 708=1923 Lah. 326. A charge for an offence under ss. 148 and 149 is an incongruous and impossible charge. A. I. R. 1924 Pat. 380=4 P. L. T. 502=24 Cr L. J. 407=72 Ind. Cas. 519.

Sentence.—As regards amount of sentence vide, 1929 M. W. N. 888.

If from the evidence it can be clearly established what the common object in a case of rioting was the mere fact that such charge does not contain an allegation of a common object is not a defect that will necessarily invalidate the conviction. Where two common objects are alleged and one is clearly proved upon the evidence, then the fact that the other common object, which is alleged, has not been proved will

not exonerate the accused from liability, and even if there be any irregularity in the form in which the evidence for the prosecution might have been presented, it cannot be relied upon in revision before the High Court, if such irregularity has not occassioned any miscarriage of justice. 2 Pat. L. J. 541. Where the accused were in possession and went to the field armed with sticks to maintain possession, they can not be convicted under this section. 17 Cr. L. J. 391=35 Ind. Cas. 823. Where in a Sessions case, the jury found that the common object of an unlawful assembly was to obstruct the police, and that the violence used to the police was the element which rendered the members of the unlawful assembly guilty of rioting, *held* that separate sentences could not be passed for rioting under section 148 of the Penal Code, and for assaulting a public servant under s. 152 of the Code. 19 C. 105. A person found guilty under both ss. 324 and 148 I. P. Code can be sentenced only under one and the other of the two sections. 35 P. L. R. 587=1934 Cr. C. 944=A. I. R. 1934 Lah. 614. In conviction for rioting it does not much matter who the aggressors are. 1922 M. W. N. 583.

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person, who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Scope.—Violence used by one member of an unlawful assembly, in prosecution of the common object makes all the members rioters (section 146). In like manner, every offence which he commits in prosecution of the common object becomes the offence of all. And further if he commit an offence which, although it cannot be said to be committed in prosecuting the common object, is yet such an offence as was likely to be committed, all are deemed to be participators in his guilt. The nature and object of the assembly must determine what act done and what offences committed by any one of its members become, under this section, the acts and offence of the whole body. Minor offences against person and property are the common and natural consequences of a tumultuous gathering of persons with evil intentions and grave offences of a like nature may equally be the probable result where the common object is one which implies violence. But there is a limitation to this law extending to many persons the actual guilt of one, which seems reasonable and consistent with the terms in which the section is expressed, viz. that the offence, if wholly beside the common object, is not to be imputed to the whole assembly.—*Morgan and Macpherson.* The object with which persons may set out may be that of causing hurt but if they know that those persons whom they accompany are carrying deadly weapons and that if such deadly weapons are used it is likely to cause grievous hurt to any one, the charge against the accused is properly framed under s. 149. 1929 M. W. N. 888. Section 149 of the Penal Code does not define any definite offence but merely provides that in certain circumstances persons may be convicted of an offence under the Indian Penal Code provided always that certain conditions are complied with. Therefore an accused has no right to have that section mentioned in the charge and it cannot be said that any prejudice is caused by the failure to mention the section in the charge. 7 Pat. 484=9 Pat. L. T. 738=29 Cr. L. J. 648=A. I. R. 1928 Pat. 454. Once common object is arrived at, preparation towards it resulting in offence makes them all liable. A. I. R. 1930 Mad. 858. Each member of unlawful assembly is guilty of murder, if murder was committed in prosecution of common object. A. I. R. 1923 Lah. 441. Section 149 ought to be strictly construed. The prosecution of the common object must mean something immediately connected with it. A. I. R, 1927 Sind. 108=21 S. L. R. 159=28 Cr. L. J. 61=99 Ind. Cas. 93. Section 149 is an offence in respect of participation. The guilt of the participator shall be guilt of the principal. A. I. R. 1926 Pat. 253=5 Pat. 238=7 P. L. T. 178=27 Cr. L. J. 512=93 Ind. Cas. 976 ; see also 92 Ind. Cas. 463=A. I. R. 1926 All. 225=24 A. L. J. 178=27 Cr. L. J. 287. No offence is punishable under s. 149 alone. There must be some substantive offence charged to be read with under s. 149. A. I. R. 1925 Pat. 117=6 P. L. T. 330=3 Pat. 870=26 Cr. L. J. 426. When a person is found to be amongst a mob of rioters, the law presumes that he shares their common object and intention. If he does not share

that common object and intention, the onus is upon him to prove his innocence. A. I. R. 1934 All. 776. If members of unlawful assembly knew that murder would be likely to be committed in prosecution of common object, unlawful assembly is responsible for the murder. A. I. R. 1932 Lah. 367=33 Cr. L. J. 460=34 P. L. R. 449=1932 Cr. C. 485 ; see also A. I. R. 1932 Oudh. 247=9 O. W. N. 437=33 Cr. L. J. 566 ; A. I. R. 1933 All. 535=1933 Cr. C. 870. Where conspiracy is to commit dacoity and murder is committed by one of the dacoits in commission of dacoity, other dacoits should not be convicted under s. 302/149. A. I. R, 1933 Lah. 977 ; see also A. I. R. 1933 Oudh. 53=34 Cr. L. J. 101=9 O. W. N. 977=1933 Cr. C. 93 =140 Ind. Cas. 892 ; A. I. R. 1983 Lah. 1075. In case of assault with lathis conducted by several persons every member is equally guilty. 1933 Cr. C. 926=A. I. R. 1933 All. 582. Where the common object is not to commit grievous hurt and grievous hurt is caused but by whom caused is not known, conviction must be under s. 332. A. I. R. 1932 Lah. 159=34 Cr. L. J. 679=1933 Cr. C. 304=144 Ind. Cas. 67. In case of conviction and separate sentence for act constituting conspiracy, separate sentence for offence under s. 120B is not necessary. A. I. R. 1933 Lah. 977 ; see also 67 M. L. J, 355=A. I. R. 1934 Mad. 565.

Where both parties are armed and prepared for fight and the riot is premeditated, there is no right of private defence unless it can be shown that the object of the assembly was to repel forcible and criminal aggression. 1929 Cr. C. 577=A. I. R. 1929 Pat. 705.

The accused who were proved to be the aggressors went to the spot armed in order to assert a supposed title and to establish possession by force. A murder was committed in prosecution of the common object by rioters. *Held*, that accused were rightly convicted under section 302 read with s. 149 I. P. Code. 1929 M.W.N. 899 ; A. I. R. 1929 Pat. 523=1929 Cr. C. 283. There is nothing unlawful on the part of five or more persons in congregating together for exercising a lawful right and resist opposition if necessary, provided they do not exceed the limits of the right of private defence of their property or persons and if some one or more of them exceed that right, unless the individuals can be identified, the mere presence of the accused at or near the spot is not sufficient to bring home to them guilt for the acts of other who exceeded their rights. 97 Ind. Cas. 54=27 Cr. L. J. 1078=A. I. R. 1927 Pat. 27. Statements of members of an assembly made at the time are admissible to prove unlawful purpose in a charge against promoters. 5 Cr. L. J. 115.

When different acts are done by members of an unlawful assembly in furtherance of common object, all are constructively guilty of the offence committed by any member. 101 Ind. Cas. 485=28 Cr. L. J. 453 ; see also A I. R. 1926 Lah. 516=26 P. L. R. 267=27 Cr. L. J.=91 Ind, Cas. 39 ; A. I. R. 1924 Rang. 291=3 Bur L. J. 49=25 Cr. L. J. 1305=82 Ind. Cas. 473 ; 1929 M. W. N. 888 ; A. I. R. 1934 Rang. 30=1934 Cr. C. 243=148 Ind. Cas. 1064=35 Cr. L. J. 863.

When a number of accused were charged with murder, rioting, causing grievous hurt, etc., and the evidence showed that the death was caused by one with a blow with a lathi, the other accused cannot be responsible unless the principles of ss. 34 and 149 I. P. Code are applied to their case. The sentences for grievous hurt and the fatal injury should be concurrent as they were caused in the course of the same transaction. 85 Ind. Cas. 845=A. I. R. 1923 Lah. 322.

Evidence of statements made by members of an assembly the promoters of which were charged with offences under s. 325 read with s. 149, I. P. Code of their determination to force their way, through the police forms evidence of a part of the *res gastae* and is admissible to indicate the promoter's intention to ignore the police orders that had been communicated to sections of the crowd. 3 Rang. 352=90 Ind. Cas. 918=A. I. R. 1925 Rang. 354. But in all cases under s. 149 the oral evidence must generally be approached with caution and carefully scrutinized. 149 Ind. Cas. 210=35 Cr. L. J. 919=A. I. R. 1934 All. 776. Offence committed must be immediately connected with common object of assembly. A. I. R. 1935 Oudh. 52. When offence was committed by one member of unlawful assembly, person charged as being member can be convicted of substantive offence. A. I. R. 1935 Sind. 34 ; see also A. I. R, 1935 Oudh. 110 ; A. I. R. 1935 Oudh. 190 ; A. I. R. 1935 All. 362. Where it is not proved that five persons took part in the assault accused cannot be held constructively guilty of murder under s. 149 read with s. 302 of the Penal Code because s. 149 only applies where there is an unlawful assembly. 85 Ind. Cas. 371 =A. I. R. 1925 Lah. 532=26 Cr. L. J. 531=6 Lah. L. J. 434.

Where it cannot be held that the common intention was to cause death, but was to cause grievous hurt or that all the members of the unlawful assembly at least

knew that grievous hurt was likely to be caused' the accused can only be convicted under s. 325 read with s. 149. A. I. R. 1923 Lah. 43 ; 10 O. W. N. 7=A. I. R. 1933 Oudh. 148.

Where there is considerable divergence between the case for the prosecution and the case for the accused in a case of rioting and there were several accused it is the duty of the trial Court as well as the Appellate Judge to examine the evidence carefully so as to show that he was fully convinced upon the consideration of the pros and cons of the case that the prosecution story was true. 4 Pat L. T. 502=1 Pat. L. R. Cr. 55=72 Ind. Cas. 519= 24 Cr. L. J. 407.

The definition of offence under s. 149 I. P. Code does not cover offence under special Acts. 72 Ind. Cas. 360=24 Cr. L. J. 360 ; see also A. I. R. 1929 Mad. 880= 52 M. 882=57 M. L J. 114=1929 M. W. N. 522=30 Cr. L. J. 864=118 Ind. Cas. 68 ; 17 L. W. 21=1922 M. W. N. 800 ; 21 Cr. L. J. 418=56 Ind Cas. 210.

If the members of an assembly act with the common object of exceeding their right of private defence they are not only all generally guilty of rioting but also of the particular offence constituted by such excess of user. If one member exceeds that limit every other member shares with him the guilt of his act. 2 Pat. 495. Each member of an unlwful assembly is guilty of murder if that murder was committed in prosecution of the common object of the assembly. 1923 Lah. 441 ; see also 1923 Lah. 322. If a member of an unlawful assembly is to be found constructively guilty of an offence of which the principal is guilty and not some other offence. If the rest of the accused are not constructively guilty of the same offences as the principal offender, they cannot be found guilty under section 149 at all. 1 Pat. 753=4 Pat. L. T. 213=71 Ind. Cas. 113=24 Cr. L. J. 65. In a charge for being members of an unlawful assembly and for culpable homicide, the defence set up was private defence. The Court found the prosecution story to be false. *Held*, that the accused need not plead and prove the right of private defence. 2 Pat. L. R. 217 Cr. Ordinarily if accused persons go armed with spears in superior force intending to carry out by force their object of bringing away a woman which they know the persons having custody of the woman will resist, each of the accused must be taken to have known at least that a death caused by one of his party was likely to be caused. 83 Ind. Cas. 714=1924 All. 670 ; see also 26 Cr. L. J, 763=A. I. R. 1925 Lah. 371=86 Ind. Cas. 347.

The offence of causing grievous hurt under s. 326 is not a minor-offence, or an offence involved in the offence under s. 304, coupled with s. 149 ; therefore a person accused of and charged with the latter offence cannot, in the event of the charge not being sustainable, be convicted of an offence under s. 326. 6 C. W. N 98.

Where a wound inflicted on a certain person cannot be regarded as the result of a common enterprise in which the accused were engaged, a conviction under section 324, read with section 149, is wrong, 7 C. W. N. 512.

This section is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case under this section, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence was one which the accused knew would be likely to be committed in prosecution of the common object 5 Bom. L. R. 1924 ; 61. P. R. 1887 Cr. The word "knew' indicates a state of mind at the time of the commission of the offence and not knowledge acquired in the light of subsequent events. 17 Ind. Cas. 408. The prosecution of "common object', in section 149 of the Penal Code means something immediately connected with the common object. 21 S. L. R. 159=28 Cr. L. J. 61=99 Ind. Cas. 93=A. I. R. 1927 Sind. 108. The word "knew" in s. 142 has been advisedly used and cannot be made to bear the sense of "might have known." 27 Cr. L. J. 547=93 Ind. Cas. 1043= A. I. R. 1926 Lah. 419. Section 349 is wide enough to cover the principle of s. 34. 95 Ind. Cas. 594=27 Cr. L. J. 818. Separate sentences may be passed under s. 147 I. P. Code and any other section which becomes applicable to to the accused with reference to the terms of s. 149. 97 Ind. Cas. 804, Where in the course of a free fight between two parties a member of one party struck a blow at a member of the other party which resulted in his death every member of the party is guilty of the offence if the evidence does not disclose the actual person who inflicted the injuries. 95 Ind. Cas. 766=27 Cr. L. J. 846=13 O. L. J. 204. The term "offences" as used in this section does not include an offence under the Railways Act or the Malabar Martial Law Ordinance. 20 L. W. 914=1925 Mad. 239. Preparation towards common object is prosecution. A. I. R. 1930 Mad. 257.

Procedure.—Cognizable or not cognizable according as arrest may be made without warrant for the offence or not—Warrant or summons according as a warrant or summons may issue for the offence—Bailable or not bailable according as the offence is bailable or not—Not compoundable—Triable by the Court by which the offence is triable.

Charge.—I (*name and office of Magistrate, etc*) hereby charge you (*name of the accused*) as follows :—

That you ' on or about the—day of—at—at—, were a member of an unlawful assembly, the common object of which was—(*specify the object*) and that while you were a member of the said unlawful assembly, another member (*name the member*) of the said assembly, caused (*specify the offence*) to——,and you are thereby under s. 149 of the Indian Penal Code, guilty of causing the said (*offence*) an offence punishable under s.——of the Indian Penal Code, and within my cognizance (or within the cognizance of the Court of Session).

And I hereby direct you to be tried by the said court on the said charge.

150. Whoever hires, or engages, or employs, or promotes, or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself committed such offence.

Hiring or conniving at hiring of persons to join unlawful assembly.

Notes.—"Affrays attended by much violence, and occasionally ending in death, are committed in some parts of India by persons either hired or employed for such work alone, or who are not or may not be ordinarily retainers or labourers in the service of the persons hiring them. The object of this section seems to be to bring within the reach of the law, those who are really the originators and instigators of the offence committed by such persons. The ordinary law of abetment might be sufficient to punish those who, by hiring or engaging others, instigate them to join an unlawful assembly. But if the prime agent keeps aloof, and the work of hiring, although known to him, is left entirely to his managers or servants, he will probably succeed in evading the ordinary law. The terms of this section therefore extend not only to acts of instigation by the master but to acts of instigation when done by others, his agents, and knowingly permitted, or connived at, by him.

"To support a charge under this section, there must be proof (1) of an unlawful assembly ; (2) of an offence (if an offence was committed by the members of that assembly) ; (3) of the complicity, by hiring, connivance or otherwise, of the person charge. Direct evidence of hiring etc., may not often be procurable ; and it will be still more difficult to obtain such evidence where the charge is one of promoting the hiring or conniving at it. The relation of the parties, their conduct, and the circumstances, generally, must furnish grounds of presumptive proof in such cases.—*Morgan and Macpherson.* Section 157 is not of wider application than section 150. It provides for an occurrence that may happen and makes the harbouring, or receiving or assembling of persons, who are likely to be engaged in any unlawful assembly, an offence. Here also as in s. 157, the law contemplates the imminence of an unlawful assembly and the proof of facts which would go to constitute an unlawful assembly. 29 C. 214=6 C. W. N. 143. Where a person was charged under s. 304, I. P. Code read along with s. 150 and the jury holds he was not guilty of culpable homicide, he cannot be convicted of constructive culpable homicide under s. 153. 85 Ind. Cas. 818 =26 Cr. L. J. 594=A I. R. 1925 Cal. 903.

Procedure.—Cognizable—Warrant or Summons according to the offence committed by the persons hired etc.—Bailable or not bailble as in the offence—Not-Compoundable—Triable by the Court by which the offence is triable.

Charge.—I (*name and office of Magistaate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you——on or about the——day of——, at——.hired (or engaged or employed or promoted) [or promoted (or connived at) the hiring (or engagement, or employ-

ment) of] one XY to join as (or become) a member of an unlawful assembly, and that the said XY as a member of such assembly in pursuance of such hiring (or engagement or employment) committed (*specify offence*) and that yon have therby committed an offence punishable under ss. 150 and——(*state the substantive offence*) of the Indian Penal Code, and within my cognizance (or cognizance of the Court of Session).

And I hereby direct that you be tried by the said Court on the said charge.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

Burden of proof—The prosecution should prove that the assembly was in fact likely to cause a disturbance the public peace. 22 P. R. 1887, Cr.

Scope.—The offence consists not in any unlawful assembly, for there may be none, but in the desobedience to the mandate of the law, which, under the particular circumstances indicated here, has ordered the assembly to disperse. Suppose five or more persons meet together on a lawful occasion : a command to them to disperse would not be a lawful command and the offence here comtemplated would not be committed. But if the time and pluce of assembly make it likely that a disturbance of the public peace will be causcd, the disobedience to the command to disperse constitutes the offence hereby made punishable. If two persons are quarrelling in a public place, an assembly of five or more composed of these persons and of bystanders, appears one likely not only to cause obstruction. bnt a disturbance of the public peace ; and knowingly to join or continue in such an assembly alter the order to disperse, may be an offence—*Morgan and Macpherson.* Playing music before a mosque in difiance of an order to disperse by a Police Sub-Inspector is an offence under this section. 22 A. L. J. 1049=1925 All. 165. On a charge under this section it is not sufficient to establish merely that in the opinion of the Magistrate, who ordered the particular assembly to disperse, such assembly was likely to cause a disturbance of the public peace. It is necessary to establish by evidence to the satisfaction of the Court that the assembly was in fact likely to cause disturbance. 3 Lah. L. J. 529=69 Ind. Cas. 373=23 Cr. L. J. 5. Common object of assembly determines whether it is unlawful. 141 Ind. Cas. 570=15 N. L. J. 90=34 Cr. L. J. 224=A. I. R. 1933. Nag. 383. Where requisite condition of s. 127 Cr. Pro. Code is wanting command is not lawful. A. I R. 1933 Nag. 277=1933 Cr. C. 1064=34 Cr. L. J. 705=144 Iud Cas. 232. This section has not application to cases where the assembly was unlawful from its inception or had become so before the command for disposal was given. 15 Lah. 610=150 Ind. Cas, 24=35 Cr. L. J. 5094=36 P. L. R. 126=A. I. R. 1934 Lah. 243.

Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

Assaulting or obstructing public servant when suppressing riot, &c.

152. Whoever assaults or threatens to assault, or obstructs, or attempts to obstruct, any public servant in the discharge of this duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use, criminal force to such public servant, shall be punished imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Scope.—This section contemplates an assault or obstruction to some particular public servant. 19 C. 105. The offence of assault is defined by section 351. Knowledge of the fact that the person obstructed is a public servant although it is not expressed in the definition, no doubt forms part of this offence.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by a Court of Session, Presidency Magistrate and Magistrate of the first class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows ;—That you on or about the day of at assaulted [(or threatend to assault), (or obstructed) (or attempted to obstruct).....A. B a public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly (or to suppress a riot or affray)] [or used (or threatend) (or attempted to use criminal force to such public servant) and thereby committed an offence punishable under s. 152 of the Indian Penal Code and within my cognizance (or cognizance of Court of Session).

And I hereby direct that you be tried by the said Court on the said charge.

153. Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either discription for a term which may extend to one year, or with fine, or with both ; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Wantonly giving provocation, with intent to cause riot—

if rioting be committed ;

if not committed.

Notes.—The provocation to riot must be given by an "illegal" act (in section 43). Not only must the provocation be by an illegal act, but it must be given wantonly and without excuse ; and moreover, there must be the intention to cause, or guilty knowledge of the probable consequences. These ingredients being present, the punishment varies according as the probable consequences actually ensure or not.—*Morgan and Macpherson.* This section involves some acts of origination of riot by doing illegal act. 143 Ind. Cas. 273=35 Bom. L. R. 240=1933 Cr. C. 474=57 B. 329=34 Cr. L. J. 559=A. I. R. 1933 Bom. 162.

The mere chance of provocation by an illegal act is sufficient to justify the conviction under this section. This section moreover, requires that the provocation given by the commission of an illegal act must be given malignantly and wantonly. "Malignantly" implies a short of general malice. 18 B. 758. As regards the meaning of "wantonly" *Vide*, 29 A. 569=A. W. N. 1907. 171=6 Cr. L. J. 14. An offence under this section is not committed when the accused did not act wantonly or malignantly. 26 M. 554=1 Weir, 260=13 M. L. J. 171. The offence under this section requires that the offender should do something illegal, by doing which he malignantly or wantonly gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed. A. W. N. 1885, 23. Killing a cow not in the presence of any Hindu is not an offence under this section. 17 A. L. J. 200. Provocation can be given by a writer of a pamphlet. 22 Bom. L. R. 166. The throwing of bricks at a temple is not an offence, nor is prohibited by law ; and therefore a person throwing bricks at a temple is not guilty under s. 153 of the Indian Penal Code. A. I. R. 1928 All. 745. Where the killing of a cow was not done in the presence of any Hindu whose religious feelings could be wounded it would not amount to giving provocation if on subsequently hearing it the religious feelings of certain Hindus were very much hurt. 17 A. L. J. 200=49 Ind. Cas. 775=20 Cr. L. J. 216.

Procedure.—Cognizable—Warrant—Bailable—Not Compoundable—Triable by any Magistrate. If rioting is not committed summons should be issued instead of warrant.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you—on or about the—day of—at—, maligantly (or wantonly) by doing an act, which was illegal, gave provocation to—, intending (or knowing is to be likely) that such provocation would cause the offence of rioting to be committed, and thereby committed an offence punishable under s. 153 of the Indian Penal Code, and within my cognizance.

And I do hereby direct that you be tried on the said charge.

153A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects shall be punished with imprisonment which may extend to two years, or with fine or with both.

Promoting enmity between classes.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

Amendment—This section has been inserted by Act 4 of 1898.

Object.—"It appears to us, that the offence of stirring up class hatred differs in many important respects from the offence of sedition against the state. It comes more appropriately in the Chapter relating to offences against public tranquility. The offence only affects the Government or the state indirectly, and the essence of the offence is that it predisposes classes of the people to action which may disturb the public tranquility, The fact that this offence is punishable in England as seditious libel is probably due to historical causes, and has nothing to do with logical arrangement."—*Statement of Objects and Reasons.*

Notes.—No subject of the Crown is entitled to write anything exciting the feeling of one class of His Majesty's subjects against another class. 10 Bom. L. R. 848. The Hindu Pandit who had ridiculed the Prophet Muhammad in his book has committed an offence under this secton. 25 A. L. J. 846=104 Ind. Cas. 225=28 Cr. L. J. 785=A. I. R. 1927 All. 649 (F. B.); but see 103 Ind. Cas. 769=28 Cr. L. J. 721=A. I. R. 1927 Lah. 590. It is settled law that this section does not mean that any person who publishes words that have a tendency to promote class hatred can be convicted under that section. 28 P. L. R. 497=104 Ind. Cas. 234=28 Cr. L. J. 794=A. I. R. 1927 Lah. 594. The essence of the offence is malicious intention. In the absence of proof of malicious intention, honesty of purpose may be safely inferred. 31 C. W. N. 168=99 Ind. Cas. 941=28 28 Cr. L. J. 205=45 C. L. J. 432=A. I. R. 1927 Cal. 215. Intention of writer, policy of the journal, class of readers and state of feeling of communities at the time should be considered. Intention may also be gathered from external circumstances. A. I. R. 1927 Lah. 594=28 P. L. R. 497=28 Cr. L. J. 794=104 Ind. Cas. 234. Comment on a religious or its founder with a view to induce persons to change religion may be permitted. But a scurrilous vituperative attack on a religion *prima facie* falls under the section. A. I. R. 1927 Lah. 594=28 P. L. R. 497=28 Cr L. J. 794=104 Ind. Cas. 234. A Hindu who ridicules the Mahomedan prophet in the prosecution of a propaganda is punishable. A. I. R. 1927 All. 654=25 A. L. J. 846=28 Cr. L. J. 785=104 Ind. Cas. 225. Editor of a news paper publishing honestly a matter of public interest should not be made liable. A. I. R. 1927 Cal. 215=31 C. W. N. 169=28 Cr. L. J. 205=45 C. L. J. 432=99 Ind. Cas. 941. Explanation cannot be used to enlarge the provisions of the substantive section. A. I. R. 1926 Cal. 1133=54 C. 59=44 C. L. J. 172=30 C. W. N. 953=27 Cr. L. J. 1154=97 Ind. Cas. 738. Liberty to criticise religion does not include licence to use vile and abusive language. A. I. R. 1927 All. 649=49 All. 856; see also 22 Cr. L. J. 513=22 Bom. L. R. 166=62 Ind. Cas. 401. Intent to incite hatred or enimity is necessary. 6 L. L. J. 162=25 Cr. L. J. 976=A. I. R. 1924 Lah. 505=81 Ind. cas. 624; see also 43 C. 591=20 C. W. N. 199=17 Cr. L. J. 254=23 C. L. J. 105=34 Ind. Cas. 974. Truth of language is immaterial. A. I. R. 1927 All. All. 649=49 A. 850. The same article may be punishable under s. 124 A. and s. 153 A. A. I. R. 1925 Sind. 59=17 S. L. R. 341=25 Cr. L. J. 614=81 Ind. Cas. 102. The moral turpitude is always involved in the commission of an act, which comes within s. 153 A. A. I. R. 1922 All. 140 (F. B.)=44 A. 352=20 A. L. J. 200=23 Cr. L. J. 128=65 Ind. Cas. 560. Attack against police as a whole can be punished under this section. 149 Ind. Cas. 370=35 Cr. L. J. 966=35 P. L. R 40=A. I. R. 1934 Lah. 219=1934 Cr. C. 450. Word "capitalist" does not denote definite class within meaning of s. 153 A. 141 Ind. Cas. 780=34 Bom. L. R. 1642=1933 Cr. C. 182=34 Cr. L. J. 231=57 B. 253=A. I. R. 1933 Bom. 65. Criticism of ill-defined group cannot lead to breach of tranquilty. *Ibid.* Criticism of British Imperialism does not promote class hatred. *Ibid.* Interpretation of speech in question of law and High Court can interfere in revision. 139 Ind. Cas. 696=33 Cr. L. J. 831=33 P. L. R. 911=A. I. R. 1932 Lah. 559. Where a drama was written by a Hindu at a time

of great public excitement and it appeared that the writer may have without any malicious intention and honestly thought that he should express himself in the manner he did with a view to remove causes which were promoting hatred. *Held*, that reading the article as a whole there were not sufficient materials to convict the accused under s. 159, at any rate that there was much in the drama which entitled the court to give the benefit of the doubt to the accused. 46 C. L. J. 154=105 Ind. Cas. 225=28 Cr. L. J. 897=A. I. R. 1927 Cal. 747. Under this section intention is an element of the offence. 93 Ind. Cas. 1052=27 P. L. R. 207=27 Cr. L. J. 556 (2). To prove such intention, although external evidence is not excluded, the internal evidence will be decisive in deciding the question. 30 C. W. N. 953=44 C. L. J. 172=97 Ind. Cas. 738=27 Cr. L. J. 1154. Court has to look at whole speech to gather its effect. 141 Ind Cas. 780=34 Bom. L. R. 1642=1933 Cr. C. 182=34 Cr. L. J. 331=57 B. 253=A. I. R. 1933 Bom. 65. Facts and circumstances of time are admissible as evidence of intention. A. I. R. 1932 Lah. 99 (S. B.)=33 P. L. R. 431=34 Cr. L. J. 473=1932 Cr. C. 119. If the words used naturally, clearly and indubitably have the tendency to incite one community against another then the intention to do it should be inferred. A. I. R. 1929 Cal. 309. Although the internal evidence of the words published will generally be decisive on the question of intention they are never more than evidences of intention and it is the real intention of the accused that is the test. A. I. R. 1929 Cal, 309. Where the article complained of contains no statement, expression or comment which is likely to incite Hindus against Mahomedans or to stir up feelings of hatred and enmity between the two communities a conviction under section 153 A. and 505 I. P. C. cannot be upheld. 6 Lah. L. J. 162. Where an article is printed in a periodical exclusively subscribed by Hindus under signature of correspondent which had the effect of causing excitement amongst Mahomedans, the editor is held liable and responsible under section 153 A and 295 A irrespective of the fact how it came to the notice of the Mahomedans. A. I. R. 1930 Lah. 350. Burden of proof shifts on accused when he asserts that natural inference does not hold good in his case. A. I. R. 1930 Bom. 177. Section 153 A is not more ancillary to section 153 than section 124 A to section 124 I. P. Code. where there is an intention, and something is done with the object of effecting the result intended, there is an attempt. Whether the feelings which exist are of indifference or of friendship or of enmity or hatred, anything, which tends to convert the two former into enmity or hatred, or to increase the enmity or hatred, promotes feelings of enmity or hatred. 14 P. W. R. 1907 Cr.=5 Cr. L. J. 439=10 P. R. 1907 Cr.

Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first class.

Charge.—I (*name and office of Magistrate, etc,*) hereby charge you (*name of the accused*) as follows :—

That you, on or about the—day of—,at—,by speaking or (writing) the word—(or by signs, or visible representations), promoted (or attempted to promote) feelings of enmity (or hatred) between (*specify the classes*) of His Majesty's subjects and thereby committed an offence punishable under s. 153 A of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the same charge.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees.

Owner or occupier of land on which an unlawful assembly is held.

If he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

and do not in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Object.—The object of the section is to impress upon the land-owners their responsibilities and obligations in respect of riots or unlawful assemblies committed

under the circumstances mentioned in the section. 7 C. W. N. 245. Very greatest caution is required before proceedings are started under this section. A. I. R. 1924 Cal. 1018=39 C. L. J. 236=25 Cr. L. J. 1258.

Facts to be proved.—To sustain a conviction under this section the facts must be proved :—(1) That the riot took place on the land belonging to the accused ; (2) that he, knowing that such offence is being or has been committed or having reason to believe that it is likely to be committed, did not give the earliest notice of it to the chief officer of the nearest police station ; (3) in cases where he had reason to believe that it was about to be committed that he did not use all lawful means in his power to prevent it ; and that (4) in the event of its taking place, he did not use all lawful means in his power to disperse or suppress the riot or unlawful assembly. 3 Cr. L.J. 27. The responsibility under this section must depend upon the fact of the person who caused the riot being himself the person who has an interest in the land or an agent or manager of such person. 16 C.W.N. 768=14 Ind. Cas. 317=13 Cr.L.J. 221. It is a question for the Crown to determine whether a prosecution under s. 154 or s. 155, Penal Code, should be discontinued in view of the fact that the riots which gave rise to it occurred a long while ago. 7 C. W. N. 301. In order to render the owner liable under s. 154, I. P. Code, the knowledge of the owner that a riot was about to be comitted is immaterial. He is liable for the acts of commission and the acts of omission, not only of himself but of his agent or servant. That his manager, took an active part in the riot is sufficient to convict the owner. 12A. 550 ; see also 39 Cr. L. J. 236. 1 A. L. J. 747 (n) ; 8 O. C. 418 ; 28 C. 504. In order to establish an offence under s. 154, it is necessary to prove (1) that a riot took place, (2) that the accused is the owner of the land on which the riot took place, (3) that his agent or manager knew that the riot was about to be committed and (4) that knowing this the agent or manager did not use all lawful means to suppress the riot, or disperse the unlawful ssembly. In such cases, the Court must act upon proof and not on mere surmises. 4 C. W. N. 691 ; see also 8 O. C. 418=3 Cr. L. J. 27.

Knowledge of owner.—Knowledge on the part of the owner or occupier of the land of the acts or intentions of the agent is not an essential element of an offence under this section and he may be convicted under the section, though he may be in entire ignorance of the acts of his agent or manager. 28 C. 504 ; see also 2 Pat. L. J. 83 ; 20 C. W. N. 862 ; 39 C. L. J. 236=25 Cr. L. J. 1258=A. I. R. 1924 Cal. 1018. But a non-resident partner or co-sharer cannot be convicted in addition to the resident sharer under ss. 154, 155. 7 C. L. R. 289 ; 39 C. L. J. 236. Where there is no resident sharer, but only an agent or manager, the absentee owner might be liable under some circumstances. 7 C. L. R. 289.

Many duties of police are by law imposed on landholders. The present section apparently proceeds upon a presumption that, in addition to any such duty, the owner or occupier of land is cognizant in a peculiar way of the designs of those who assemble on his land, and is able not only to give the police notice, but also to prevent and to disperse and suppress the assembly. It seems that an absent and non-resident owner may be made liable under this section for the misconduct of his local agents. The difficulty of proving the complicity of land-holders and others in affrays and outrages connected with the occupation of land, committed by hired agents, probably rendered necessary the introduction into the code of the four following sections. It will be noticed that circumstances which are in truth only evidence (as reasonable grounds for presuming a guilty knowledge or connivance) of an offence, become in these sections part of the definition of an offence—*Morgan and Macpherson.*

Procedure—Not cognizable——Summons——Bailable——Not Compoundable ——Triable by Presidency Magistrate or Magistrate of the First-class.

Cearge.—I (*name and offence of Magistrate etc*) hereby charge you (*name of the accused*) as follows :—

That, on or about the day of , at , an unlawful assembly was held (or a riot was committed(upon certain land, situated at , belonging to (or in the occupation of) you, and that you (or C. D. your agent or manager) well knowing that the said unlawful assembly was being held on the said land, did not give the earliest information thereof in your (or his) power to the principal officer at the nearest police station, to wit E. F. at—and did not use all the lawful means in your (or his) power to prevent it (or disperse the said unlawful assembly) and that you thereby committed an offence punishable under s. 154 of the Indian Penal Code, and within my cognizance.

And I do hereby direct that you be tried on the said charge.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of person for whose benefit riot is committed.

such person shall punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Absentee co-owner.—An absentee co-sharer who takes an active part in the management of the property, is not liable to be convicted under this section when there are other co-sharers. 8 C. W. N. 908.

Person not having property in land nor claiming interest therein is not liable. 17 C. W. N. 1247=15 Cr. L. J. 191=22 Ind. Cas. 767. A landlord is not liable for sudden unpremediated riot. 3 W. R. 54.

Precedure.—Not cognizable———Warrant———Bailable———Not-compoudable———Triable by Presidency Magistrate or Magistrate of the Ist or 2nd class and may be tried summarily.

Charge.—I (*name and office of Magistrate, etc*) hereby charge you (*name of the accused*) as follows :—

That, you or about the day of , a riot was committed for your benefit (or on behalf of you) upon certain land to wit , belonging to (or in the occupation of) you (or in which you claim an interest) etc, and that you (or C. D. your agent or manager) well knowing that the riot would be committed on the said land, did not use all the lawful means in your (or his) power to prevent the said riot etc.

Principle.—The principle on which this and the following section proceed is to subject to fine, all persons in whose interest an affray is committed and the agents of such persons, unless it can be shewn that they did what they lawfully could do to prevent the offence. The subject of dispute whether land, water, fisheries, crops or other produce of land, markets, etc., or the right to use land, etc., must be one which the person charged under this section either owns, or occupies, or lays claim to, whether he has any lawful interest therein or not. To support the charge there must be proof of the riot, and of those circumstances which lead to the inference that it was committed in the interest (and therefore presumably, at the instigation) of the person charged. It is also essential to establish by direct, or presumptive proof a knowledge or reason for bilief that the offence would probably be committed. Usually, where the means of knowing are shown to exist, it will not be unreasonable to presume knowledge.

As to the proof of the matters mentioned, in the latter part of the section ("the use of all lawful means of prevention," etc), it is to be observed that in general the law supposes that every person acts legally, and does what he is required by law to do. If therefore a man is charged with omitting to do what the law enjoins, he who brings the charge must prove this omission. But there is another rule, which seems to be applicable here which requires that facts so peculiarly within the knowledge of a person that he can have little or no difficulty in being put to the proof of them shall be proved by him. Probably therefore the accused will be bound to undertake the proof of the measures employed by him, in order to exempt himself from liability to fine under this section.

The amount of fine to which the offender is, under this section, liable is unlimited. It will be borne in mind that in such cases, it is provided that the sum to which a fine may extend shall not be excessive (section 63)—*Morgan and Macpherson.*

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of agent of owner or occupier for whose benefit a riot is committed.

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Notes.—*Vide*, 10 C. 338.

Scope.—See the note to the preceding section. The agent or manager is here made punishable by fine under the like circumstances. The amount of fine is here also unlimited. These two sections contain the only instances throughout the Code in which fine unlimited is the sole punishment—*Morgan and Macpherson.*

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the 1st and 2nd class.

Charge.—*Vide*, S. 155.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such person have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Scope.—The mere collection and harbouring of any number, however small, of persons of the class there referred to, subjects the persons harbouring them, to punishment, if he knows the business for which they are, or are about to be, engaged. There must be proof that the persons harboured are employed, or about to be employed, for the purpose mentioned; and that they are received in some place of reception, (whether a house, out-house or other place) in the possession or charge of the accused person, or under his control :—as if he directs, or permits, his servants etc., to receive them into his house. A knowledge of the purpose for which the persons are or are about to be employed, must also be shown either by direct proof or otherwise. The mere fact of harbouring such persons, connected with circumstances showing that some right concerning adjacent land etc., is in violent dispute, would probably be sufficient presumtive evidence—*Morgan and Macpherson.* To support a conviction under section 157, it must be shown that for the purpose of an unlawful assembly, the accused had hired or engaged, or employed other persons. The mere fact that the accused's servants came from a district, where men having a well-known character as *lathials* reside, and that they had been in his service for some time before a riot took place, is not sufficient to support a conviction. 7 C. L. R. 289. Section 157 refers to unlawful assembly in future. 134 Ind. Cas. 1278=35 C. W. N. 720=58 C. 1401=1931 Cr. C. 992=33 Cr. L. J. 62=A. I. R. 1931 Cal. 62=A. I. R. 1931 Cal. 712. In the absence of the proof of hiring a conviction under s. 157 cannot be sustained. 131 Ind. Cas. 159=1931 Cr. C. 488=32 Cr. L. J. 664=1931 M. W. N. 326=A. I. R. 1931 Mad. 440. Volunteers engaged in preparing salt cannot be said to have been hired, engaged and employed by their leader. *Ibid.* Section 157 is of wider application than section 150. It provides for an occurrence that may happen and makes the harbouring, or receiving or assembly of persons, who are likely to be engaged in any unlawful assembly, an offence. Here also, as in section 150, the law contemplates the imminence of an unlawful assembly and the proof of facts which would go to constitute an unlawful assembly. 29 C. 214=6 C. W. N. 143.

Procedure.—Cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st and 2nd class.

Charge.—I (*name and office of Magistrate, etc.*), hereby charge you (*name of the accused*) as follows :—

That you....., on or about the.....day of....., at....., harboured [received or assembled) in the house (or premises) situated at.....in your occupation (or charge) or control] one X-Y knowing that he has been hired (engaged or employed or is about to be hired, engaged or employed) to join (or become member of) an unlawful

assembly, and that you thereby committed an offence under section 157 of the Indian Penal Code and under my cognizance.

And I hereby direct that you be tried on the said charge.

Being hired to take part in an unlawful assembly or riot.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both ;

or to go armed.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon, or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Procedure.—Not cognizable—Summons—Bailable— Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class. If the offence falls under the second part warrant instead of summons will be issued.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you....., on or about the.....day of....., at....., were engaged (or hired) by or offered (or attempted to be hired, (or engaged), to do or assist in doing any of the acts specified in section 141 to wit———and thereby committed an offence punishable under section 158 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Affray.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Evidence.—The Court does not expect in an affray to find specific evidence as to acts of each fighter. General evidence as to the accused taking part in it will be sufficient. 21 C. 392. A *chabutra* is not a public place. 17 A. 166.

Scope.—An assault may be committed in private where it cannot cause general terror or alarm ; it is therefore treated specially as an offence against the person of an individual. (see sections 350, 351). But an affray is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance. If a number of persons meet together at a fair or market, or upon any other lawful or innocent occassion, and there arises a sudden quarrel or fighting, the design of the meeting being lawful, and the breach of the peace happening without any previous intention,—only the persons who actually engage in the fight are guilty of an affray ; the other persons present cannot be charged with this or any other offence under the present chapter. Mere quarrelsome words or gestures used by two or more persons, or preparations made by them for fighting, will not constitute an affray, To support a charge of affray there must be proof of the fighting and that it was in or adjacent to a public road, street, etc., or in some other public place.—*Morgan and Macpherson.* Attack by one person and defence by another person is affray. A. I. R. 1931 All. 8=1931 A. L. J. 891=32 Cr. L. J. 1269=53A. 229 ; see also 31 C. 542 ; 39 M. 886 ; 13 N. L. R. 68 ; 40 M. 556. For affray there must be two or more persons. 65 M. L. J. 723=1933 M. W. N. 718=1933 M. Cr. C. 248=38 M. L. W. 760=A. I. R. 1933 Mad. 843. The gist of the offence consists in the terror it causes to the public. A. I. R. 1931 All. 8=1931 Cr. C. 8=53A. 229=32 Cr. L. J. 1269. This section postulates commission of definite assault or breach of peace. A. I. R. 1928 Lah. 813=30 Cr. L. J. 571=116 Ind. Cas. 180. Prosecution should not lodge a complaint simply for exchanging abuse in a public street. A. I. R. 1926 Lah. 412=8 L. L. J. 82=27 Cr. L. J. 696=27 P. L. R. 176=94 Ind. Cas. 888.

Punishment for committing affray.

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.

Scope.—Conviction under this section cannot stand without proof of disturbance of public peace. A. W. N. 1883, 197.

A public place is a place where the public can go. 31 C. 549 ; 40 M. 556 ; 13 N. L. R. 68 ; 39 M. 386 ; 15 Q. B. D. 63, 67.

The maximum substantive sentence awardable under s. 160 being only one month, the maximum term of imprisonment in default of payment of fine under s. 65, should be one-fourth of the maximum awardable for the offence. U. B. R. (1872-1892), 333. This section postulates commission of definite assault or breach of peace. A. I. R. 1928 Lah. 813. Where the scene of occurence was an unfenced and open small piece of ground merely separated from public road by a small lane which was free of access to and readily moved over by the public passing it by, *held*, that the affray was in a public place and that the conviction under s. 163 I. P. Code was valid in law. 6 Mys. L. J 579. Where there is no evidence of fighting, an offence under this section has not been committed. A. I. R. 1928. Lah. 813. Offences under ss. 147 and 160 of the Penal Code respectively are obviously *ejusdem generis* consequently there is no impropriety whatever in convicting the accused who are charged with offence under s. 147 with offence under s. 160. 99 Ind. Cas. 861=28 Cr. L. J. 189=A. I. R. 1927 Nag. 163. In a case in which the accused was charged under section 160 I. P. C. the Magistrate gave judgment in his own handwriting but forgot to sign and date it. *Held*, that the omission amounted to a mere irregularity and did not effect the merits of the case. 47 A. 284=23 A. L. J. 8=86 Ind. Cas. 64=26 Cr. L. J. 688. The offence of affray is not a component part of the offence of rioting. Its essence is the disturbance to the public peace, caused by two or more persons fighting in a public place. A fight need not be in a public place, it must be by five or more persons and there need not be any fighting. 1 Mys. L. J. 147. To constitute an affray under this section there must be a fighting in a public place and consequent disturbance of public peace. 1 Weir, 71. Mere exchange of words without fighting, in consequence of an obstruction in a public way, caused to some of the accused, would not amount to an affray. *Ibid* : 20 Cr. L. J. 571 ; 29 Bom. L. R. 1478 ; 9 Bom. Cr. C. 160 ; 31 Bom. L. R. 922 ; 1 Hale 456.

In an affray specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it, and persons who, as in this case, punted the boats on which the fight took place, were held to be just as blame-worthy as men who struck blows. 21 C. 393.

An affray differs from riot in that it may be committed by two persons. *Russ.* Cr. 427. Public place means a street or highway, or other place where the public may pass or be as of right. *R* v. *O' Neill*, Ir. Rep. 6 C. L. 1. A Hindu temple is a public place. 40 M. 556. So also the premises of a harbour. 39 M. 486. A place far away from a public place is a private place, *R.* v. *Hunt*, 1 Cox. 177.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate also triable summarily.

Charge—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you—on or about the—day of—at—, committed the offence of affray, by fighting with each other (or with—) in—which is a public place and disturbed the public peace, and thereby committed an offence punishable under s. 160 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Conviction when to be set aside—Where accused is prejudiced by not having notice of facts which constitute ingredients of offence his conviction of such offence must be set aside. 65 M. L. J. 723=1133 M. W. N. 718=1933 M. Cr. C. 248=38 M. L. W. 760=A. I. R. 1933 Mad. 843.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

Public servant taking gratification other than legal remuneration in respect of an official act.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing, or forbearing to do any official act, or for showing, or forbearing to show, in the exercise of his official functions favour

or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, or with any public servant, as such' shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations :—"Expecting to be a public servant,"—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification".—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*) A, a munsiff, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b*) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(*c*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for the service. A has committed the offence defined in the section.

Scope.—The above section requires proof that an official has obtained as a motive or reward for official conduct, an illegal gratification for himself or another. That other may or may not be an official, and therefore, may be wholly unconnected with the official conduct. The conduct which, is contemplated as the consideration for the bribe must be that of the official obtaining it. To obtain a bribe as a motive or reward for another's conduct, does not fall within the section, though it may be an abetment of that offence or cheating. The performance of the act which is consideration of the bribe is not essential. But it is essential that the bribe should be obtained "as a motive or reward." That phrase evidently means "on the understanding that the bribe is given in consideration of some official act or conduct." Such an understanding need not be proved by explicit evidence of any precise agreement. It may be inferred from circumstances. 31 B. 336 ; see also I. A. 530. This section is not confined to cases in which the illegal gratification is taken for doing an act but also applies to a case where a public servant accepts the illegal gratification as a motive or reward for rendering or attempting to render any service to any one with any public servant as such. 39 M. L. T. 615=105 Ind. Cas. 829=53 M. L. J. 723. The allegation that a police officer helped a candidate for election to the Legtslative Council as he has got a "silver tonic" does not amount to a charge of bribery as it is not an official act. 7 Pat. L. T. 608=97 Ind. Cas. 354. The gist of the offence is a public servant taking gratification other than legal remuneration of an official act. 8 N. L. J. 138=89 Ind. Cas. 1035=26 Cr. L. J. 1467. It is necessary to show that the offence, the instigation to which is the subject of the charge, has been committed. 1 Ind. Jur. N. S. 43. The plain words of s. 161 exclude the defence that the benefit

bargained for was to go to some body else, and also exclude the notion that an officer is protected if he agrees to let his official acts be swayed by the motive of accepting a gratification to be used professedly for advancing some public, not private object, such as charity, science or religion. 21 B. 517. Where a person made use of his official position and claimed and obtained money as a reward for rendering services, he is guilty under this section. Rat. Un. Cr. C. 955 ; see also 3 W. R. Cr. 10 ; A. W. N. 1883, 179. A Civil Court peon asking a party in a suit to pay him *dusturi*, if he wished him to serve sommons on a witness without an identifier, is guilty of an offence of attempting to obtain an illegal gratification within section 161, Penal Code. 32 C. 292=9 C. W. N. 547=2 Cr. L. J. 204. A person giving a gratification to a public servant in consideration of screening him by not proceeding against him for an offence is not guilty of an offence under sections 161, 109 I. P. Code, but is guilty of an offence under section 214. 13 P. R. 1881 Cr. The evidence of the person who bribes is admissible against the person bribed. 3 W. R. Cr. 19. On a conviction for taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. 16 W. R. Cr. 74. A public servant accepting a donation to a charity in which he is interested, as a motive for showing favour to the donor in his official acts, is guilty. Gratification is not restricted to pecuniary gratification. A. I. R. 1923 Bom. 44=24 Bom. L. R. 534=23 Cr. L. J. 466=67 Ind. Cas. 818. Public servant must be shown to have power to show favour before he can be convicted. A. I. R. 1921 Cal. 344=33 C. L. J. 379=23 Cr. L. J. 1 =64 Ind. Cas. 369. Acknowledgment of receipt of gratification is to be proved. 18 Cr. L. 317=15 A. L. J. 127=38 Ind. Cas. 429. Chaprasi receiving money for payment to clerk of Court to register name is guilty of the offence. 18 Cr. L. J. 536=9 P. R. 1917 Cr.=39 Ind. Cas. 680. Gratification need not actually be produced. It need not be for doing any particular act but may be for rendering any service as such public servant. The principle of the illustration applies as much to the other purposes set out in s. 161 as to doing or forbearing to do any official act. A. I. R. 1927 Mad. 1011=51 M. 86=53 M. L. J. 723=28 Cr. L. J. 1005=105 Ind. Cas. 829,

If a public servant erroneously represents that the particular act is within his official duty and obtains gratification by inducing such an erroneous belief in another person, he would be guilty under section 161 of the Indian Penal Code even though the act is not in fact within the exercise of his duty. A. I. R. 1928 All. 752. No favour need be shown to a briber as a fact 27 Bom. L. R. 129=86 Ind. Cas. 72=26 Cr. L. J. 696. For conviction under this section, the illegal gratification must be proved to have been received with one of the intents mentioned in the section. 89 Ind. Cas. 455=26 Cr. L. J. 1367 ; 47 M. L. J. 662=1924 Mad. 851 ; 26 Bom. L. R. 267 ; 45 Ind. Cas. 150. It is an absolute absurdity to admit solicitation of a bribe by a third person, without the privity or the connivance of the public servant concerned as an excuse for giving bribe to such public servant. U. B. R. (1892—1896), Vol I. 158. Where a putwaree took grain as consideration for showing favour to the giver in the discharge of his functions as putwaree, his conduct came under s. 161 rather than under section 165. 2 N. W. P, 148. Where a sum of money was paid, on account of Government, into the Bank of Bengal (which carried on the treasury business of the Government), and a podder of the Bank took a reward for his trouble, he would not be convicted under s. 161 of the Penal code, as he was the servant of the Bank and took the money on its behalf, and not "on behalf of the Government." 4 C. 376 Where a public servant was charged with the offence of receiving illegal gratification partly on one day and partly on another day for the same purpose, *held*, that the offence was a continuous one, and that the separate convictions for offences under ss, 161 and 165 I. P. Code were bad in law. 5 C. W. N. 332. As regards what amounts to an attempt to obtain bribe, *vide*, 2 A. 253. In a case where a public servant allowed the gratification to be delivered, but not in order to its acceptance, but merely for the purpose of having complete evidence of the transaction, it was *held* that, as the intention of the officer was not criminal it was no offence under section 110 of the Penal Code, but that it fell under s. 116. U. B. R. (1892-1896) Vol. I. 154' Conclusive evidence is required to establish a charge of bribe against a public servant or of his having committed an offence in discharge of his public duties. 26 P. W. R. 1911 Cr.=12 Cr. L. J. 485=12 Ind. Cas. 93. Where a village headman, finding certain persons getting cocks to fight near a public road, threatened them with a prosecution and subsequently took money as a consideration for not prosecuting them section 160 of the Penal Code was *held* inapplicable and the offence fell under section 384 only. 14 Cr. L. J. 413=20 Ind. Cas. 237=6 Bur. L. T. 92.

A person who gives bribes is an accomplice of the person who receives them; and while it is usually unsafe to convict public servants on the uncorroborated evidence of persons who say that they have given bribes, the question as to the amount of corroboration depends on the circumstances of each case. 26 Bom. 193=3 Bom. L. R. 694.

Where a head constable demanded a bribe of Rs 150 and the bribe was paid in two instalments, *held* that this was only one transaction and there could be only one conviction. A. W. N. 1888, 184. An offence under this section is committed when the doctor of a hospital is offered bribe. A. I. R. 1930 Mad. 671. Illustration (a) to s. 116 is only an example of abetment of an offence under section 161. There are many other ways of instigating a public servant to commit an offence under s. 161 besides by means of a direct offer of a bribe. 1923 Bom. 44=24 Bom. L. R. 534=67 Ind. Cas. 818; 9 L. B. R. 52. It is not enough for a conviction under section 161, Indian Penal Code that the accused merely took certain sum of money, but it must be proved that he took the amount as a motive or reward for any of the purposes mentioned in the section. 21 C. W. N. 552; see also 9 P. R. 1917 Cr.

A person who instigates another to offer bribe to a public servant is guilty of abetment. A. I. R. 1934 Pesh. 110=1934 Cr. C. 1315=152 Ind. Cas. 890. Persons negotiating bribe or arranging for its payment are accomplices. 34 P. L. R. 836; see also A. I. R. 1929 Nag. 215=30 Cr. L. J. 311=1929 Cr. C. 110=114 Ind. Cas. 457; A. I. R. 1925 Lah. 401=6 Lah. 98=26 P. L. R. 263=26 Cr. L. J. 1241=88 Ind. Cas. 857. Mere knowledge that a bribe was to be given could not make a person a participator in the giving of the bribe. A. I. R. 1929 Bom. 296=53 B. 479=31 Bom. L. R. 545=31 Cr. L. J. 65=120 Ind. Cas. 340. An offer to pay an illegal gratification is an attempt to bribe. A. I. R. 1925 Pat. 48=3 Pat. 647=26 Cr. L. J. 119; see also A. I. R. 1923 Bom. 44=24 Bom. L. R. 534=23 Cr. L. J. 466=67 Ind. Cas. 818. Punishments in the case of offences by or relating to the public servants ought to be deterrent. A. I. R. 1925 Nag. 321=26 Cr. L. J. 821=86 Ind. Cas. 469. When sanction of Government is necassary, *vide* A. I. R. 1922 Mad. 62=42 M. L. J. 139=23 Cr. L. J. 148=65 Ind. Cas. 612; see also A. I. R. 1926 All. 271=48 A. 264=24 A. L. J. 230=27 Cr. L. J. 345. Offences under ss. 161 and 384 Penal Code are not entitled to protection under s. 80 (3). 25 S. L. R. 395=136 Ind. Cas. 513=1932 Cr. C. 114=33 Cr. L. J. 298=A. I. R. 1932 Sind. 28. Bribe given are not exonerated merely because Judge takes money without any guilty intention. A. I. R. 1933 All. 513=1933 Cr. C. 853=34 Cr. L. J. 623. Offer of bribe to public servant as motive for rendering any service is abetment of offence under s. 161 A. I. R. 1935 Sind 7. When the public servant to whom bribe is given is not in a position to show favour, no offence under s. 161 is committed. A. I. R. 1935 Pesh. 26.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by a Court of Session, Presidency Magistrate or Magistrate of the 1st Class.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows:—

That you—being a public servant in the—department directly accepted from (*state the name*), a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Penal Code, and within my cognizance (or of the Court of Session or High Court).

And I hereby direct that you be tried on the said charge.

N. B.—In a charge under this section it must be shown that the accused took the bribe as a motive for doing an official act. 47 M. L. J. 662=1924 M. W. N. 894.

Taking gratification in order by corrupt or illegal means to influence public servant.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act or in the exercise of the official function of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, "or with any member of the Senate of the Allahabad University," or with any public servant, as such, shall be punished

with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Amedment.—The words within quotations have been inserted Act 18 of 1887.

Notes.—Motive is essential to constitute an offence under this section. 8 Ind. Cas. 668=9 M. L. T. 137=1910 M. W. N. 776=11 Cr. L. J. 696. Taking gratification for himself and for other persons for inducing a public servant to do an official act is an offence. 63 P. L. R. 1918=18 P. W. R. 1918: 3 W. R. 19; 3 W. R. 69. Offering bribe to an inspector in the Finger Print Bureau in order to make him give favourable evidence in Court is an offence. 28 Cr. L. J. 717=69 Ind. Cas. 445.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

Charge.—I (*name and office of Magistrate etc.*,) hereby charge you (*name of accused*) of follows :—

That you——on or about the——day——at—— accepted (obtained or agreed to accept or attempt to obtain) from , for yourself (or for XY) a gratification of , as a motive (or reward) for inducing by corrupt or illegal means, A. B. a public servant, to wit to do or to forbear to do an official act to wit and thereby committed an offence under section 162 of the Indian Penal Code and within my cognizance (or the cognizance of the Court of Session or the High Court.)

And I hereby direct that you be tried by the said court on the said charge.

Taking gratification for exercise of personal influence with public servant.

168. Whoever accepts or obtains, or agrees to accept or attempts to to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, "or with any member of the Senate of the Allahabad University," or with any public servant, as such shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,——are not within this section, in as much as they do not exercise or profess to exercise personal influence.

Notes.—Offering of bribe to an inspector in the Finger Print Bureau, in order to make him give favourable evidence in Court is an offence under this section. 69 Ind. Cas. 445=23 Cr. L. J. 717.

Legislative Change.—The words within quotations have been inserted by Act of 1887.

Procedure.—Not Cognizable—Summons—Bailable—Not compoundable—Presidency Magistrate or Magistrate of 1st Class.

Punishment for abetment by public servant of offences defined in section 162 or 163.

164. Whoever, being a public servant, in respect of whom either of the offences definded in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant, B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year or with fine or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Scope.—The taking of presents by a public servant with a corrupt motive is a crime which ought to be made cognizable and punishable by the criminal courts. But the mere taking of presents by public servants when such presents are not corruptly taken is not a matter of punisment. The law, however, because of the difficulty of proving what is so little palpable as a corrupt motive, seizes upon one material circumstance of evidence of an offence, and enacts it as a difinition of offence itself.—*Morgan* and *Macpherson*.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you——being a public servant in the——Department of Government abetted the commission of the offence punishable under section 162 (or section 163) by—and thereby committed an offence punishable under s. 164 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session or of the High Court.)

And I do hereby direct that you be tried on the said charge.

Public servant obtaining valuable thing without consideration from person concerned in proceeding or buisness transac- by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be or, to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to, the person so concerned.

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month, A has obtained a valuable thing from Z without adequate consideration.

(*b*) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Notes.—Vide 6 C. 655 ; 8 W. R. Cr. 35 ; 1 A. 530 ; 5 C. W. N. 332.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by a presidency Magistrate or a Magistrate of the First or Second class.

Notes.—The proceeding or business must be one for transaction by the public servant,—or if not for transaction by himself personally. it must have some connection with the official functions of himself or of a public servant to whom he is subordinate These expressions seem wide enough to comprise every step connected with the progress of any proceeding or business through a court or public office, as well as those

which are conducted mainly by subordinate hands, as those which come under the immediate direction of the official superior,

Persons who stand in such a relative position to each other as is contemplated in this section, commit no offence within its term if they have *bona-fide* dealing together connecting the buying or selling of any thing. Such a practice as the sale or purchase by a public servant, even at a full and fair price. to or from a person who is a suitor, or has other business for transaction before him is not to be encouraged, even if it is to be tolerated. But this section provides no penalty for any such case. Its provisions are applicable only where a valuable thing is accepted or obtained "without consideration" ; or for a consideration which the public servant knows to be inadequate.—*Morgan and Macpherson.*

Public servant disobeying law, with intent to cause injury to any person.

166. Whoever, being a public servant, knowingly disobeys, any direction of the law so as to the way in which he is to conduct himself as such public servant, intending to cause or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Scope.—The conduct of many classes of public servants in the discharge of their official duties is regulated not merely by orders received directly from their superiors, but by laws, which prescribe the course of proceeding to be followed. Such laws, whether they relate to judicial or to other proceedings, necessarily give a certain latitude of discretion to those whom they are intended to guide. "Any direction of law" indicates that the direction may be given by a written law, or it may be a mandate proceeding from a competent authority which the public servant is bound by law to obey,—— as a writ or order for the liberation of a person from prison.

The offence hereby made punishable consists, not in an inadvertent or even careless, but in a corrupt departure from the direction of the law. The officer "knowingly disobeys" in order to cause "injury," i. e. illegal harm to any person in body, reputation or property, (see section 44.) There must be proof of such facts as raise an inference of wilful disobedience, coupled with the guilty knowledge or intention to injure. A public servant would always be presumed to know the law by which his conduct should be guided. But it would of course be competent to him to show in mitigation or excuse, that he acted in obedience to orders of his official superiors and without any intent to injure—*Morgan and Macpherson.*

Notes.—To satisfy the requirments of this section there must be a wilful disobedience of an express direction of law ; a disobedience to an order is not sufficient, even though that order may be one that is given under a provision of law. Rat. Un. C. C. 764.

Where a peon, who entrusted with a notice for service on the complainant, and whose duty was merely to require the signature of the complainant to an acknowledgment of the service of notice, represented the notice to be a warrant and actually arrested the complainant under colour of the alleged warrant, *held* that the peon was rightly convicted under s. 166. 7 M. L. T. 429=6 Ind. Cas. 773=11 Cr. L. J. 400=20. M. L. J. 568.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by a Presidency Magistrate or Magistrate of the First or Second class.

Public servant framing an incorrect document with intent to cause injury.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished

with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Scope.—The intention of knowledge is the essence of the offence. Errors or carelessness or ignorance are not made punishable as offences, even though they may occur in important parts of document. It must be proved, that the accused person is a public servant charged with the preparation, etc,, of the document (proof, that he usually has the preparation in fact will in the first instance be sufficient)——that the document is incorrect (this knowledge or belief of this will be presumed until the contrary is proved by him)———and that he had the knowledge or intention to cause injury. *Morgan and Macpherson.*

An Amin, who is directed to attach the movable property in the judgment debtor's possession by a warrant of attachment is, by Form No. 136 in the Fourth Schedule to the Civil Procedure Code, bound to return the warrant within a certain date with an endorsement certifying the date and the manner in which it has been executed or why it has not been executed. 1 Weir, 74. A village *kernan* who furnishes a false information regarding application for vacant Government lands is guilty of an offence under this section. 1 Win. 108.

Notes.—The offence under s. 167 includes offence under ss. 467 and 471. Conviction under both is illegal. A. I. R. 1929 Oudh. 615=3 O. W. N. 760=13 O. L. J. 817=28 Cr. L. J. 90=99 Ind. Cas. 122. In case of tampering with official records and issuing false copies, deterrent punishment is necessary. A. I. R. 1926 All. 719=28 Cr. L. J. 31=99 Ind. Cas. 63.

Procedure.—Not cognizable——Summons——Bailable——Not compoundable—Triable by a Court of Session——, Presidency Magistrate or Magistrate of the First class.

Charge—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at being a public servant to wit and being such public servant, charged with the preparation (or translation) of the document relating to and dated , (framed or translated) the aforesaid document in a manner which you knew (or believed) to be incorrect intending thereby to cause (or knowing it to be likely that you might thereby cause) injury to and that you thereby committed an offence punishable under s, 167 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried by the said Court on the said charge.

Public servant unlawfully engaging in trade.

168. Whoever, being public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.

Scope.—The obligation not to trade to which this section refers, is that which arises from some prohibition which has the force of law, or by, which a person is "legally bound" (see section 43). A person engages in trade who habitually buys and sells with a view to profit. The expression, however, may be intended to bear a wider meaning here, and it will be open for the Courts to decide what is included in the term. It is considered inexpedient to permit Government servants to engage in pursuits by which their time and attention would be diverted from their proper duties. Accordingly no officer so long as he remains in the actual service of the Government, is permitted to acquire and hold lands for agricultural purposes in any part of India, and there may be other similar or more extensive prohibitions binding on all public servants. But disobedience to the orders of Government in this matter is not, it seems, to be accounted an offence punishable by this section. The present provision applies to the punishment of persons who are prohibited by law from engaging in trade. The section can scarcely be deemed to apply where the prohibition is by contract or agreement between the employer and the employed. There should be proof of the particular prohibition which is applicable ; and of the trading, that is the buying and selling as a course of business—*Morgan and Macpherson.*

Notes.—The word "trade" in this section does not include lending money at interest. 147 P. L. R. 1903=22 P. R. 1903 Cr. ; but see (1911) N. L. R. 53. Member of Municipal Committee may be guilty under this section where such lending is prohibited by Municipal Law. 7 N. L. R. 53=10 Ind. Cas. 577=12 Cr. L. J. 281. See also A. I. R. 1933 All. 543=1933 Cr. C. 874. Police officer carrying on trade commits offence. 19 Cr. L. J. 152=43 Ind. Cas. 440. No previous sanction of Local

Government is required for an offence under s. 168. A. I. R. 1932 Nag. 133=140 Ind. Cas. 711=28 N. L. R. 156=1932 Cr. C. 669.

Procedure.—Not cognizable———Summons———Bailable———Not compoundable———Triable by Presidency Magistrate or Magistrate of the first class.

Charge.—I (*name and office of Magistrate*, etc.) hereby charge you (*name of accused*) as follows :—

That you on or about the day of , at being a public servant, to wit , and being as such public servant legally bound, not to engage in trade, did engage in trade, and thereby committed an offence punishable under s. 168 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the same charge.

Public servant unlawfully buying or bidding for property.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property either in his own name, or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both ; and the property, if purchased, shall be confiscated.

Scope.—Various laws prohibit officers holding sales of property and persons employed by or subordinate to them, from purchasing directly or indirectly any property at such sales. The precise terms of the law which creates the obligation not to bid should be referred, to ; for the prohibition may not be absolute, but only against purchasing at certain sales.—*Morgan and Macpherson.*

Notes.—16 W. R. 52 ; 8 B. L. R. App. 1.

Procedure.—Not cognizable———Summons———Bailable———Not compoundable———Triable by a Presidency Magistrate or Magistrate of the first class.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at being a public servant, namely in the Department and being legally bound as such public servant, not to purchase (or bid for) property, purchased (or bade) for that property, in your own name [(or in the name of)] (or jointly) (or in shares) and thereby committed an offence punishable under s. 169 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Personating a public servant.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

Comment.—To support a conviction under this section, it is not necessary that the act done or attempted to be done under colour of office should be such an act as might be legally done by the public servant personated. 27 A. 295. But mere personation is insufficient to justify conviction under this section. The section further requires that the offender should be shown to have attempted to do or to have done, in such assumed character, some act under colour of such office. The phrase "an act under colour of such office" points to acts, which could not have been done, without assuming official authority or responsibility, and would not connote acts of a ministerial or mechanical character, which might be done, without requiring the justification of office in the person doing them. 9 Bom. L. R. 222. See also 9 Bom. L. R. 706=6 Cr. L. J. 79. A petition writer is not a public servant. U. B. R. (1897—1901) Vol. 1, 265. The above section does not make the act of pretending to hold a particular office as a public servant punishable unless the person to such assumed character does or attempts to do any act under colour of such office. U. B. R. (1892—1896) Vol. I. 168.

Scope.—There are two distinct offences here punished. A may falsely pretend that he has been appointed Darogah of a certain place in the room of Z, deceased ; or he may falsely pretend to be Z, who is the Darogah of that place. In either case

if he does or attempts such an act as that described he commits an offence. An act is done "under colour" of the office, if it is an act having some relation to that which he pretends to hold. If it has no relation to the office, as if A, pretending to be a servant of government, to be travelling through a district obtains money, provisions, etc., the offence may amount to cheating under s. 145, but it is not punishable under the present section. The offence first described in this clause can, it seems, be committed only where there is in fact in such office in existence. If in consequence of a dispute as to the right to nominate to an office or to remove from an office, it is uncertain who legally fills the office——a person doing an official act in the assertion of what he honestly believes to be his lawful title to the office, would not be deemed within this section.—*Morgan and Macpherson.* Where the accused went to the platform of a railway station and obtained admission on the pretence that he was a C. I. D. officer without purchasing a ticket. *Held*, that his conviction under s. 107 I. P. Code, was wrong in as much as to sustain a conviction under that section there must be one which assumes official authority. The mere assumption of false character without any attempt to do an official act is not sufficient to bring the offender within the meaning of s. 170 I. P. C. 3 Pat. L. J. 389=1918 Pat. 287=4 Pat. L. W. 39=43 Ind. Cas. 785=Cr. L. J. 209. Trial of offences under ss. 170 and 175 together is illegal. 146 Ind. Cas. 195=1933 Cr. C. 662=A. I. R. 1933 Mad. 434. Where a C. I. D. constable pretend to police officer and as such officer demands production of *rapdasi* paper, *held*, that he was guilty under s. 170. A. I. R. 1935 Lah. 92.

Procedure.—Cognizable—Warrant—Bailable—Not-Compoundable—Triable by any Magistrate.

Charge.—I (*name and office of the Magistrate etc.*) hereby charge you (*name of the accused*) as follows : —

That you—on or about the—day of—at,—knowing, that you did not hold the office of—pretended to hold that office as a public servant, (or falsely personated—holding such office), and in such assumed character did (or attempted to do)—under colour of such office, and thereby committed an offence punishable under s. 170 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Wearing garb or carrying token used by public servant, fraudulent intent.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed that he belongs to that class of public servants, shall be punished with imprisonment of either description, for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both.

Scope.—A similar offence, wearing a soldier's dress, is defined and punished by section 140. It will be noticed that the offences complete, although no act is done or attempted in the assumed official character. The mere circumstance of wearing such a garb or using such a token with the intention or knowledge supposed, is sufficient.—*Morgan and Macpherson.*

Notes.—Where a person was found carrying a police jacket under his arm with the intent that it should be believed that he was a police constable, he may be convicted of an offence under this section. U. B. R. 1904 ; 1st Qr. Penal Code 3—1 Cr. L. J. 554. Where the accused had no intention to personate the offence cannot be committed. A. I. R. 1930 Mad. 246=1930 Cr. C. 199=58 M. L. J. 111=31 Cr. L. J. 329 =1930 M. W. N. 174=121 Ind. Cas. 763.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

Charge.—I (*name and office of the Magistrate etc.*), hereby charge you (*name of the accused*) as follows :—

That you on or about the day of at , not belonging to class of public servants, wore garb of such a class of public servants to wit (or carried a token to wit which is used by

class of public servents) with the intention that it may be believed, (or with the knowledge that it is likely to be believed) that you belong to that class of public servants and thereby committed and offence punishable under s. 121 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

CHAPTER IXA.*

OF OFFENCES RELATING TO ELECTIONS.

171A. For the purposes of this chapter—

Candidate; Electoral right defined.

(*a*) "Candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

(*b*) "Electorial right" means the right of a person to stand or not to stand as or to withdraw from being, a candidate or to vote or refrain from voting at an election.

Scope.—This chapter "firstly" seeks to make punishable under the ordinary penal law, bribery, undue influence and persuasion and certain other malpractices at election not only, to the legislative bodies, but also to membership of public authorities, where the law prescribes a method of election; and further, to debar persons guilty of such malpractices from holding positions of public responsibility for a specific period. Secondly, it proposes to empower the commissioners appointed under the rules to exercise judicial powers of investigation in respect of elections of legislative bodies in India. *Statement of Objects and Reasons.* "It has been suggested in some quarters that this Chapter should be confined to offences commited in connection with elections to legislative bodies constituted under the Government of India Act. After full consideration of the question, we feel there are distinct advantages at the present time when election is to play so important a part in the new public life of India, that the public conscience should be markedly drawn to the danger of corrupt practices in relation to the franchise, whether that franchise relates to legislative or other bodies. We felt it is of the greatest importance that this principle of the purity of the franchise should be insisted on in the general criminal law of the country and that it should not be left to local legislatures to deal with the broad principles enacted in this chapter. There will be sufficient scope for these bodies in elaborating and supplementing the law as proposed in the Bill for we recognise that it is by no means exhaustive." *Report of the Select Committee.*

171 B. (1) Whoever—

Bribery.

(*i*) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(*ii*) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery.

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

* Inserted by Act XXXIX of 1920.

Ntoes.—'Bribery' is defined primarily as the giving or acceptance of a gratification either as a motive or as a reward to any person, either to induce him to stand as, or not to stand as, or to withdraw from being, a candidate or to vote or restrain from voting at an election. It also includes offers or agreements to give or offers and attempts to procure a gatification for any person. "Gratification" is already explained in section 161 of the Penal Code and is not restricted to pecuniary gratifications or gratifications estimable in money.—*Statement of Objects and Reason, Vide, Gazette of India Part. V, p. 135 of 1920.*

171C. (1) Whoever voluntarily interferes or attemtps to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

Undue influence at elections.

(2) Without prejudice to the generality of the provisions of sub-section (1). whoever—

(*a*) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

Notes.—Preventing an election-candidate from coming out of his house and going to his voters for canvassing votes on the day previous to the election day does not amount to an offence under this section. 93 Ind. Cas. 692=27 P. L. R. 190=27 Cr. L. J. 468. Where a candidate remarkes that *Ghosh* woman need not vote, no offence under section 171 C has been committed. A. I. R. 1934 Mad. 276=146 Ind. Cas. 572.

171D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name ;

Personation at elections.

and whoever abets, procures or attempts to procure the voting by any person in any such way commits the offence of personation at an election.

Notes.—A candidate at a Municipal election was not aware that a voter was falsely personating another. He attested the voting paper but did not profess to do so on his personal knowledge and the voting officer also knew that the candidate was not doing it on his personal knowledge. *Held*, that the candidate was not guilty of intentionlly aiding the commission of an offence under this section. 24 A. L. J. 180=94 Ind. Cas. 897=27 Cr. L. J. 705=A. I. R. 1926 All. 237. "The definition of 'personation' closely follows the definition in section 24 of the Ballot Act, 1872, and covers both a person who attempts to vote in another person's name or in a fictitious name a voter who attempts to vote twice and any person who abets, procures or attempts to procure such voting"—*Statement of Objects and Reasons.*

In a Municipal electoral roll Mohammad Din, son of Faquir Mohommad, was recorded as a person entitled to vote. The accused Mohammad Din whose father's name was admittedly Abdulla asked for a Ballot papper in the name of Mohammad Din, son of Faquir Mohammad ; and when questioned he asserted more than once that his father's name was Faquir Mohammad. The contention that the officer who prepared the electoral roll intended to put the accused on the register and that Mohammad Din, son of Faquir Mohammad, had no existence at all, was not proved. *Held*, that the accused was guilty of personation. *Mohammad Din*, v. *Emperor*, 117 Ind. Cas. 883=30 Cr. L. J. 853=A. I. R. 1929 Lah. 52. When the accused had not the intention to personate the offence cannot be committed. A. I. R. 1930 Mad. 246=1930 Cr. C. 199=58 M. L. J. 111=31 Cr. L. J. 329=121 Ind. Cas. 763.

171E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both ;

Punishment for bribery.

Provided that bribery by treating shall be punished with fine only.

Explanation.—'Treating' means that form of bribery where the gratification consists in food, drink, entertainment or provision.

Vide—26 Cr. L. J. 362 = 47 All. 263=84 Ind. Cas. 714 ; 26 Cr. L. J. 445=85 Ind. Cas. 61.

Procedure.—Non-cognizable—Summons—Bailable—Not compoundable— Triable by a Presidency Magistrate or Magistrate of the first class.

Charge.—I (*name and office of Magistrate etc*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of at , gave a gratification to wit to , with the object of inducing him (or any other person) to exercise electoral right (or of rewarding any person for having exercised any such right) and thereby committed an offence under s. 171 E of the Indian Penal Code and within my cognizance, etc.

171F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Punishment for undue influence or personation at an election.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the First class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of , at , voluntarily interfered (or attempted to interfere) with the free exercise of an electoral right to wit and thereby committed an offence punishable under s. 171 F of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Notes.—Where it was found that the petitioner had intentionally but recklessly abetted the offence of false representation at a municipal election, he could not be convicted under s. 465 of Indian Penal Code. Where there are two provisions one specific and the other general, the specific provision ought to be applied in preference to the general one. 22 A. L. J. 1105. An act, to amount to an attempt must be such that if not prevented, it would complete the offence. At a municipal election the petitioner went to the officer who had the custody of the signature slips. He did not give out his name but produced a piece of paper which bore a certain number. The officer looked at the number and then at the electoral roll and asked the petitioner if he was *Lachoo* and he said "yes" but the *patwari* who was there pointed out that his name was *Molkhan* which was the truth. Thereupon the petitioner was turned away. *Held*, that the petitioner was not guilty of attempting to commit the offence of fraudulently applying for voting paper and thereby personating at election. 22 A. L. 1102. Where a candiate identifies a voter without ascertaining identity of the voter, he is guilty of abetment of personation at election. A. I. R. 1928 All. 150. *Mens rea* is a necessary ingredient in offence under section 171F. A. I. R. 1930 Mad. 246. The offence of personation at election is a most serious one. It is an act done with deliberate intent to profit at the expense of an opponent. It is difficult of detection, and when it is found that the voter, whether alive or dead, was certainly not present at the polling station and that the candidate was not the victim of a plot, the inevitable inference is that he corruptly, wrongfully and intentionally abetted the offence. *Emperor* v. *Badan Singh*, A. I. R. 1928 All. 150.

171G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the presonal character or conduct of any candidate shall be punished with fine.

False statement in connection with an election.

Procedure.—Not-cognizable——Summons—Bailable——Not compoundable——Triable by a Presidency Magistrate or Magistrate of the First class.

Charge.—I (*name and office of Magistrate etc.*,) hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of , at , with intent to affect the result of the election, to wit , made or published a statement to wit which statement is false and which you knew (or believed) to be false (or which you did not believe to be true) and thereby committed an offence punishable under section 171G of the Indian Penal Code.

And I hereby direct you to be tried on the said charge and within my cognizance.

Notes—General imputations of misconduct do not come under this section. 55 M. 791=A. I. R. 1932 Mad. 511=63 M. L. J. 380=33 Cr. L. J. 665=1932 M. W. N. 1086. To advise people not to vote by making false statement is not an offence. A. I. R. 1922 Mad. 337=41 M. L. J. 577=66 Ind. Cas. 566.

Illegal payments in connection with an election.

171H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Procedure.—Not-cognizable——Summons—Bailable———Not-compoundable—Triable by a Presidency Magistrate or Magistrate of the First Class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of , at without the general (or special) authority in writing of , a candidate incurred (or authorized) expenses on account of the holding of any public meeting [or upon any advertisement, (or circular) (or publication) or in any other way to wit] for the purpose of promoting (or procuring) the election of, and thereby committed an offence punishable under section 171H of the Indian Penal Code and under my cognizance etc.

Failure to keep election accounts.

171 I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts for expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

Notes.—"It is also made illegal for any one, unless authorized by a candidate to incur any expenses in connection with the promotion of the candidate's election and if by any law accounts have to be kept, failure to keep such accounts is made penal.—*Statement of Objects and Reasons.*

Procedure.—Non-cognizable——Summons—Bailable———Not-compoundable—Triable by a Presidency Magistrate or Magistrate of the First Class.

Charge.—I (*name and office of Maiastrate, etc.*,) hereby charge you (*name of the accused*) as follows :—

That you, being required by law for the time being in force to wit (or by any rule having the force of law, to wit (to keep accounts of expenses incurred at (or in connection with) an election to wit , failed to keep such accounts and thereby committed an offence punishable under section 171 I. of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Absconding to avoid service of summons or other proceeding.

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Object.—The object of the section is to punish an offender for the contempt his conduct indicate of the authority whose processes he disregards. In order to prove the commission of an offence under this section the existence of a summons, notice or order is necessary. It is not sufficient to show that a person apprehended that a process will be issued, and has therefore absconded. It must also be shown that the accused knew or had reason to believe that the process had issued. 4 M. 393 ; see also A. I. R. 1923 Rang. 231=1 Rang. 218=24 Cr. L. J. 848=74 Ind. Cas. 960. The provisions of this section do not cover the absconding from a warrant of arrest. A. I. R. 1928 A. 232.

Scope.—A refusal to sign a receipt of a summons is not offence under this section. A. W. N. 1883, 222. This section has no application in the case of a warrant, which is not "a summons, notice or order." 2 C. L. J. 625=3 Cr. L. J. 117 ; 5 W. R. 71 Cr. ; 4 N. W. P. 97 ; Rat. Un. Cr. C. 152 ; 1 Weir, 75 ; 28 P. R. 1890 Cr.; but see 9 W. R. 70 Cr.

The term "abscond" is not to be understood as implying necessarily that a person leaves the place in which he is. It matters not whether a person departs from a place or remains in it, if he conceals himself ; nor does the term apply to the commencement of the concealment. 4 M. 393=1 Weir, 76 ; 1 Weir, 75.

Absconding by a person against whom a warrant has been issued must be dealt with in the manner provided for by the Code of Criminal Procedure, and not under section 172, Penal Code. *Queen* v. *Amirjan*, 7 N. W. P. 302. Where the accused refused to accept the notice, abuses the process server and went inside his house, the conduct of the accused did not disclose an offence under section 172, I. P. Code. 11 O. L. J. 332=1 O. W. N. 159.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

Charge.—I (*name and office of Magistrate, etc.*,) hereby charge you (*name of accused*) as follows :—

That you on or about the day of at , absconded in order to avoid being served with a summons (or notice) (or order) proceeding from a public servant, and thereby committed an offence under s. 172 of the Indian Penal Code and within my cognizance.

And I thereby direct that you be tried on the said charge.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice, or order,

or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice order, or proclamation, is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusal to sign a summons.—A refusal to receive and sign a summons does not constitute a prevention of service within the meaning of this section. Rat. Un. Cr. C. 17 ; 5 B. H. C. Cr. 34 ; 3 C. 612 ; 20 C. 356 ; 24 A. L. J. 216=27 Cr. L. J. 142=91 Ind. Cas. 814 ; 24 A. L J. 215=92 Ind. Cas. 460=27 Cr. L. J. 284 ; 23 A. L. J. 148=86 Ind. Cas. 973=26 Cr. L. J. 909 ; 40A 577 ; 1 Rang. 49 ; 74 Ind. Cas. 65 ; 21 O. C. 150 ; 1 Weir, 79 ; 31 A. 608 ; 23 A. L. J. 148=86 Ind. Cas. 973=26 Cr. L. J. 909=1925 All. 322 ; 21 Cr. L. J. 688=57 Ind. Cas. 928 ; 19 Cr. L. J. 801=21 O. C. 150=46 Ind. Cas. 817. A refusal to sign an acknowledgment of summons issued by a Magistrate and the throwing down the summons do not amount to a prevention of service within the meaning of section 173. 1 Weir, 80. Where a person refuses to receive a summons and throws it down, he cannot be said to have prevented the service of the summons. 5 M. 200 Note—1 Weir 79. A refusal to receive a summons is not an offence under section 173, Penal Code. The words "any manner prevents the service" cannot apply when the summons is tendered and refused as it is good service. 5 M. 199=1 Weir, 80=6 Ind. Jur. 410. Refusal to accept or to sign the duplicate of a citation issued under section 147 of the Land Registration Act is not an offence under section 173 of the Indian Penal Code. 6 A. L. J. 777=31A. 608=3 Ind. Cas. 965. A refusal to serve as a special constable, when ordered to do so, is no offence under section 173 of the Penal Code and proceedings taken under that section for such refusal are bad in law and should be quashed. 2 C. L. J. 555=10 C. W. N. 82=3 Cr. L. J. 169. Refusal to sign order requiring accused's attendance under s. 160 Criminal Procedure Code is not an offence under this section. A. W. N. 1886, 93. A Tahsildar is not competent to issue a summons for a purpose not contemplated by Act III of 1869. Disobedience to such a summons is not an offence under this section. *In re Timma Royan,* 1 Weir, 96. Under the Cr. P. Code the mere tender to person of a summons is sufficient and a refusal by him to receive it does not constitute the offence of intentionally preventing service thereof on himself under section 173 of the Penal Code. 40A. 577=16 A. L. J. 453. For a conviction under section 173 I. P. Code it is necessary to prove that the accused prevents the process server from tendering the summons. Mere refusal to accept a summons when tendered does not amount to intentionally preventing service of summons. 57 Ind. Cas. 928=21 Cr. L. J. 688 ; 74 Ind. Cas. 65=2 Bur. L. J. 22 A man who gets away from a service officer with the obvious intention of not allowing him to hold any communication with him at all and shuts himself in his house is intentionally preventing service either by tender or by delivery and is liable to be convicted under s. 173 I. P. Code. 107 Ind. Cas. 563=29 Cr. L. J. 263=26 A. L. J. 107.

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd Class.

Charge.—I (*name and office of Magistrate, etc.,*) hereby charge you (*name of the accused*) as fallows :—

That you on or about the day of at , intentionally prevented the serving on yourself (or on any other person), of a summons (or notice) (or order) to wit—proceeding from (*name the public servant*) as such—, to issue such summons, notice or order, and thereby committed an offence punishable under section 173 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Non-attendance in obedience to an order from public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A, being legally bound to appear before a Zillah Judge, as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this section.

Scope.—In order to sustain a conviction under this section, it has to be shown that the summons issued was issued by a public servant legally competent, as such public servant to issue the same, and that the accused intentionally omitted to attend in pursuance of the summons. 12 A. L. J. 680. Section 147 of the U. P. Land Revenue Act when it gives a revenue official exercising fiscal functions authority to issue a citation to a defaulter to appear gives him authority to order that person to appear before him and the person is obliged to appear before him, if so ordered, under the penalties laid down by s 174. 4 O. W. N. 1211 ; see also 49 A. 205=99 Ind Cas. 60=28 Cr. L. L. 28. It is not an offence to comply with a *subpœna* where the place of attendance is not specifically mentioned. 94 Ind Cas. 889=24 A. L. J. 536=A. I. R. 1926 All. 474. A person who does not attend to receive order under s, 56 of the Legal Practitioners Act cannot be charged, under this section. A. I. R. 1928 Rang. 296. The mere fact of inaccuracy in naming a person who is personally summoned may not be a sufficient ground for acquitting a person so served for an offence under section 174 Penal Code. 1 Weir. 892. Before a person can be convicted of an offence under section 174 it must be shown that he intentionally omitted to attend in obedience of the summons, It is not sufficient to prove that the summons was affixed to the house of those called on to attend and that they did not attend. It must also be proved that the summons was brought to their knowledge, that they were required to attend, and that they intentionally omitted to do so. 1 Weir 84. A summons which is tendered to the accused, but which the accused refuses to receive, is a legal summons, as the service amounts to personal service. Failure to obey its directions is an offence punishable under section 174, Penal Code. 1 Weir, 81. To make a summons returnable on a sunday is not illegal. 1 Weir, 86. A citation issued under section 147 of Act III of 1901 is an order to the defaulter to appear at the time and place named therein within the meaning of s 174 of the Penal Code, and intentional disobedience of it is an offence under the section. 13 O. C. 55=5 Ind. Cas 805=11 Cr. L. J. 250. Where an officer is not competent to issue summons, ommission to attend in pursuance of such summons is not an offence. 1 Weir 95 ; 1 A. L. J. 263=1 Cr. L. J. 497 ; 1 Weir. 94 ; 1 Weir, 96 ; 1 Weir, 97 ; 4 P. R. 1907 Cr.=6 Cr. L. J. 107 ; 12M. 297 ; 1 Weir 87 ; Colm. Dig. Cr. 89 of 1877. But where a person is so authorised an omission to attend in pursuance of such a summons is an offence under this section. 1 Weir, 93 ; 8 Ind. Cas. 133 ; Colm. Dig. Cr. 74 of 1877. Disobedience of summons wrongly issued is not an offence. 17 Cr. L. J. 471=14 A. L. J. 1069=36 Ind. Cas. 151. Accused is not guilty in case of incapacity to attend due to illness. A. I. R. 1922 All. 82=20 A. L. J. 192=23 Cr. L. J. 208=65 Ind. Cas. 864. Non-appearance of a defaulter after the issue of a citation is no offence. A. I. R. 1927 All. 49=25 A. L. J. 38=28 Cr. L. J. 153=49A 215=99 Ind. Cas. 409. Disobedience of summons served on an amin personally by a police officer is an offence. 18 Cr. L. J. 733=40 Ind. Cas. 733. Where a solicitor failed to appear under the mistaken belief that he was asked to produce a letter written by his client he was not guilty. 42 Ind. Cas. 532. When summons was served too late, no offence has been committed. A. I. R. 1924 Rang. 35=1 Rang. 549=25 Cr. L. J. 229=76 Ind. Cas. 693. A Magistrate cannot try a person for an offence under s. 174 for disobedience of his summons. 35 P. L. R. 454=A. I. R. 1934 Lah. 545=1934 Cr. C. 365.

Person appearing in obedience to summons, but departing without permission is not punishable unless the summons contained a direction that he should not leave the office without express permission. 1 Weir 99. Where a summons has not fixed any time for attendance an omission to attend in pursuance of such a summons is not an offence. Colm. Dig. Cr. 88 of 1877. Where, in a summons, no place is specified at which a person summoned is to appear, a person disobeying the summons does not omit to attend a certain place as is required by the section. 1 Weir 81; 14 P. R. 1887 Cr; 1 Weir 100; A. W. N. 1883, 109. An accused cannot be convicted under this section when the summons in question is a process not provided by the law. 2 P. R. 1871 Cr. An order to the police directing the police to inform the parties of the date is neither a summons nor a notice under this section. A W. N. 1890, 1. Where the accused failed to attend Court in obedience to a direction by the Court, but the case was not taken up owing to other demands on the Magistrate's times no conviction can be made under s. 174. Penal Code. 3 S. L. R. 155=4 Ind. Cas. 410=10 Cr. L. J. 576. Before convicting a witness under section 174, the court is bound to decide whether there was an intentional disobedience to the summons, after giving him an opportunity of explaining his absence. 27 P. W. R. 1907 Cr.=7 Cr. L. J. 226; 2 Bur. L. J. 146=1 Rang. 549. Section 160, Cr. Pro Code does not authorise a police officer to require the attendance of an accused person with a view to his answering the complaint made against him. The disobedience of such an order, therefore, cannot fall within s. 174 I. P. Code. 4 Bom. L. R. 644. An officer should not try himself an offence under section 174, I. P. Code, in his capacity as a Magistrate, when the offence has been committed before him in his capacity as a settelement officer. 2 A 405; S. C. 99 Oudh. Actual service of the summons, notice or order, must be strictly proved, or be admitted before a conviction can be had under s 174, Penal Code, for non-attendance in obedience to such summons, notice or order. S. C. 99 Oudh; A. W. N. 1882, 52; 6 M. H. C. App. 29. A summons directing a person to appear within a certain number of days, without specifying a particular day for the appearance, does not comply with the requirements of the section. 1 Weir 82.

A complainant can hardly be held a witness punishable for refusal to answer question either under section 485, Cr. Pro. Code, or under section 174 I. P. Code. 13 B. 600. A verbal order given to a witness by a court, to attend court on a particular day at a particular hour, is an order, the disobedience of which is punishable under section 174 of the Penal Code. Rat. Un. Cr. C. 75; 5 M. H. C. App. 15; but see 1 Weir 86=2 Weir 123. A service of notice on the pleader of the accused is not a sufficient notice to make the party liable under this section. 6 C. W. N. 927. The mere production of the summons to the accused, with an endorsement of service and the alleged mark of the accused, is not sufficient proof of service in the face of his denial that he received the summons. 1 Weir 85. The absconding of an accused after having seen warrant for his arrest, is not an offence under this section. 1 Weir 89=7 M. H. C. App. 43. Where there is no order for personal appearance, a person cannot be convicted under this section for non-attendance. 2 Lah. L. J. 539. Where summons has not been issued according to law, there cannot be conviction under section 174 I. P. C. 59 Ind. Cas. 335=22 Cr. L. J. 79. The mere fact that a person is so incapacitated by illness as to be obliged to give up his ordinary advocations would be sufficient excuse for him not to attend a Court in obedience to a summons. It is not necessary that he should have been so dangerously ill that he could not move. 20 A. L. J. 192=65 Ind. Cas. 854=23 Cr. L. J. 208. Disobedience to a verbal order of a cantonment magistrate to attend does not constitute an offence under section 174 I. P. Code in the absence of proof that the order issued by the Magistrate was issued in his capacity as magistrate or that he was legally empowered to issue such order. 23 Cr. L. J. 230=66 Ind. Cas. 70. What is made punishable by law under section 174 is an intentional disobedience to the summons of a Court. The word, 'intention' does not appear to have been defined in the I. P. Code, but it has been interpreted to mean non-attendance which amounts to wilful disobedience. 72 Ind. Cas. 593=24 Cr. L. J. 433=1923 Lah. 163. When a summons has been served just a day before the date fixed for appearance and the place is somewhat distant from the place of appearance, the accused cannot be convicted under this section. 26 A. L. J. 1201=111 Ind. Cas. 670=29 Cr. L. J. 910=A. I. R. 1928 A. 680 (F. B.).

Procedure.—Not-cognizable Summons Bailable Not compoundable Triable by any Magistrate and triable summarily.

Charge.—I (*name and office of Magistrate, etc*) hereby charge you (*name of the accused*) as follows :—

That you on the day of , at , being legally bound to attend in person (or by an agent) at and at in obedience to summons (or notice) (order) (or proclamation) proceeding from legally competent, as such to issue the same, intentionally omitted to attend at that place at that time (or departed from that place before) and thereby committed an offence punishable under s. 174 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

Omission to produce document to public servant by person legally bound to produce it.

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Notes.—Special laws which require the production and delivery of documents, and contain penalties for the omission to produce or other non-compliance with orders relating to them, are not affected by this provision. Previous sanction is absolutely needed to prosecute under this section. 12 C. W. N. 1016 ; 8 C. W. N. 20. It must be proved that the accused was in possession of the document in question. 4 P. L. W. 65. Where it is doubtful which of the two persons had the document required to be produced, they could not be convicted. 19 Cr. L. J. 217=4 Pat. L. W. 65=43 Ind. Cas. 793. No offence is done under this section, where a person does not produce the original of a document to a Sub-Registrar or a receiver appointed under the Land Registration Act. 15 P. R. 1910 ; 29 C. 236 ; 2 C. L. J. 621. An offence under this section is not committed by non-production of a document, when the summons is too vague, and does not direct any particular book to be produced. A. W. N. 1890, 171. A party to a suit failing to comply with an order for production or inspection of documents can be dealt with only in manner prescribed by Order XI, rule 21, but is not punishable under s. 175 or any other section of the Penal Code. 15 P. W. R. 1910 Cr.=15 P. R. 1910 Cr.

Procedure.—Not-cognizable———Summons————Bailable————Not compoundable————Triable by the Court in which the offence is committed, subject to the provisions of Chapter XXXV ; or if not committed in a Court, triable by a Presidency Magistrate, or a Magistrate of the First or Second Class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you on the day of , at , being legally bound to produce (or deliver up) the document of to as such, intentionally omitted so to produce or deliver up the same to and thereby committed an offence punishable under section 175 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

176. Whoever being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

Omission to give notice or information to public servant by person legally bound to give it.

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprison-

ment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Notes.—The mere fact that a landlord is collecting rent in excess of the rent recorded without apprising the revenue officials of the same will not render him liable under this section. 7 L. R. 195 Cr. Omission to give information, when the person is bound to do so is an offence. A. I. R. 1926 Nag. 217. This section is applicable only in cases of intentional omission. 5 P. R. 1889 ; 16 W. R. 35 ; 18 W. R. 22 ; 11 Ind. Cas. 785. A person should not be convicted for a technical offence under this section. 90 Ind. Cas. 145=26 Cr. L. J. 1489. The accused must be under a legal obligation to give that information. 17 P. W. R. 1911 ; 23 P. R. 1872 Cr. ; U. B. R. (1892-1896) Vol. I, 169. When information has reached to a public servant from other sources a conviction under this section is not sustainable. 4 C. 623 ; Rat. Un. Cr. C. 674 ; 5 P. R. 1893 ; 20 C. 316 ; 7 M. 436. Failure by village head-men, watchmen and landed proprietors or their agents to report a sudden and unnatural death in their houses is not punishable under section 176. 1 Weir 101=2 Weir 38 ; A. W. N. 1900, 207 ; 19 P. R. 1870 Cr. A failure by a *kurnam* of a shotriam village to comply with an order of the Revenue Inspector calling for cultivation accounts of the village is not an offence under s. 176, Penal Code. 1 Weir 105. Where a person refuses or neglects to comply with any rule made under section 565, sub-section 3 of the Criminal Procedure Code, he is punishable as if he had committed an offence under the first part of s. 176 of the Penal Code. 1 N. L. R. 133=2 Cr. L. J. 745. In order to convict a person under section 46 of the N. W. P. and Oudh Land Reveuue Act (III of 1901) read with s. 176 I. P. Code, the following facts must be proved : (1) that a particular patwari or *kannungo* asked a particular zaminder for information, (2) and that information was either refused or was false when given. 8 O. C. 128=2 Cr. L. J. 207. Under certain specified circumstances covered by section 45 of the Criminal Procedure Code, the concealment of suspicious death can be punishable under section 176, Penal Code, but mere servants who are entirely dependant on their master in whose house the death has occured, do not come within the category of persons who are bound to cummunicate an occurrence of this sort. 17 P. R. 1911 Cr. 11 Ind. Cas 609 =12 Cr. L.J. 425. Failure to inform a revenue officer that excess rent had been collected when such information was not asked for is not an offence. A. I. R. 1929 All. 111 =27 Cr. L. J. 1367=98 Ind. Cas. 487. Intentional omission alone is an offence. 144 Ind. Cas. 343=1933 Cr. C. 774=34 P. L. R. 712=A. I. R. 1933 Lah. 515.

Procedure.—Not-cognizable Summons Bailable Not compoundable Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occured by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. VII Reg III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation.—In section 176 and in this section the word "offence" includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

Scope.—To come within the provisions of this section, the accused must be shown to be legally bound to furnish information, and to have furnished false information. 1 Weir. 106; Rat. Un. Cr. C. 210; in order to justify a conviction under this section, it is not necessary to prove an intention to defraud. It is enough to show that the information furnished as true was either known to be false or not believed to be true. 1 Weir. 107. This section embraces every case in which a subordinate seeks to impose false information upon his superior. 6 M. H. C. App. 48. The first part of the section deals with a simple case of a person who being bound to furnish true information to a public servant furnishes a false information to him. Under the second clause of the section the information which a person is legally bound to give for the purpose of preventing the commission of an offence refers not to the commission of offences generally but to the commission of some particular offence. 15 C. 386; 20 A. 151; S. C. 11 Oudh; 12 W. R. Cr. 23; 4 M. 144; 1 Weir 111; 21 W. R. Cr. 30. Submitting false roadcess return is not an offence under this section where such false information was given for his success in a civil suit. 13 C. W. N. 191=12 Cr. L. J. 11=4 Ind. Cas. 578. A false verification in an objection petition to the assessment of income-tax is an offence punishable under this section. 44 P. R. 1905=187 P. L. R. 1905=3 Cr. L. J. 128. Where a person who is not legally bound to furnish information of an offence, falsely informs the police that such an offence has been committed without intending to cause injury or annoyance to any particular person, he commits no offence under section 177 or under section 108 of the Penal Code. Rat. Un. Cr. C. 76. Where the accused paraded a borrowed stage carriage instead of his own cart before the local Superintendent of Police, with the object of inducing that officer to report favourably on his application for a renewal of license under Act XVI of 1861, *held* that misconduct of the accused did not constitute an offence punishable under section 177, or s. 182, I. P. Code. A. W. N. 1887, 268. False report to Revenue surveyor for securing mutation of name is not an offence under this section. 15 Cr. L. J. 603=25 Ind. Cas. 515=8 Bur L. T. 82. The essence of an offence under s. 52 Income-tax Act is the verification of a false statement. A. I. R. 1929 All. 919=1930 A. L. J. 26=31 Cr. L. J. 88=1929 Cr. C. 647=120 Ind. Cas. 435. Where assessable income is deliberately kept out of return by lawyer and when he persists in maintaining false defence, the punishment should be deterrent. 1933 Cr. C. 1123=A. I. R. 1933 Rang. 292. When assessment has been made by one Income-tax officer, his successor can make complaint against assessee. 1933 Cr. C. 1123=A. I. R. 1933 Rag. 292. A person charged with false verification under s. 40 of the Income-tax Act and s. 177 I. P. Code can be tried only at the place of the offence. A. I. R. 1923 Mad. 50=45 M. 839=43 M. L. J. 475=23 Cr. L. J. 679=68 Ind. Cas. 843. When no notice under s. 22 (2) of the Income-tax has been served upon him he cannot be convicted under s. 177. I. P. Code for furnishing a false return. A. I. R. 1934 Lah. 626=35 P. L. R. 544=A. L. R. 1934 Lah. 540=152 Ind. Cas.682.

Legislative changes.—This Explanation has been added by the Indian Criminal Law Amendment Act (III of 1894) s. 5.

Procedure.—Not-cognizable—Summons—Bailable—Not compoundable—Triable by a Presidency Magistrate or a Magistrate of the first or second class—Triable summarily if the offence falls under the first clause.

Refusing oath or affirmation when duly required by public servant to make it.

178. Whoever resuses to bind himself by an oath "or affirmation" to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Legislative Changes.—The words quoted have been inserted by the Indian Oaths Act (X of 1873) s. 15.

Procedure.—Not cognizable——Warrant——Bailable——Not compoundable or Triable by the Court in which the offence is committed, subject to the provisions of Ch. XXXV ; or if not committed, in a Court, triable by a Presidency Magistrate, or Magistrae of the 1st or 2nd class and triable summarily.

Notes.—A witness who has not been paid his legal expenses can refuse to give evidence. 1907 U. B. L. R. (P. C.) 9 ; 7 Cr. L. J. 208.

Refusing to answer public servant authorized to question

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months' or with fine which may extend to one thousand rupees, or with both.

Notes.—This section has nothing whatever to do with the conduct of accused persons in Court. 47 M. 396=46 M. L. J. 40=(1924) M. W. N. 141=19 L. W. 292. Refusal to answer a question which is not relevant to the case is not an offence. 81 Ind. Cas. 951 ; see 7 C. L. J. 63 ; 10 B. 185. Not remembering a fact is not refusal. 27 Cr. L. J. 252=1926 Lah. 240=92 Ind. Cas. 428. Evasive answers fall under this section. 22 A. L. J. 110=1925 All 239. Under section 161, Criminal Procedure Code, a person answering questions put by a police officer is not bound to answer truly. Therefore, a refusal to answer such questions is not punishable under section 179. 1 Weir 111=2 Weir 123. The rufusal by a person summoned as a "jury man" by the police to answer such a question as whether, on looking at the hands of a certain person, he found marks of tying with a rope, is not an offence under s. 179 of the Penal Code. Rat. Un. Cr. C. 92. A refusal to answer questions put by police officer making an investigation under chapter XIV Cr. Pro. Code is no offence. A. I. R. 1931 Rang. 26=8 Rang. 511=128 Ind. Cas. 833. The refusal must be deliberate. 144 Ind. Cas. 1061=1934 P. L. J. 427=35 Cr. L. J. 1036= A. I. R. 1934 All. 136. Where Magistrate requires complainant as witness under s. 219 Criminal Procedure Code and he refuses to give evidence, he is guilty of offence under s. 179. A. I. R. 1935 All. 267.

Procedure.—Not-cognizable——Summons——Bailable———Not Compound able———Triable by the Court in which the offence is committed, subject to the provisions of Chapter XXXV ; of if not committed in a Court, triable by a Presidency Magistrate or Magistrate of the 1st or 2nd class.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extened to five hundred rupees, or with both.

Notes.—A refusal to sign a statement under s. 264 of Cr. Pro. Code is an offence 39 A. 399. An accused is bound to sign a deposition if it is read over to him. 1881 A. W. N. 43. A deposition in a Revenue inquiry need not be signed. 1 Weir, 112 ; see also. 4 B. 15 ; 3 L. B. R. 199 ; 8 P. R. 1912. A refusal to sign a statement made by accused under section 346 is not an offence under this section. 1 Weir 113. An inquest report is not a statement within the meaning of s. 180, Penal Code, and refusal to sign such a report is not an offence punishable under the Penal Code. 8 M. L. T. 198 Cr.=7 Ind. Cas. 557=11 Cr. L. J. 500. The language of s. 364 of the Code of Criminal Procedure must make it compulsory on the Magistrate to sign a statement and also upon the accused. The Magistrate is a public servant legally competent to require the accused to sign the statement, and if he refuses to do so, the accused commits an offence under section 180 of the Indian Penal Code. 15 A. L. J. 291= 39 A. 399. Merely because statement of a witness is incorrect, he is not guilty of perjury. Deliberate intention to deceive is necessary. A. I. R. 1933 Sind. 412. Criminal proceedings should not be taken against a witness for perjury where he corrects himself before leaving witness-box. A. I. R. 1933 Sind. 412.

Procedure.—Not-cognizable———Summons———Bailable———Not compound-able——Triable by the Court in which the offence in committed subject to the provisions of Ch. XXXV ; or if not committed, in a Court triable by a Presidency Magistrate or Magistrate of the 1st or 2nd class.

181. Whoever, being legally bound by an oath "or affirmation" to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.

Punishment.—A sentence under this section must award a term of imprisonment. 4 M. H. C. App. 18.

Notes.—This section has application only in cases where the proceeding is other than judicial. 2 M. H. C. 538; 7 W. R. 68; 8 W. R. 24; 8 B. H. C. Cr. 21, but see 1 Weir, 115. All that is required is that the person must be authorised to administer oath or solemn affirmation. 6 W. R. 81; 5 A. 17; 5 M. H. C. 326; see also 2 M. H. C. R. 438; 6 M. 252; 12 M. 451.

Procedure. Not-cognizable———Warrant———Bailable———Not compouudable——Triable by a Court of Session, Presidency Magistrate or Magistrate of the 1st class.

Charge. I (*name and office of Magistrate etc.*) hereby charge you (*name of accused*) as follows:

That you on or a about the day of , at , being legally bound by an oath (or affirmation) to state the truth, on a certain subject, to wit ; to a public servant [or person authorised by law to administer such oath (or affirmation)] did make to such touching the aforesaid subject, a statement to wit which was false, [or which you knew (or believed) to be false] [or which you did not believe to be true] and thereby committed an offence punishable under s. 181 of the Indian Penal Code and within my cognizance (or cognizance of the Court of Session or High Court.)

And I hereby direct that you be tried by the said Court on the said charge.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, knowing it to be likely that he will thereby cause, such public servant—

False information with intent to cause public servant to use his lawful power to the injury of another person.

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful powers of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowingly it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(*b*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises attended with annnoyance to Z. A has committed the offence defined in this section.

(*c*) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that, in consequence of this information, the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

Legislative changes.—This section has been substituted by Act 3 of 1895.

Scope of the section.—This section makes the giving of false information to a public servant punishable in two cases, first, when the intention or knowledge, with which the false information is given is to cause the public servant to use his lawful power to the injury or annoyance of any person, and secondly, when the intention is to cause the public servant to do or omit to do anything which he ought not to do or omit to do. It is not necessary that the public servant shall have been actually induced to do or omit to do anything. It is sufficient if the person giving the false information intended to cause or knew it to be likely that such information would cause, the public servant to do or omit to do something which he would not have done if the true state of facts had been known to him. The offence consists in the giving of false information with intent to mislead a public servant and is complete whether the public servant was or was not misled. The imputability consists in the consciousness that a deception is practised upon a public servant in contempt of his authority as such, and that he might thereby be induced to do what he ought not to do in the discharge of his duty as a public servant so as to prejudice the public interest. 1 Weir 118 ; 26 M. 640 ; 25 Ind. Cas. 1000 ; 11 Mys. L. J. 483. Statements made by prisoners for the purposes of their defence cannot bring them under the provisions of s. 182, as information given to a public servant. 2 N. W. P. 128. A conviction under s. 182 of the Penal Code, could not be sustained against a person who gave false answers to questions put by a police officer in the course of investigation of a cognizable offence. The ordinary meaning of the expression "give information" is to volunteer information, not to make statements in answer to questions put by a public servant. 2 Cr. L. J. 474=U. B. R. 1905, Penal Code 18. "Information" is not restricted to first information recorded under Criminal Procedure Code s. 154. A. I. R. 1933 Pat. 555=1933 Cr. C. 1268=14 P. L. T. 541=146 Ind. Cas. 234.

An officer in charge of a police station is not competent to make a complaint under section 182, I. P. Code, or to give the sanction required under section 168 Criminal Procedure Code, for such a prosecution. 116 P. R. 1866 Cr. An accused may be convicted of an offence under s. 182 of the Penal Code, even if the petition containing the information given by him is not actually signed by him. 11 Cr. L. J. 3=4 Ind. Cas. 477=3 S. L. R. 132. Giving false information, of an alleged offence, to a village Magistrate (a public servant) amounts to an offence under section 182 of the Penal Code. 28 M. 565=3 Cr. L. J. 108. Complaint should be made by officer to whom information is given. Trying Magistrate cannot be complainant. 138 Ind. Cas. 551=59 C. 334=1932 Cr. C. 440=33 Cr. L. J. 631=A. I. R. 1932 Cal. 511. Where letter giving false information under s. 182 is posted at Kanbakonam and reaches D. S. P. at Tanjore, the offence under s. 182 is committed at Tanjore and Tanjore Court can try that case and not the court at Kambakonam. 137 Ind. Cas. 333=1932 Cr. C. 408=33 Cr. L. J. 452=1932 M. W. N. 451=A. I. R. 1932 Mad. 427. Complaint under s. 182 must contain ingredients of offence. A. I. R. 1935 Rang. 97. Statement made by witness to police under s. 161 Cr. Pro. Code is not information given to public servant. A. I. R. 1935 Rang. 97.

A person who was accused of an offence before a Court could not with impunity make a false charge against the presiding officer of the Court, such charge being ordinarily punishable under section 182 of the Indian Penal Code, and could not escape because his object was to get the case transferred to another Court. 12 O. C. 308=4 Ind. Cas. 160=10 Cr. L. J. 509 ; but see 7 A. L. J. 1143=1 Ind. Cas. 914=11 Cr. L. J. 537. In order to support a conviction under this section, the information given should have been information which the informer knew or believed to be false, and it should have been proved that he gave it with such knowledge. 9 W. R. Cr. 31. Where a charge against another person is made by a witness not in the course of his evidence or in answer to a question but quite voluntarily and irrelevantly sanction can be properly granted to prosecute a witness under s. 182 of the Penal Code. 13 Cr. L. J. 56=13 Ind. Cas 392=4 Bur. L. T. 262. Section 182, and not merely s. 211 of the Code, applies to cases in which false statement charged is made to a Police officer. The Magistrate has no jurisdiction to order a prosecution for making a false complaint, till that complaint has been finally determined. 4 C. L. J. 88=4 Cr. L. J. 68. Section 182 of the Indian Penal Code relates only to cases of information given to officials, with the intention of causing or with knowledge that it is likely to cause, that official to do or omit to do something, which he ought not to do or omit

to do, or to use his lawful power to the injury or annoyance of any person. 9 Bom. L. R. 33=31 B. 204. Section 182, Penal Code, is to be interpreted not in isolation but in association with section 211 of the Code. Where the information conveyed to the police amounts to the institution of criminal proceedings against a defined person it amounts to the falsely charging of a defined person with an offence as defined in the Penal Code, then the person giving such information has committed an offence punishable under section 211. In such a case, section 211 is and section 182 is not, the appropriate section under which to frame a charge. Section 182 when read with s. 211, must be understood as referring to cases when the information given to the public servant falls short of amounting to the institution of criminal proceedings against a defined person and falls short of amounting to the false charging of a defined person with an offence as defined in the Penal Code. 15 Bom. L. R. 574=2 Bom. Cr. C. 86=14 Cr. L. J. 491=20 Ind. Cas. 747 ; see also A. I. R. 1935 Nag. 69. Where a person in whose house a theft took place informed the police that he suspected two persons as perpetrators of the crime, *held*, that this did not amount to giving false information within the meaning of s. 182 of the Penal Code. 22 C. W. N. 478=27 C. L. J. 230=44 Ind. Cas. 352. Section 182 I. P. Code applies to a case in which it is intended that a public servant should not do or omit to do something which he would be legally justified in doing or omitting to do it he knew the true facts. 16 A. L. J. 814=47 Ind. Cas. 91. Information must be proved to have been false to the knowledge of the accused or that he believed it to be false. 52 Ind. Cas. 282. To constitute an offence under section 182 I. P. Code of giving false information of a threatened breach of the peace, it is necessary for the prosecution to prove not merely an absence of a reasonable and probable cause of giving the information but a positive knowledge or belief of the falsity of the information given. 53 Ind. Cas. 695 ; see also 62 Ind. Cas. 327=2 P. L. R. 1922. 22 Cr. L. J. 503 ; 22 Cr. L. J. 347=61 Ind. Cas. 171 ; 69 Ind. Cas. 81=A. I. R. 1923 Oudh. 4=9 O. L. J. 342=23 Cr. L. J. 641=26 O. C. 44. A preparation for committing an offence under this section is not punishable. 18 A. L. J. 636=57 Ind. Cas. 96. The statement of a petitioner to the Deputy Superintendent of Police in a departmental enquiry is an "information" within the meaning of this section. 1 Lah. 410=58 Ind. Cas. 819. On a prosecution for an offence under section 182 I. P. Code, the mere fact that the information was shown to be false does not throw the burden of proof on the accused that when he gave the information he believed it to be true. It is incumbent on the prosecution to show that the only reasonable inference was that he must have known or believed it to be false. 69 Ind. Cas. 81=23 Cr. L. J. 641=2 U. P. L. R. (O. C.) 81=9 O. L. J. 342 ; 26 O. C. 44. No offence under section 182 I. P. Code is committed in respect of a false information given to a police officer of a native state or under section 193 I. P. Code in respect of false evidence given before a Court of that state. 47 B. 907=25 Bom. L. R. 772=1924 Bom. 51. A village Magistrate is not subject to the authority of a Sub-Magistrate as a puplic servant and the latter has no authority to grant sanction in respect of false information given to the former. 45 M. L. J. 553=(1923) M. W. N. 745. False information of a non-cognizable offence made to police officer without expecting that any action will be taken by him cannot form ground of conviction under s. 182. 18 A. L. J. 636=2 U. P. L. R. (A) 296=21 Cr. L. J. 576=57 Ind. Cas. 96 ; see also 145 Ind. Cas. 819=10 O. W. N. 755=1933 Cr. C. 1051=A. I. R. 1933 Oudh. 374 ; 33 Cr. L. J. 314=13 P. L. T. 83=A. I. R. 1932 Pat. 710. It is desirable to give the accused party an opportunity to prove the truth of his case before inquiry by the Magistrate. 60 C. 656=A. I. R. 1933 Cal. 532=34 Cr. L. J. 1059=37 C. W. N. 368=145 Ind. Cas. 660 ; see also 137 Ind. Cas. 849=36 C. W. N. 15=1932 Cr. C. 312=33 Cr. L. J. 514=A. I. R. 1932 Cal. 383 ; A. I. R. 1933 Cal. 614=37 C. W. N. 399=1933 Cr. 1000=145 Ind. Cas. 824. But conviction of accused without preliminary opportunity to prove his case is not illegal. 134 Ind. Cas. 919=32 Cr. L. J. 1241=58 C. 1065=35 C. W. N. 378=A. I. R. 1931 Cal. 634 ; 37 C. W. N. 368=60 C. 656=A. I. R. 1933 Cal. 532. Giving false information to Police about bullock being missing is no offence. 136 Ind. Cas. 447=33 Cr. L. J. 314=13 P. L. T. 83=1932 Cr. C. 311=A. I. R. 1932 Pat. 170. Where complaint states facts disclosing minor and graver offence, prosecution should be for graver offence. A. I. R. 1931 Mad. 702=1931 Cr. C. 942=54 M. 1018=61 M. L. J. 770=32 Cr. L. J. 1215.

Where in support of an application to transfer a criminal case, a person swore to an affidavit contaning allegations which were subsequently found to be false and handed it over to the pleader of the complainant, who filed it in Court, the deponent cannot be prosecuted under section 182, I. P. Code, as there is no information given to a public servant within the meaning of this

section. 20 L. W. 624=83 Ind. Cas. 343=25 Cr. L. J. 383=1925 Mad. 123=47 M. L. J. 658.

The distinction between a charge under section 211 and a mere report under section 182, I. P. Code, may be put thus. If the complainant confines himself to reporting what he knows of the facts, stating his suspicions, and leaving the matter to be further investigated by the police or leaving the police to take such course as they might think right in the performance of their duty ; he may be making a report, but he is not making a charge. But if he takes the further step, without waiting for any official investigation, of definitely alleging his belief in the guilt of a specified person, and his desire that the specified person be proceeded against in Court, that act of his, whether verbal or written, if made to an officer of the law authorized to initiate proceedings based upon the complainant's statement, whether amounting to an expression of the complainant's belief in the guilt of the specified person or his desire that Court proceedings be taken against him amounts to making a charge. 22 A. L. J. 137 Cr. ; 22 A. L. J. 829 ; see also 82 Ind. Cas. 718=25 Cr. L. J. 1358.

A prosection under section 182 I. P. Code will lie quite irrespective of whether the action which a public servant is asked to take on information given to him is a legal one or not. 75 Ind. Cas. 289=24 Cr. L. J. 913. To bring a case within s. 182 I. P. Code, it is necessary for the prosecution to establish not merely that the information as given was such that the only reasonable inference to be drawn is that they knew or believed it to be false. 110 Ind. Cas. 785=29 Cr. L. J. 753.

Even where accused persons do not desire to take action under section 211 I. P. Code, a Court of law has authority to complain against a false complaint under s. 182 of the Code which is contained in Chapter X relating to contempt of the lawful authority of public servants. A. I. R. 1928 All. 333. The false information to the police was followed by a complaint to the Magistrate on the same facts and the same charge. The Magistrate tried the complaint and classified it to be false. The police is to lay a complaint under section 182 for false information given to them. *Held*, the offence alleged falls under section 211 and a complaint by the Magistrate before whom the charge was made is necessary. A. I. R. 1928 Rang. 243. Where offence falls under both sections 182 and 211, prosecution under section 182 is quite improper. A. I. R. 1928 Rang. 254 ; 23 S. L. R. 225=115 Ind. Cas. 313. When a complaint is made by a public servant for an offence punishable under s. 182, I. P. Code, a Magistrate is governed only by the rules in Chapter XVI of the Cr. Pro. Code. 30 Cr. L. J. 710. To constitute an offence punishable under section 182, I. P. Code, it is necessary that the information given should be information which the accused person knows or believes to be false. 30 P. L. R. 655. Even if a Magistrate is disentitled by a statutory bar to take cognizance of any offence under section 182 I. P. Code, cognizance by him of an offence under s. 211 is not also barred without any statutory provision to that effect. 117 Ind. Cas. 37=30 Cr. L. J. 710. To constitute the offence accused should know that there was no just or lawful ground for proceeding. A I. R. 1930 Lah. 54.

This section makes the giving of false information to a public servant penal, when either of the two consequences is intended to be caused or is known to be likely to be caused by the false information, the first being the causing "the public servant to use the lawful power of such public servant to the injury or annoyance of any person" and the second being the causing the "public servant to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given, were known to him." The second part of the section can, therefore, be read without importing into it the words "to the injury or annoyance of any person." It is sufficient if the public servant does or omit anything which he ought not to do or omit, if the true state of facts were known to him. As a public servant is bound to act in the discharge of his duty properly it may often be interference with his duty, and thus dangerous to the public welfare, if through false information he is prevented from acting, or induced to act wrongly. 13B. 506. In order to support a conviction under this section, the information should have been information which the informer knew or believed to be false, and it should have been proved that he gave it with such knowledge. 9 W. R. Cr. 31. See also 31B. 204 ; 15 Bom. L. R. 574 ; 15 Cr. L. J. 672. The expression "give information" in this section should not be interpreted as meaning volunteering information, but is intended to apply to a statement made in answer to a question put by a public servant. 104 Ind. Cas. 712=28 Cr. L. J. 872. This section deals with giving information to a public servant, as opposed to lodging a complaint in Court and requires that the information given by the accused should not only be false in fact but it must be

false to the knowledge or belief of the informant. 19 S. L. R. 91. For a conviction under this section it is not necessary that the false report must be taken down from dictation. 3 O. W. N. 96 (Sup)=95 Ind. Cas. 598=27 Cr. L. J. 822. The word "give" in this section does not bear the restricted meaning of "volunteer". 26 Cr. L.J. 1532=90 Ind. Cas. 316=A. I. R. 1925 Rang. 364. "Gives information" in this section does not necessarily mean "volunteers" information. A. I. R. 1929 4 ; see also A. I. R. 1928 P. 56. Inability to substantiate a claim is not an offence under this section. A. I. R.1928 Pat. 574. The penalties of s. 182, I. P. Code, could not be applied to the case of a person, giving to the Collector of a District incorrect information that in the informant's opinion the Collector had a claim on behalf of the state, of which the local Zemindars had, according to the informant, usurped possession. 4A. 498=A. W. N. 1882, 128. For an offence under section 182, it is only necessary that the information given by the accused to a public servant should be false to his knowledge, whereas to constitute an offence under section 211, it is necessary that the accused should institute or cause to be instituted some criminal proceedings against another person or should falsely charge him with having committed an offence. (1917) M. W. N. 875.

The offence under this section is complete when false information is given to a public servant to institute proceedings against a third person. The offence is complete, although the public servant takes no step towards the institution of criminal proceedings. 15A. 336=A. W. N. 1893, 111. The words "to use his lawful power" in this section refer to some power to be exercised by the officer misinformed, which shall tend to some direct and immediate prejudice of the person against whom the information is levelled. 4 M. 241=2 Weir, 256. It is not essential for the public servant mentioned in s. 182 to have been induced to do anything or omit to do anything. 13A. 351=A. W. N. 1891, 109. It is against the public servant to whom the false information is given that the offence under s. 182 is committed, and it is complete if the false information is given irrespectively of the results which may actually follow the action that may be taken upon it. 3 N. W. P. 194. Under section 182 accused must have known or believed information to be false while under section 211 if he had reasons to believe it to be false it is enough. A. I. R. 1925 Sindh. 184. The expression "gives information" in section 182 I. P. Code not only includes information given voluntarily but also a statement made within the course of investigation by the police. 7 Pat. 715. Where false reports were submitted both to the police and to a magistrate the police cannot start proceeding under section 182, where the magistrate has not started proceeding under section 211. 26 A. L. J. 533=A. I. R. 1928 All. 342; see also A. I. R. 1931 Rang. 12=8 Rang. 499=1931 Cr. C. 28=32 Cr. L. J. 202. When the charge under either s. 182 or 211 is in respect of the same offence there cannot be separate trials under the two sections. 17 Cr. L. J. 177=33 Ind. Cas. 817 ; see also 23 Cr. L. J. 55=14 L. B. R. 43=64 Ind. Cas. 839.

Procedure.—Not-cognizable—Summons—Bailable — Not-compoundable — Triable by Court of Session, Presidency Magistrate or Magistrate of 1st or 2nd Class.

Charge.—I (*name and office of Magistrate*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of , at , gave to a public servant, a certain information to wit—which you knew (or believed) to be false, intending thereby to cause, (or knowing it to be likely that he will thereby cause) such—, to do (or omit) something to wit,—which such—ought not to do (or omit) if the true state of facts were known by him [or to use the lawful power of such—to the injury (or annoyance) of—] and thereby committed an offence punishable under s. 182 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Resistance to the taking of property by lawful authority of public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Scope.—Resistance to the taking is punishable when the taking is by lawful authority. *Morgan and Macpherson.* Resistance to a distraint which is not issued

bona-fide is not an offence. 1 Weir, 126. Refusal to give up property along with threatening to do harm is resistance under this section. 6 Bom. L. R. 254. But mere refusal is not. Rat. Un. C. 412 ; see also 15 B. 564. Resistance of seizure of goods in execution of a decree against a deceased debtor is an offence under this section. 12 M. 87. Resistance to an expired distress warrant is punishable. 10 C. 18 ; 1 Weir 134 ; see also 49 P. R. 1905. A mere verbal direction to the bailiff not to remove property attached by him in execution of a decree, unless the property was entered as the accused's property, cannot be regarded as an illegal resistance, under section 183, if the evidence does not show that the bailiff is either abused or intimidated, or that any physical resistance was attempted. 15 B. 564. A mere refusal by the accused to hand over to the bailiff the money which he had in his pocket, is not a resistance to the taking of that money within the meaning of s. 183 of the Penal Code. Rat Un. Cr. C. 412. A resistance to a sheriff attaching property under a defective warrant is not liable to be punished under either s. 183 or section 186 I. P. Code. 49 P. R. 1905 Cr.=164 P. L. R. 1905=3 Cr. L. J. 75 ; 1 Weir, 134. It is the intention of law that when a public servant attaches property under a warrant in execution of a decree, he must have the warrant with him ; otherwise the taking of the property is not lawful. 27 A. 258=1 A. L. J. 595. Where a warrant for attachment of the applicant's property was not properly signed, he commits no offence under this section by removing property before it was seized. 18 A. L. J. 284=55 Ind. Cas. 852=21 Cr. L. J. 372 ; see also 1920 Pat. 285=1 Pat. L. T. 564. The judgment debtors cannot take it upon themselves to decide whether or not a certain property in their possession sought to be attached by the decree holder should be attached or should not be proceeded against. So long as the property is in their possession they have no right to offer resistance to attachment thereof. 109 Ind. Cas. 362=29 Cr. L. J. 538=A. I. R. 1928 Lah. 844. Resistance to execution of a warrant for their attachment of property which does not give the date for execution is not illegal. 1 Pat. L. J 850=18 Cr. L. J. 39=36 Ind. Cas. 871. Where the owner entrusted certain property to a firm for sale and subsequently the Court of Wards took charge of his estate, the firm's refusal to return the property until their account was settled is not an offence under s. 183 or 186, by reason of s. 171 Contract Act. A. I. R. 1926 Oudh. 202=1 Luck 133=30 O. W. N. 160=27 Cr. L. J. 328=92 Ind. Cas. 744. No offence is committed if the real owner of the sheep resist the Amin in wrongfully seizing the stranger's cattle. 1932 M. W. N. 247.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by a Presidency Magistrate or Magistrate of 1st or 2nd Class.

Charge.—I (*name and office of Magistrate, etc,*) hereby charge you (*name of the accused*) as follows : —

That you on or about the day of at offered resistance to the taking of property by the lawful authority of a public servant, knowing (or having reason to believe) that he is such public servant and thereby committed an offence under section 183 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Obstructing sale of property offered for sale by authority of public servant.

Notes.—Notices, etc., such as are sometimes given at public sales by persons having or claiming in good faith to have a right or interest in the property to be sold, would not be deemed obstructions. But such notices if clearly not *bona fide*, and merely for the purpose of injuring the sale, might be so. *Morgan and Macpherson.* To constitute an offence under this section, the sale must be by the authority of a public servant. 27 A. 480. Obstruction means physical obstruction. 2 Cr. L. J. 44 ; see also 1883 A. W. N. 197.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd Class.

Illegal purchase or bid for property offered for sale by authority of public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

Notes.—Both corporeal and incorporeal property are contemplated by this section. 3 W. R. 33 ; see also 37 A. 128=13 A. L. J. 109. *Bona fide* bidder cannot be prosecuted for failure to deposit earnest money. 148 Ind. Cas. 784=35 Cr. L. J. 789 =11 O. W. N. 473=1934 Cr. C. 582=A. I. R. 1934 Oudh. 186.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first class.

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Comment.—To constitute an offence under this section, the obstruction must be intentional and it must be direct. U. B. R. (1897—1901) Vol. 1. 266. To support a conviction under this section it is requisite to prove that the public servant was obstructed in the discharge of his public functions. 15 Bom. L. R. 315. There must be actual obstruction and not a mere withholding of assistance or inciting of others to withhold assistance. 6 C. P. L. R. Cr. 5. The word "voluntarily" contemplates the commission of some overt act of obstruction and does not intend to render penal passive conduct. 15 M. 221. Where the accused, in the honest belief that men doing some work on private land under the order of a Magistrate had committed trespass, prevented them from doing the work, *held*, that he could not be convicted under section 186 of the Penal Code. A. W. N. 1882, 52. Where a person voluntarily obstructs a public servant in the discharge of his functions, viz., in running away from the custody of police peon, he is not liable to be punished under section 186 I. P. Code. 2 B. H. C. 128. Prosecution must establish that public servant was acting in discharge of puplic function. 143 Ind. Cas. 686= 10 O. W. N. 553=1933 Cr. C. 672=34 Cr. L. J. 614=A. I. R. 1933 Oudh. 281 ; see also 142 Ind. Cas. 144=34 Cr. L. J. 263=13 P. L. T. 480=A. I. R. 1932 Pat. 276 ; A. I. R. 1932 Pat. 279=13 P. L. T. 689=33 Cr. L. J. 883=11 Pat. 493 ; 152 Ind. Cas. 481=1934 M. W. N. 1230=1934 Cr. C. 1287=A. I. R. 1934 Mad. 664. When the accused refused to accompany a clerk employed in making survey measurements of houses, under Act. I of 1865 Bombay, to have his house measured, *held*, that the act of the accused was no obstruction within the meaning of section 186 I. P. Code. 5. B. H. C. R. 51. Forbidding a surveyor to measure land in a particular manner is not an offence under this section. Rat. Un. Cr. C. 371=Cr. Reg. 27 of 1888. Where the action of a public servant is not justifiabie in law, obstruction to him is not an offence. 4 Bom. L. R. 437. But where a person not only refuses to give up property but threatens to do harm to the police-officer if he ventures to carry out the warrant, he commits an offence under s. 186 I. P. Code, since the threat is an overt act sufficient in law to constitute "voluntary obstruction". 6 Bom. L. R. 254=1 Cr. L. J. 262. A person between whom and the Municipality there is a *bona fide* dispute as to the ownership of the road commits no offence, under section 186 I. P. Code, if he pulls up the pegs and cuts the strings in the assertion of his right. Rat. Un. Cr. C. 366. Wife in chaining out-door of house to prevent execution of warrant against her husband's property commits no offence under this section. Rat. Un. Cr. C. 407= Cr. Reg. 79 of 1888.

There cannot be any voluntary obstruction of public servant in the discharge of his public functions, unless it is shown that the public servant was acting in the discharge of his functions in the manner authorized by law. 23 C. 896 ; 1 C. W. N. 74 ; 37 C. 122=14 C. W. N. 122. Obstruction to an illegal warrant is not an offence. A. I. R. 1925 Mad. 613=26 Cr. L. J. 750=48 M. L. J. 97=85 Ind. Cas. 286 ; see also

146 Ind. Cas. 183=1933 Cr. C. 1324=1933 A. L. J. 952=A. I. R. 1933 All. 759. Non-stopping at toll bar though signalled by contractor amounts to obstructing public servant in discharge of public function. A. I. R. 1935 Bom. 24.

Spreading a false report and thereby preventing people from bringing their children for vaccination does not amount to voluntary obstruction of the vaccinator in the performance of his public duties. 15 M. 93=1 Weir, 131 ; 1 Weir 129 ; Obstruction by the father of a child to an illegal act of a vaccinator is not an offence. 1 Weir, 131 ; 1 Weir, 132. Where a father does not consent to the vaccination of his child, he has a perfect right to take away the child from the vaccinator and to use such forces as is necessary for the purpose. 1 Weir, 132. This section does not cover the case of a public servant who is acting wholly outside his jurisdiction. 51 B. 896=29 Bom. L. R. 987=103. Ind. Cas. 593=28 Cr. L. J. 705. Resistance to execution under a time-barred warrant is not an offence. 99 Ind. Cas. 413=28 Cr. L. J. 157. If a person escapes from custody of process-server after arrest and shuts himself up in a room and refuses to come out he is not guilty under this section. 9 Lah. L. J. 408=103 Ind. Cas. 833=28 Cr. L. J. 753. Where a writ of attachment is without seal of Court resistance to attachment by judgment-debtor is not an offence under this section. 7 Pat. L.T. 30=93 Ind. Cas. 146=27 Cr.L.J. 418=A.I.R. 1926, Pat. 237. Passive conduct without overt act of obstruction cannot constitute an offence. A.I.R. 1924 Lah. 139. The word "obstruction" as used in s, 186 I. P. Code means "physical obstruction" *i. e.*, actual resistance or obstacle put in a way of a public servant. 110 Ind. Cas. 101. The use of the word "voluntarily" in this section indicates the commission of some overt act of obstruction and does not render mere passive conduct penal. Refusing to open a closed door does not amount to voluntary obstruction. The public functions contemplated by this section are not intended to cover any act that a public functionary may take upon himself to perform even he believes he is acting in the discharge of his duties. 25 Cr. L. J. 721=81 Ind. Cas. 209=1925 Lah. 139. A refusal of a *patwari* to allow the *Kanungo* to go through his account is only an act of insubordination and not a criminal act and a prosecution under s. 186 cannot be maintained. 26 Cr. L. J. 597=85 Ind. Cas. 821=A. I. R. 1925 All. 409 ; see also 47 A. 579=23 A. L. J. 352=87 Ind. Cas. 514=26 Cr. L. J. 978= A. I. R. 1925 All. 401 ; 30 Bom. L. R. 1255=A. I. R. 1928 Bom. 497. Obstruction implies criminal force and as such mere threatening language is not sufficient. A. I. R. 1928 Lah. 827. Mere threat will not in all cases amount to obstruction unless accompanied by overt act or show of physical force. Mere threat to be obstruction must be of such nature so as to affect public servant to cause him to abstain from proceeding with execution of his duties. 146 Ind. Cas. 183=1933 A. L. J. 952= 1933 Cr. C. 1324=A. I. R. 1933 All. 759 ; see also 141 Ind. Cas. 636=60 C. 149= 34 Cr. L. J. 181=1932 Cr. C 892=36 C. W. N. 1038=A. I. R. 1932 Cal. 871 ; 135 Ind. Cas. 653=33 Cr. L. J. 175.=1932 Cr. C. 111=9 Rang. 601=A. I. R. 1932 Rang. 21.Physical obstruction to a person acting under the direction of a public servant present at the time is an offence under this section. A. I. R. 1928 B. 135. The offence made punishable under section 186 is that of "voluntarily" obstructing a public officer in the discharge of his duty. 1 Weir 134. Mere absence cannot be held to be obstruction so as to constitute an offence under section 186. 1 Weir 134. A conviction under section 186, I. P. Code cannot be sustained, unless it is proved that a public servant was obstructed in the discharge of his public functions. L. B. R. (1872—1892), 152 ; see also L. B. R. (1872-1891), 336 ; 10 P. R. 1905 Cr. ; 8 W. R. Cr. 66 ; 9 B. H. C. 165 ; 15 Bom. L. R. 315=19 Ind. Cas. 507. Where a process-server was seriously obstructed, insulted and jostled in the execution of his duty, it is serious obstruction and the persons doing so are guilty of the offence under section 186, Indian Penal Code. 30 P.W.R. 1915 Cr. Where the accused, prisoners in a Jail, gave insubordinate answers and surrounded in a menacing attitude a constable who went to the cells to make inquiries, about the diet of the prisoners, *held*, they were guilty of an offence under s. 186 of the Penal Code. A. W. N. 1882, 223. To oppose the execution of an illegal warrant is not an offence. 22 C. W. N. 814 ; 86 Ind. Cas. 286 ; 39 C. L. J. 33 ; 93 Ind. Cas. 146. Under section 186 I. P. Code it is not necessary to prove that the written order under which the public servant was acting was actually shown to the accused. It is enough if it is found that the public servant had the order with him and could show it to anybody who wanted to see the same or question his authority. 45 Ind. Cas. 833=19 Cr. L. J. 641. Although it is improper for a *nazir* to depute one of his assistants to execute a warrant for the delivery of possession which is directed to him personally. But the assistant is sufficiently clothed

with authority to execute the warrant and any person offering resistance or obstruction to its execution is guilty of an offence under section 186 Penal Code. 54 Ind. Cas. 977=21 Cr. L. J. 193 ; see also A. I. R. 1933 Cal. 469=34 Cr. L. J. 826=57 C. L. J. 41=1933 Cr. C. 749=144 Ind. Cas. 817. Sanitary Inspector of a Municipality is a public servant. 36 C. W. N. 134= 139 Ind. Cas. 812=59 C. 234=33 Cr. L. J. 521=A. I. R. 1932 Cal. 462. So also are toll collectors and their servants. 36 Bom. L. R. 1124.

The execution of a writ of attachment after expiry of the date fixed for its return is illegal resistance to such execution is not an offence under section 186 of the Penal Code. 60 Ind. Cas. 334=22 Cr. L J. 222. The mere fact that the accused declined to render any help to the Naib Tahsildar in his investigation cannot be viewed as an obstruction caused by the petitioners. 73 Ind. Cas. 338=24 Cr. L. J. 594. Where a Court peon seeks to execute a decree by assisting the judgment debtor and the latter obstructs him and threatens to use violence, he is guilty under section 186. 82 Ind. Cas. 165=25 Cr. L. J. 1237 ; see also 83 Ind. Cas. 657=1924 Mad. 760. An obstruction caused in the assertion of *bona fide* rights would not ammount to an offence under s. 186. 4 Mys. L. J. 29.

Procedure.——Not cognizable—Summons——Bailable—Not—compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both,

and, if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with the simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Scope.—This section and s. 188, apply to direct refusal or omission of a person bound by law to render or furnish assistance to a public servant in the execution of his public duty. 7 C. L. R. 575. The word "assistance" referred to in the first part of this section is *ejusdem generis* with the various forms of assistance specified in the latter half of the section. The assistance must have some direct personal relation to the execution of the duty by the public officer. 26 M. 419 (F. B.) ; see also 38 M. L. J. 27=1920 M. W. N. 110 ; 139 Ind. Cas. 106=1932 Cr. C. 594=33 Cr. L. J. 36=A. I. R. 1932 All 506. Where a person is not legally bound to render assistance no offence is committed. 42 A. 314 ; 6 C. P. L. R. 5 ; 22 B. 769 ; 3 A. 201.

Procedure.—Non-cognizable——Summons——Bailable—Not-compoundable——Triable by Presidency Magistrate or Magistrate of the first or second class.

Disobedience to order duly promulgated by public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

and, if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affary, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order and thereby causes danger of riot, A has committed the offences defined in this section.

Scope.—Order by competent authority must be obeyed. 141 Ind. Cas. 720=34 Bom. L. R. 1523=34 Cr. L. J. 199=A. I. R. 1933 Bom. 1. To justify a conviction under this section, it is necessary to establish that the disobedience "causes or tends to cause, obstruction, annoyance, or injury to any person lawfully employed, and to make the offence graver, it must be established that such disobedience causes or tends to cause danger to human life, health or safety ; or causes or tends to cause a riot or affray." A. W. N. 1186, 251. In order to constitute an offence under this section it is necessary to show, *first*, a lawful order promulgated by a public servant ; *secondly*, a knowledge of the order and disobedience of it ; and *thirdly*, the result that is likely to follow such disobedience. 4 C. W. N. 226 ; see also A. I. R. 1931 Cal. 122=35 C. W. N. 257. To sustain a conviction under this section, it is essential that there should be evidence to show that the disobedience would produce one of the consequences specified in the section. Rat. Un. Cr. C. 433 ; 1 Weir 137 ; 31 C. 990. It is not sufficient in order to affect a person with the knowledge of an order s. 144 Cr. P. Code, and to render him liable to conviction under section 188, I. P. Code, to show that the order had been duly promulgated. 31 C. W. N. 340=45 C. L. J. 202=100 Ind. Cas. 830=28 Cr. L. J. 350 ; see also 44 C. L. J. 450 ; A. I. R. 1930 Cal. 63=33 C. W. N. 1002. It must be proved that under s. 144 that breach of peace or other danger would have resulted from the act of disobedience of the accused. A. I. R. 1930 Cal. 131=1930 Cr. C. 131=125 Ind. Cas. 273 ; see also 67 Ind. Cas. 205=3 Pat. L. T. 268=23 Cr. L. J. 381 ; 20 C. W. N. 981=36 Ind. Cas. 144 ; A. I. R. 1934 Oudh. 162=11 O. W. N. 384=35 Cr. L. J. 699. "To be legally empowered" is different from "to be justified." 47 A. 205=85 Ind. Cas. 823=26 Cr. L. J. 599. "Promulgate" indicates some form of publication.—*Ibid.* Sale of *arrack* in contravention of an order promulgated by the District Collector is not punishable under this section in absence of proof of causing or attempting to cause obstruction, annoyance or injury to any one. 22 L. W. 98=26 Cr. L. J. 1556=48 M. L. J. 605=A. I. R. 1925 Mad. 856. Disobedience of order without proof of annoyance etc., is not an offence under this section. A. I. R. 1928 Mad. 591. By an order under section 114 of the Criminal Procedure Code the petitioners were directed not to make any disturbance over a certain person's right of a ferry and thereafter the petitioners being found plying another ferry at the site in question but not causing any disturbance were ordered to be prosecuted under section. 188 I. P. Code. 22 C. W. N. 599 =46 Ind. Cas. 515=19 Cr. L. J. 739. Cognizance of a case under section 188, I. P. Code cannot be taken except, in accordance with the provisions of s. 195 Cr. P. Code and under section 487 Cr. Pro. Code, the Magistrate whose order is disobeyed is not competent to try the case. 23 C. W. N. 520=29 C. L. J. 282. It is essential for a prosecution under s. 188, Penal Code that the disobedience of the order "causes or tends to cause obstruction, annoyance or injury to any person lawfully employed." 3 Pat. L. T. 268=23 Cr. L. J. 381=67 Ind. Cas. 205.

Section 188 is obviously intended to apply to orders passed by public functionaries in the public interest or to prove a breach of the peace or other lawful disturbance and not to orders made in civil suits between party and party for the breach of which a remedy has been provided by the Code of Civil Procedure. 24 O. C. 18=61 Ind. Cas. 237=22 Cr. L. J. 381. It is the duty of the prosecution in every case under section 188 to prove by positive evidence that the accused had knowledge of the order with the disobedience of which he is charged. The proof of general notification pomulgating the order does not satisfy the requirements of the section. 63 Ind. Cas. 865=22 Cr. L. J. 705. Sanction to prosecute under s. 188 should not be granted unless all the elements necessary for conviction are proved. 21 Cr. L. J. 675=57 Ind. Cas. 915 ; see also A. I. R. 1923 Pat. 131=4 P. L. T. 13=24 Cr. L. J. 583=73 Ind. Cas. 327. The validity of a final order under s. 133 of the Cr. Pro. Code cannot be questioned at the trial of the accused for disobedience of that order under s. 188 of the Penal Code. 60 C. 1336=148 Ind. Cas. 808=35 Cr. L. J.

778=A. I. R. 1934 Cal. 242=1934 Cr. C. 242. Where an order under s. 244 Cr. Pro. Code has been disobeyed conviction should be based on actual facts and on general conclusions. A. I. R. 1932 Cal. 868=36 C. W. N. 792=33 Cr. L. J. 829=1932 Cr. C. 892. Magistrate cannot make mandatory order directing party to do some act. He can only make restrictive order. Conviction for disobeying such order is unsustainable. 146 Ind. Cas. 169=1933 Cr. C. 1274=A. I. R. 1933 Cal. 724. Breach of order of Commissioner of Police under s. 62A (4) Calcutta Police Act and s. 93A Suburban Police Act is an offence under s. 188. 132 Ind. Cas. 174=35 C. W. N, 716=32 Cr. L. J. 844=58 C. 1303=A. I. R. 1931 Cal. 410. Accused need not prove that disobedience of order by some one else than himself was without his consent. A. I. R. 1933 Sind. 93=142 Ind. Cas. 591=1933 Cr. C. 228=34 Cr. L. J. 362.

Legality of the order under section 144 of the Code of Criminal Procedure could not be questioned in proceedings under section 188 of the Indian Penal Code. 34 C. L. J. 578. The question whether the order disobeyed is a legal order is an entirely distinct question from whether an offence has been committed in disobeying it. If the order is legal, the Court has only to see whether the accused disobeyed it and if so, whether such disobedience caused or tendered to cause the effects specified in the second or third paragraphs of the section. 45A. 526=73 Ind. Cas. 801 ; see also 111 Ind. Cas. 461=29 Cr. L. J. 877. The offence of disobedience of an order duly promulgated, by a public servant under certain prescribed conditions is an offence under s. 188 I. P. Code. 31 Bom. L. R. 1151=A. I. R. 1929 Bom. 433.

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Charge.—I (*name and office of Magistrate, etc.,*) hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of at knowing that by an order, to wit promulgated by a public servant lawfully empowered to promulgate such order, you are directed to abstain from (*state the name of the act*) or to take certain order to wit with certain property, to wit , in your possession (or under your management) disobeyed such direction, and thereby committed an offence punishable under section 188 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servants, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Threat of injury to public servant.

Gist of the offence.—In order to sustain a conviction under this section there must be a threat of injury to either the public servant or to any one in whom the accused believes that public servant to be interested. What the section deals with are menaces which would have a tendency to induce the public servant to alter his actions because of some possible injury to himself or to some one in whom the accused believes he has an interest. Rat. Un. Cr. C. 273 ; see also 28 M. L. J. 505=39 M. 561. It is most material in a prosecution under this section, that the actual words used by the accused towards the public servant, should be mentioned before the Court to enable it to ascertain whether, in fact, a threat of injury to the public servant was really made by the accused. 8 A. 380. Where the accused was arrested under civil warrant and refused to follow the court peon and threatened him with violence and offence under this section has been committed. A. I. R. 1925 Pat. 183=25 Cr. L. J. 1237=82 Ind. Cas. 165. Mere threat of legal complaint is not an "injury". A. I. R. 1926 Lah. 136=6 Lah. 558=27 Cr. L. J. 400=27 P. L. R. 87=93 Ind. Cas. 48.

Injury under this section implies an illegal harm. *Ibid* ; see also 934 Ind. Cas. 536=32 Cr. L. J. 1181=58 C. 392=A. I. R. 1931 Cal. 448.

Procedure.—Non-cognizable———Summons———Bailable——Not-compoundable Triable by Presidency Magistrate or Magistrate of the First or Second Class.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered, as such, to give such protection, or so cause such protection to be given, shall be punished with imprisonment of eiter description for a term which may extend to one year, or with fine or or with both.

Threat of injury to induce person to refrain from applying for protection to public servant.

Notes.—A notice of intention to file civil suit for a declaration of right against a person does not amount to holding out threat or injury. 92 Ind. Cas. 863=24 A. L. J. 314=27 Cr. L. J, 357. But excommnication for instituting a civil suit falls under this section 8 M. 140.

Procedure.—Non-cognizable—Summons—Bailable—Not—compoundable—Triable by a Presidency Magistrate or Magistrate first or second Class.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCE AGAINST PUBLIC JUSTICE.

Scope.—Many thlngs which interfere with the administration of justice are made punishable in the preceding chapter. The chapter is intended to provide, for certain offences of that description which either do not properly fall within other chapters or which calls for more serve punishment because committed in order to obstruct public justice. It includes false evidence, and certain other offences agains justice.—*Morgan and Macpherson.*

191. Whoever, being legally bound by an oath, or by any express provision of law. to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Giving false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false and, therefore, gives false evidence.

(c) A, knowing the general character of Z's handwriting states that he believes a certain signature to be the handwriting of Z ; A, in good faith, believes it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies, as a true interpretation or translation of a statement or document, which he is bound by oath to interpret translate truly, that which is not, and which he does not believe to be, a true interpretation or translation. A has given false evidence.

Scope.—The words in section 191 are very general and do not contain any limitation that the statement made shall have any bearing upon the matter in issue.

It is sufficient to bring a case under this section, if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court and of leading it to suppose that what he states is true. 26 A 509. A person can be convicted if he has made a false statement in an affidavit. 99 Ind. Cas. 341=28 Cr. L. J. 133. No offence under this section is committed by false statement in an application for substitution. 102 Ind. Cas. 214=28 Cr. L. J. 518=6 Pat. 184. The authors of the Code thought it inexpedient to use the technical terms of the English law where they did not adopt its definitions and materially departed from it in substance. The offence of attempting to impose on a Court of Justice by false evidence, is therefore not designated in the Code by the word "perjury" which is used in the English law and in the Regulations. For in the Code the definition of this offence is wider in its scope than that which is to be found in the English law, or the Regulations—*Morgan and Macpherson.* Where a witness misreads a document for the information of the Magistrate an offence under this section is not committed. 9 C. P. L. R. Cr. 5. A false answer to a police enquiry is an offence under this section. 8 C. L. R. 236. But the making of a false balance sheet is not an offence. 16 A. 88=A. W. N. 1894, 23. A false statement recorded under s. 161, Cr. Pro. Code, 1882, is an offence under this section. 7 P. R. 1896 Cr. The practice of charging a man with making two mutually contradictory statements may be convenient, but it can only be successfully used where the two statements are necessarily and irreconcilably contradictory. 1915 M. W. N. 34=16 Cr. L. J. 14=26 Ind. Cas. 318. To justify a conviction of perjury, it is not necessary to prove that the statement of the party accused is impossible, and it is certainly sufficient to prove it incredible. 22 O. C. 230=54 Ind. Cas. 60. It is open to a witness to correct himself on second thought or on being reminded of any fact which might have escaped his memory. 25 O. C. 130=23 Cr. L. J. 653=69 Ind. Cas. 92. In order to sustain an indictment for perjury the prosecution must establish *inter alia* two things ; (1) that the statement was false ; (2) that it was known or believed to be false or not believed to be true. In other words, the statement must be intentionally false. 29 Bom. L. R. 14=I. L. T. 40 Lah. 36=107 Ind. Cas. 100=29 Cr. L. J. 212=A. I. R. 1928 Lah. 125. The mere fact that an accused on a previous occasion, made an inconsistent statement does not necessarily prove that the previous statement was true and that the latter is false. 29 P. L. R. 14=29 Cr. L. J. 212=107 Ind. Cas. 100. The offence of giving false evidence may be committed, although the person giving evidence has been neither sworn nor affirmed. 19 C. 355. A person filing a written statement is bound by law to state the truth, and if he makes a statemeat which is false to his knowledge or belief, or which he believes not to be true, he is guilty of giving false evidence within the meaning of s. 191 of the Penal Code. 6 A. 626=A. W. N. 1884, 253. A defendant, being bound to verify his written statement, is bound to make a true statement, and, therefore, if he makes a statement which he knows to be false, he is punishable for giving false evidence within the meaning of s. 191 Penal Code. 1 Weir 174 ; see also 43 C. 1301=20 C. W. N. 1192=34 Ind. Cas. 235. In order to support a charge of giving false evidence, it is not necessary that there should be proof of corrupt intention. It is sufficient that there is proof of intention, and, if the statement was false and known to the accused to be false, it may be presumed that in making it the accused intentionally gave false evidence. 3 N. W. P. 133. It is essential to consider, not the form of the statement which is to be gathered not merely from the words selected for the purpose of framing the charge, but also from any other statements which are to be found in the deposition of the accused which may reasonably be construed to affect the meaning of the selected words. 2 J. G. 38. A person making a false statement upon oath before a police patrol, acting under s. 13 of Bombay Act, VIII of 1867, gives false evidence within the definition in s. 191 I. P. Code and is liable to punishment under s. 193. 4 B 479. Where a person is under no legal obligation to speak the truth, he has not committed an offence under s. 191, in making a false statement 7 C. 121=8 C. L. R. 300 (F. B.) ; see also 10 C. 405 ; 23 M. 544 ; 8 B. 216. A witness making a false statement to a police officer, in reply to a question which he is bound by s. 161 to answer would be guilty of intentionally giving false evidence. 16 C. 465. Perjury is not established unless the two contradictory statements are irreconcilable, 107 Ind. Cas. 100. Each false statement is a separate offence under perjury. A. I. R. 1928 All. 706=29 Cr. L. J. 794=111 Ind. Cas. 122. The false statement must be in a proceeding in which the person is legally bound to speak the truth. A. I. R. 1922 Lah. 133=23 Cr. L. J. 82=65 Ind. Cas. 434. False statement in an affidavit in support of an application for transfer is an offence under s. 191. A. I. R. 1927 Sind. 113=28 Cr. L. J. 133=99 Ind. Cas. 341. To bring

a case within s. 191 false evidence must be intentionally given. 144 Ind. Cas. 194=1933 Cr. C. 484=34 Cr. L. J. 686=A. I. R. 1933 All. 318 ; see also A. I. R. 1933 P. C. 124=37 C. W. N. 314=1933 A. L. J. 645=14 P. L. T. 305=35 Bom. L. R. 507=64 M. L. J. 466=34 Cr. L. J. 322.

It is essential to the well-being of society that persons who commit offences which are of a public nature and which are punishable as crimes should be brought to justice. Therefore a Court cannot take cognizance of a bargain to abstain from the prosecution of a person for such an offence as that of wilfully giving false evidence. 3 N. W. P. 166. Sections 191 and 193 of the Penal Code require that the evidence should be intentionally false to the knowledge of the person giving it. Materiality may not be essential to the offence of giving false evidence, but it must be taken into consideration in arriving at the intention of the accused. Rat. Un. Cr. C. 2.

Fabricating false evidence.

192. Whoever causes any circumstance to exit, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false or entry or false statement so appearing in evidence, may cause any person who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to "fabricate false evidence."

Illustrations.

(*a*) A, puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*) A, makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*) A, with the intention of causing Z to be convicted of a criminal conspiracy writes a letter in imitation of Z's handwriting, purporting to be adressed to an accomplice in such criminal conspiracy and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

Comment.—To constitute an offence under this section, it is necessary to prove that it was intended that false circumstance should appear in evidence in a judicial proceeding, that is, should appear as part of the evidence on which the judicial officer has to form his judgment, and that the circumstance should be of such a nature as might have caused the judicial officer to entertain an erroneous opinion touching some material point in the case. 1 Weir. 175. It is the intention that creates the criminal offence and not the fact as to whether under the terms of the law, the document is admissible in evidence. 16 Cr. L. J. 620. But in a recent Punjab case a contrary view was taken. *Vide* 1 P. R. 1914 Cr. It is not essential for the purpose of this section that there should be any judicial proceeding pending at the time of the fabrication. It is enough that there is a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the document in question is intended to be used in such a proceeding. 22 Bom. L. R. 1229 ; A. I. R. 1921 Bom. 366=45 B. 668=22 Cr. L. J. 49=59 Ind. Cas. 193. Execution proceedings are judicial proceedings for purpose of ss. 192 and 193 of the I. P. Code. 22 Bom. L. R. 1239=45 B. 668. There is no fabricating of false evidence if document produced does not lead to an erroneous opinion but rather to a correct opinion. 40 A. 39=19 Cr. L. J. 2=15 A. L. J. 822=42 Ind. Cas. 914. To tutor a man to give false evidence is an offence under this section. 105 Ind. Cas. 662=28 Cr. L. J. 950=A. I. R. 1927 All. 721.

Object.—The framers of the Code thus explained the provisions on the subject of fabricating false evidence : "It appears to us that the offence which we have designated as the fabricating of false evidence is not punished with adequate severity under the English and other systems of law. This may perhaps be because the offence, in its aggravated forms, is not one of very frequent occurrence in western countries. It is notorious, however, that in this country the practice is exceedingly common, and for obvious reasons. The mere assertion of a witness commands far less respect in India than in Europe, or in the United States of America. In countries

which the standard of morality is high, direct evidence is generally considered as the best evidence. In England assuredly it is so considered, and its value as compared with the value of circumstantial evidence is perhaps overrated by the great majority of the population. But in India we have reason to believe that the case is different. A Judge, after he has heard a transaction related in the same manner by several persons who declare themselves to be eye-witnesses of it, and of whom he knows no harm, often feels a considerable doubt whether the whole from begining to end be not a fiction and is glad to meet with some circumstance, however slight, which supports the story, and which is not likely to have been devised for the purpose of supporting the story. Hence, in England a person who wishes to impose on a Court of Justice knows that he is likely to succeed best by perjury, or subordination of perjury. But in India, where a Judge is generally on his guard against direct evidence, a more artful mode of imposition is frequently employed. A lie is often conveyed to a Court, not by means of witnesses, but by means of circumstances, precisely because circumstances are less likely to lie than witnesses. These two modes of imposing on the tribunals appear to us to be equally wicked, and equally mischievous. It will indeed be harder to bring home to an offender the fabricating of false evidence than the giving of false evidence. But wherever the former offence is brought home, we would punish it as severely as the latter. If A puts a purse in Z's bag with the intention of causing Z to be convicted as a thief, we would deal with A as if he had sworn that he saw Z take a purse. If A conceals in Z's house a paper written in imitation of Z's hand, and purporting to be a plan of a treasonable conspiracy, we would deal with A as if he had sworn that he was present at a meeting of conspirators at which Z presided."—*Morgan and Macpherson.* To constitute an offence under this section, it is necessary to prove that it was intended that the false circumstances should appear in evidence in a judicial proceeding, that is, should appear as part of the evidence on which the judicial officer has to form his judgment, and that the circumstances should be of such a nature as might have caused the judicial officer to entertain an erroneous opinion touching some material point in the case. 1 Weir. 175=5 M. H. C. 373. Execution proceedings are judicial proceedings for the purpose of s. 192 and s. 193 of the Indian Penal Code. 22 Bom. L. R. 1239. It is not essential for the purpose of this section that there should be any judicial proceeding pending at the time of the fabrication. It is enough that there is a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the document in question is intended to be used in such a proceeding. 22 Bom. L. R. 1229. Where a document was produced by the accused which did not lead to the forming of an erroneous opinion touching a particular point but led rather to the forming of a correct opinion one of the ingredients constituting the offence of fabricating false evidence was wanting and the accused was not guilty of an offence under section 192. 15 A. L. J. 819. A person commits the offence of fabricating false evidence, if he makes a document, which, though it may not contain any false statement in express terms, yet contains false recitals, which implies such a false statement. 10 C. W. N. 220=3 Cr. L. J. 196. False dying declaration by a man who does nothing to communicate with authorities does not come under either section 192 or section 194. A. I. R. 1930 Pat. 550. Under section 192, a false document is not fabricated evidence unless there was, at the time of making it, an intention that it should appear in evidence. 7 M. 289=8 Ind. Jur. 138.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-Martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustrations.

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in a inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Legislative changes.—The words "or before a Military Court of Inquest" after the words "Court Martial" in Explanation I have been omitted by Act XIII of 1889.

Gist of the offence.—The gist of the offence does not consist in actual causing a failure of justice, but in the intention to cause a failure of justice by misleading the Court, and with such intent causing the existence of any circumstances which might appear in evidence. 29 A. 351. Where a witness makes a statement which is false and at once admits this and states what is real truth he should not be prosecuted for giving false evidence. 230 P. L. R, 1911 ; 16 Cr. L. J. 280. The rule of law is perfectly clear that in order to establish a charge of perjury, it is necessary to prove not only that the prisoner made a statement which was false, but also that he knew or believed it to be false or did not believe it to be true. In other words, the statement must be proved to be intentionally false. 15 Lah. 407 ; see also A. I. R. 1934 Oudh. 65=35 Cr. L. J. 390=147 Ind. Cas. 395=11 O. W. N. 87=A. L. R. 1934 Oudh. 77 ; see also A. I. R. 1935 Cal. 304.

Verification.—It is a false statement made under a verification that constitutes an offence under s. 193. not a verification on oath by solemn affirmation. 27 C. 820; 6 Bom. L. R. 886.

Notes.—When the deposition of a witness was not read over to him he cannot be convicted under this section. 103 Ind. Cas. 107=28 Cr. L. J. 651. False statement in affidavit in support of an application is punishable under this section. 99 Ind Cas. 600=28 Cr. L. J. 168=A. I. R. 1927 Sind. 128 ; see also 55 A. 114=1932 A. L. J. 1076=1933 Cr. C. 53=34 Cr. L. J. 457=A. I. R. 1933 All. 47 ; 131 Ind. Cas. 262=53 C. L. J. 184=1931 Cr. C. 403=35 C. W. N. 690=32 Cr. L. J. 674=58 C. 1211=A. I. R. 1931 Cal. 344. The essence at the offence of perjury consists in an attempt to mislead and deceive the Court. 27 Cr. L. J. 953=A. I. R 1926 Pat. 517. If a witness makes a false statement and immediately afterwards corrects it, he should not be convicted under this section. 89 Ind. Cas. 1028=26 Cr. L. J. 1460. See also 14 Cr. L. J. 280. In view of the definition of complaint in Cr. P. Code, the particulars of the offence under this section, must appear in a complaint preferred by a Court under s. 476 Cr. Pro. Code. 52 Cal. 478=89 Ind. Cas. 251=26 Cr. L. J. 1307=A. I. R. 1925 Cal. 721. It is the duty of the prosecution to prove conclusively that the statement made by the accused was necessarily a false statement, before a conviction can be sustained under this section. 21 Cr. L. J. 500. In a case of perjury it is desirable that the due administration of the oath to the accused person on the occasion in question should be proved like any other fact. 20 Cr, L. J. 370. A claimant for land registration is bound to make a true declaration upon the subject of his application, and if he makes a false statement in the course of a declaration, he is liable to punishment under ss. 191 and 193 I. P. Code. 38 C. 368=11 Ind. Cas. 595=12 Cr. L. J. 411 ; see also 9 C. W. N. 127=2 Cr. L. J. 15. Though perjury is offence every perjurer should not be charged. 145 Ind. Cas. 371=1933 Cr. C. 288=34 Cr. L. J. 948=A. I. R. 1933 Mad. 230 ; see also 144 Ind. Cas. 846=1933 Cr. C. 970=34 Cr. L. J. 833=A. I. R. 1933 Cal. 606. Magistrate recording statement under section 164 Cr. Pro Code is Court. Offence committed under s. 193 cannot be taken cognizance of without complaint in writing. A. I. R. 1935 All. 341.

Proof that the statements which form the subject matter of charge are false must consist of reliable evidence, and the court is not justified in treating obviously unreliable evidence as good, merely because the accused himself was responsible for it. 5.

S. L. R. 136=13 Ind. Cas. 220=13 Cr. L. J. 28. If a person makes a false statement bofore a Sub-Registrar he commits an offence under this section 12 M. L. T. 376=1912 M. 'W. N. 1107=18 Ind. Cas. 662=14 Cr. L. J. 102. The offence under this section is an offence against public justice. The person best qualified to say whether a prosecution should or should not be instituted is the Judge before whom the evidence was given and who considered all the facts of the case. 9 A. L. J. 538=15 Ind Cas, 496=13 Cr. L. J. 496 ; see also 14 Cr. L. J. 107=18 Ind Cas. 667=13 P. W. R. 1913, Cr.=68 P. L. R. 1913. In a prosecution for giving false evidence, under this section. the case of each person accused should be separately enquired into by the Magistrate 5 A. 17 ; L. B. R. (1872—1892), 129. In a charge under this section, the words constituting the false statement or their substance should be inserted. Rat. Un. Cr. C. 488=Cr. Rg. 57 of 1889 ; see 7 N. W. P. 137. Under the definition of "fabricating false evidence" it is not necessary that the evidence should be intended to be used in a judicial proceeding. It is sufficient if it is to be used to influence a public servant in any proceeding taken by law before him. 52 B. 385=30 Bom. L. R. 330=108 Ind, Cas. 501=A. I. R. 1928 Bom. 130. Mere fabrication of accuunt is not in itself criminal offence. 137 Ind. Cas. 134=34 Bom. L. R. 294=1932 Cr. C. 244=56B. 213=33 Cr. L. J. 386=A. I. R. 1932 Bom. 185. In order to sustain an indictment for perjury the prosecution must establish *inter alia* two things : (1) that the statement was false (2) that it was known or believed to be false or not believed to be true, In order words the statement must be intentionally false. 29 P. L. R. 14=107 Ind. Cas. 100=29 Cr. L. J. 212=A. I. R. 1928 Lah. 125. A false statement in the affidavit by the identifier as to the service of summons is punishable under section 103, if the affidavit was intended to be used in a judicial proceeding. 6 Pat, 760=106 Ind. Cas. 703=29 Cr. L. J. 11=A. I. R. 1928 Pat. 161. Where it is not shown that the statement taken by a civil Court was read out to the petitioners as required by order XVIII, r. 5 Civ. Pro. Code. 1908. the petitioners cannot be convicted under s. 193 (a) r. 5. 12 P. R. 1917 Cr. 15 P. W. R. 1917 Cr.

Where a witness, having made a false statement, is cautioned by the trying Judge and is informed of various circumstanees which seem to establish the falsehood of that statement. and the witness after such caution acknowledges that his earlier statement, was false and corrects it, it is not desirable to subject such a witness to a prosecution for perjury. 19 Bom. L. R. 61=4 Bom. Cr. Cas. 8. In a case under s. 193 it is essential to show that the accused gave a false evidence or made a false statement intentionally and the falsity must not be merely a matter of vagueness and doubt. 18 Cr. L. J. 772=41 Ind. Cas. 148. A stop should be put to prosecutions for perjury arising out of a certain case, where two Courts take quite contradictory views of occurence. In such circumstances, it is highly improper to continue the criminal prosecutions. 27 A. L. J. 1327=9 L. R. 139 Cr. A *patwari* who being directed by a revenue Court prepares a false report can be prosecuted under s. 193 of the penal Code. 27 A. L. J. 512=118 Ind. Cas. 232=30 Cr. L. J. 874=A. I. R. 1929 All. 374. A man should not be prosecuted under section 193. Where he has reverted to the truth in the course of the trial, especially if he was not a willing false witness. 112 Ind. Cas. 468=29 Cr, L. J. 1044 ; see also 117 Ind. Cas. 210=30 Cr. L. J. 724=A. I. R. 1929 Nag. 279 : 83 Ind. Cas. 490=25 Cr. L. J, 1127 ; 81 Ind. Cas. 951 ; 152 Ind. Cas. 254=1934 Cr. C. 1147=A, I. R. 1934 Sind. 155 ; 137 Ind. Cas. 748=1932 Cr. C. 421=33 Cr. L. J. 485=33 P. L. R. 321=A. I. R. 1932 Lah. 307 ; but see A. I. R. 1934 Lah. 981=1934 Cr. C. 1375. Where false statement is made before police and committing Magistrate but retracted before Sessions Judge Court, prosecution under s. 193 should not be sanctioned. A. I. R. 1933 Nag. 179=34 Cr. L. J. 649=143 Ind. Cas. 747 ; where a person makes one statement in committing Court and contradicts it in Sessions Court, and the latter statement is true the Sessions Court can complain of falsehood of former only if committed in relation to Sessions trial. 134 Ind. Cas. 1137=33 Cr. L. J. 48=61 M. L. J. 914=1931 M. W. N. 1061=55 M. 178=A. I. R. 1931 Mad. 778. Fabrication of electoral roll is an offence under ss. 193 and 465 of the I. P. Code. 1934 Cr. C. 1359=A. I. R. 1934 Cal. 838.

Where the deposition of a witness was not read over to him as provided by s. 360 of the Cr. Pro. Code he cannot be prosecuted for perjury. 103 Ind. Cas 107=28 Cr. L. J. 654. Where during the course of a criminal trial, the accused was asked whether his son had not been arrested by a certain head-constable some years previously and he replied that he had no knowledge of the same, *held*, that in the absence of direct proof, that the accused had personal knowledge of such arrest, he was not liable to be convicted under section 193. 9 Lah. L. J. 414. In a case where as a matter of fact no oath was administered to the applicant, the lower Courts gave

sanction for prosecution under section. 193. I. P. Code. *Held* assuming that such was the case the applicant was bound to state the truth before a Court of Justice, 26 Cr. L. J. 566=85 Ind. Cas. 710=A. I. R. 1925 All. 410. A person cannot be prosecuted under this section, for making a false statement in an affidavit, where the oath has been administered by a person who had no authority to administer such an oath. 31 Bom. L. R. 144=116 Ind. Cas. 248=30 Cr. L. J. 593=A. I. R. 1929=Bom. 136. It is not advisable to order prosecution for perjury or for an attempt to commit perjury of a most technical nature in which there is not any large degree of certitude of conviction. 117 Ind. Cas. 210=30 Cr. L. J. 724=A. I. R. 1929 Nag. 279. When false statements amounting to perjury are made in course of administration enquiry and order for prosecution is passed, no appeal lies against the order. 30 Cr. L. J 1154=A. I. R. 1929 All. 936. But sanctioning a prosecution of an offence under section 193 I. P. Code is a judicial act and judgment has to be formed on legal evidence. 7 Mys. L. J. 387.

If the statement made is designedly false the accused is liable irrespective of the fact whether the statement had a material bearing or not upon the matter under enquiry before the Court. The materiality or immateriality can have a bearing upon the sentence to be passed. 30 Cr. L. J. 1154=A. I. R. 1929 All. 936. Where a statement on the basis of which a person is accused of perjury is proved to be false, it can safely be presumed that in making that statement the accused "intentionally" made false statement. 116 Ind. Cas. 643=30 Cr. L. J. 655=A. I. R. 1929 Nag. 193. Where the statements of an accused have not been made in the conrse of judicial proceedings, he cannot be convicted under this section. 82 Ind. Cas. 710=25 Cr. L. J. 1450=6 Lah. L. J. 375.

The intention to commit perjury must be clearly present before a person charged with the offence can properly be convicted of it and a statement capable ef being construed in any reasonable way that does not show a clear intention of committing perjury or a delibrate attempt to make a false statement does not *per se* contain the elements of the offence and where a prosecution for perjury is sought to be based on an affidavit filed in Court, the Court should take a broad view of the facts and where the language may convey a meaning indicative of falsity as well as one which may amount to an inaccurate description of events which have happened a prosecution for perjury is unsustainable. 1 Pat. L. R. Cr. 17=72 Ind. Cas. 887=24 Cr. L. J. 471. A "judicial proceeding" is nothing more or less than a step taken by the Court in the course of the administration of justice in connection with a pending case. 2 M. H. C, 43 ; 1934 A. L. J. 1087=4 A. W. R. 816=1934 Cr C. 1306=A. I. R. 1934 All. 988.

Before a person can be held guilty, under section 193 of the Penal Code, for a false statement made before the investigating police officer, it is necessary having regard to the provision of s. 161 of Cr. Pro. Code, that it should be shown, by evidence that the statement was made in answer to questions put by such officer. 16 C. 349. This section makes it imperative upon the Court to pass some sentence of imprisonment in every case of conviction under that section. 2 J. G. 26. In case of prosecution under ss. 193 and 120 B. Penal Code previous sanction is necessary. 139 Ind. Cas. 89=33 Cr. L. J. 657=1932 Cr. C. 881=A. I. R. 1932 Cal. 850. In a trial under this section, age, relationship and other circumstances are to be considered by trying Magistrate. 140 Ind. Cas. 756=34 Cr. L. J. 92=1933 Cr. C. 157=1933 M. W. N. 100=A. I. R. 1933 Mad. 125. Sanction cannot be refused in case of contradictory statements by approver. 1933 Cr. C. 1113=A. I. R. 1933 Lah. 868. A husband can be prosecuted for making false statement in Divorce proceedings. 145 Ind. Cas. 253=A. I. R. 1933 Lah. 98.

A person is guilty of fabricating false evidence when he makes a false entry in a document intending that it shall appear in evidence and mislead the judge or Magistrate; 56 P. L. R. 1918=19 Cr. L. J. 141. Prosecution for perjury under this section should not be ordered where the statements complained of are slightly discrepant owing to inaccuracies of mind and are not deliberately false. 43 Ind Cas. 822=19 Cr. L. J. 230. An accused person may be convicted of the offence of having given false evidence before a Civil Court, notwithstanding that the Court has made no note in writing to the effect that the evidence has been read out to the deponent. 28 P. R. Cr. 1918=39 P. W. R. Cr. 1918=47 Ind. Cas. 872=19 Cr L. J. 972. In a case under this section for perjury where the prosecution, is based upon a certain statement being false made by the accused, it is essential to set out the exact statement in detail upon which the prosecution wants to proceed, (1918) Pat. 13=4 Pat. L. W. 44=43 Ind. Cas. 585=19 Cr. L. J. 169.

Attestation of false report without knowledge of contents is not an offence under this section. 17 A. L. J. 574=50 Ind. Cas. 28=20 Cr. L. J. 268. Mere witnessing

service of summons on a wrong person also does not constitute an offence. 52 Ind. Cas. 417=20 Cr. L. J. 648. In a case under this section, it must be proved beyond all reasonable doubt that the particular portion of the statement alleged to have been made by the accused is false. 51 Ind. Cas. 629=20 Cr. L. J. 519. Where the deposition of a witness is read by him it need not be read over to him. 23 C. W. N. 661=29 C. L. J. 513=50 Ind. Cas. 660; see also 42 M. 561=36 M. L. J. 296=50 Ind. Cas. 987. In case of perjury it is desirable that the due administration of the oath to the accused person on the occasion in question should be proved like any other fact. 50 Ind. Cas. 978=20 Cr. L. J. 379. Secondary evidence cannot be admitted in the trial of the petitioner for perjury to prove the making of the statement in the Munsiff's Court. 1 Lah. 361=58 Ind. Cas. 830. It is the duty of the prosecution to prove conclusively that the statement made by the accused was necessarily a false statement, before a convtction can be sustained under this section. 56 Ind. Cas. 660=21 Cr. L. J. 550. In a prosecution for perjury under this section, where the accused is charged with having falsely denied the receipt of consideration it is for the prosecution to prove that consideration did pass, and not for the accused to prove the contrary. 18 A. L. J. 1151=59 Ind. Cas. 198=22 Cr. L. J. 59.

A statement recorded by a Magistrate in the course of a police investigation under s. 146 of the Criminal Procedure Code is not evidence within s. 193 Expl. 2, I. P. Code. 23 Bom. L. R. 1=45 B. 835=60 Ind. Cas. 593. See also A. I. R. 1932 Lah. 254=1932 Cr. C. 278=33 Cr. L. J. 413=137 Ind. Cas. 131; but see 142 Ind. Cas. 776=34 Cr. L. J. 469=34 P. L. R. 421=1933 Cr. C. 564 =14 Lah. 507=A. I. R. 1933 Lah. 321; A. I. R. 1933 Mad. 125=1933. M. W. N. 100=1933 Cr. C. 157=34 Cr. L. J 92=140 Ind. Cas. 756. Where the accused's evidence was disbelieved by the Lower Court but believed by the Sessions Court and again disbelieved by the High Court, the Sessions Court should not direct prosecution of the accused. 32 Cr. L. J. 652=1931 Cr. C. 644=A. I. R. 1931 Lah. 404. When same act constitute offence under ss. 193 and 471. I. P Code, prosecution under s. 471 alone without complaint of District Munsiff before whom document is used does not lie. 144 Ind. Cas. 519=1933 M. W. N. 217=37 M. L. W. 547=34 Cr. L. J. 800=A. I. R. 1933 Mad. 413.

In order to convict a person for fabricating false evidence, it must be established that the accused made a document containing a false statement, that he intended that false statement should appear in evidence in a proceeding taken before a public servant and that the false evidence might cause any person, who in such proceeding was to form an opinion on the evidence, to entertain an erroneous opinion touching any point mentioned in the result of the proceeding. 2 A. L. J. 203=A. W. N. 1905, 52=2 Cr. L. J. 100; see also A. W. N. 1903, 68; A. W. N. 1890, 86. The essential ingredient in the constitution of an offence under section 193 is the intention of the person. Where a person is charged with having made contradictory statements in a cross-examination, the Magistrate will be exercising a proper discretion, if he takes into consideration the fact that the statement has been made in the course of cross examination, when possibly he may have been either confused, or under some mistake regarding the question put to him. 2 C. W. N. 81. Making false verification to written statemet with knowledge of its falsehood is offence within the meaning of section 193.—A. I. R. 1930 All. 490.

The mere fact that the accused, by falsely representing to the Marriage Registrar that a marriage had been solemnised, induced the Registrar to make a false entry of the registration of the marriage, will not make the accused liable to be convicted under section 193 in the absence of proof of the intention mentioned above. 11 G. W. N. 911=6 Cr. L. J. 162. In order to convict a person under section 190, the prosecution should prove that the statements made by the accused were false. and were made by him knowing them to be false. 2 C. L. J. 101=2 Cr. L. J. 455; 16 W. R. Cr. 47. Where after the setting aside of a *mokurari* tenure by a Civil Court, the accused deposited money in Court and put in a petition stating that the deposit was in respect of the Mokurari tenure held that he could not be convicted of fabricating false evidence. 10 C. L. R. 433. Where a person made a false statement in the recital of title to a property in a document, and the statement was not admissible in evidence against the person or persons against whose interest such statement was made *held*, that he could not be convicted under s. 193 for fabricating false evidence. 2 C. L. J. 46=2 Cr. L. J. 388 It is wrong to lie, but to tell a foolish and irrelevant falsehood would not always or necessarily amount to giving false evidence in a judical proceeding A. W. N. 1889 218. A charge under section 8 I. P. Code can be framed as regards a statement under s. 164 Cr. I. P. Code. 1882, made on oath before a Magistrate. 16 M. 421=1 Weir 175.

An enquiry under section 476, Cr. Pro. Code, is a judicial proceeding and a witness giving false evidence in the course of such an enquiry is guilty of an offence under s. 193 of the Penal Code. 37 C. 52=14 C. W. N. 132=5 Ind. Cas. 62=11 Cr. L. J. 45. But a proceeding under s. 512 of the Criminal Procedure Code (Act X of 1882) is not a judicial proceeding. A. W. N. 1890, 100 ; see also A. W. N. 1899,39. In order to constitute the offence of giving false evidence in a judicial proceeding, it must be proved that the prisoner at the time he made the false statement, was under a legal obligation as a witness to state truth. 4 M. H. C. 185=1 Weir. 159. The making of any number of false statements in the same deposition is one aggregate case of giving false evidence and charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition. 6 M. H. C. App. 27. In order to establish the offence of having intentionally given false evidence by reason of two contradictory statements, it is necessary to prove that both the statements are such that a charge of giving intentionally false evidence might be made in regard to either of them or in regard to both of them in the alternative. 27 C. 455=4 C. W. N. 249 ; 7 A. 44=A. W. N. 1884, 258 ; 22 A. 115=A. W. N. 1889, 207 ; 5 B. H. C. R. 49. Where the perjury is assigned upon a distinct allegation, the evidence of its falsity must be regularly taken, in the case in which it is tried. If the whole proof consists of two conflicting statements an alternative charge and finding are the regular course. 1 Weir 165, see also Rat. Cr. Cr. C. 26 ; 23 M. 544. According to the English Law, since the decision in *King* v. *Haris*, 5 Barn. & Ald. 296, mere proof of contradictory statements on oath, without proving which of those statements is false, is sufficient to support a conviction on a charge of perjury. But in India, satisfactory proof of contradictory statements on oath or solemn affirmation is sufficient to justify an alternative finding of an offence under sec. 193. 1 Weir 155=4 M. H. C. 51. A good conviction may take place on proof of two contradictory statements, without confirmatory evidence as to the falsity of either when both are on oath and made the subject of separate charges. 1 Weir. 161 ; 23 Bom. L. R. 884=46 B. 161 ; but see 1 Cr. L. J. 517. A person cannot be charged in the alternative, with intentionally giving false evidence in a stage of judicial proceeding before a Magistrate or with intentionally giving false evidence before a police-officer making an investigation under Ch. XIV Cr. Pro. Code. 18 B. 377 F. B.

A conviction in the alterative under s. 193 or s. 182, Penal Code is not sustainable on the ground that, where one statement has been on oath, and a contradictory statement has been made before the police, the accused must be either guilty under section 195, Penal Code, of giving false evidence in court, or under section 182 Penal Code, of giving false information. 1 L. B. R. 101 ; see also Rat. Un. Cr. C. 401. In order to sustain any conviction for giving false evidence upon an alternative charge, when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. 10 C. 405. A conviction upon an alternative charge of having given false evidence consisting of contradictory statements in a single deposition is good though there may be no finding as to which of the statements was false. 10C. 937 ; see also 13 B. L. R. 324 (F. B.)=21 W. R. 72 ; 13 B. L. R. 325 note=12 W. R. Cr. 11 ; 11 W. R. Cr. 37 ; 20 P. R. 1883 Cr. If a person is accused of making two contradictory statements, direct evidence is necessary to prove that both the statements were made, and an enquiry must be held as to which statement is untrue and whether the accused wilfully made the statement alleged to be false, knowing it to be such. 3 B. L. R. A. Cr. 36 ; 22 W. R. Cr. 2. In cases where it is doubtful which of two contradictory statements is false, the accused must be given the benefit of the doubt and the punishment should be awarded to that statement which involves the least guilt. 3 P. R. 1899 Cr. ; see also 27 P. R. 1890 Cr. An alternative charge under section 193 of the Penal Code cannot be permitted in respect of contradictory statements, one of which is made to the police and another to a Magistrate. Rat. Un. Cr. C. 518. Where an incriminating question is put to a witness, the Magistrate should explain to him his position, and should advise him of his right, as otherwise, he may be induced, through ignorance of the state of the law, to deny the truth for fear of penal consequences. If without such warning, he speaks untruth, the offence he has committed, namely of intentionally giving false evidence, does not deserve punishment. 2 C. L. R. 181. A person making an incriminating statement which at the same time is false, is not protected from prosecution under s. 193 Penal Code, though he cannot be made subject to any other kind of prosecution. 1 Weir. 153.

Where several persons are charged with giving false evidence in the same proceeding, each of them should be separately tried. 4 A 293=A. W. N. 1882, 37 ;

A. W. N. 1881, 83 ; 1 Weir 161=2 Weir 271. It is essential, in order to sustain a charge under section 193 of the Penal Code, that it should be proved that there was a judicial proceeding and that the false statement alleged to have been made in the course of that proceeding was actually made. 1 B. L. R. A. Cr. 13. The true rule is that no man can be convicted of giving false evidence except on proof of facts which, if accepted as true, show not merely that it is incredible but that it is impossible that the statemeuts of the party accused made on oath can be true. 11 W. P. Cr. 25. By the penal law of the country a statement untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court. 19 W. R. Cr. 69. In a case of giving false evidence the strictest and most accurate proof is necessary, and the testimony of a single witness unsupported by corroborative evidence is insufficient to convict a person charged with giving false evidence. 5 W. R. Cr. 27 ; 5 W. R. Cr. 25 ; but see 14 W. R. Cr. 53, 5 W. R. Cr. 98. A charge under section 191 should specify the proceedings in which the alleged false evidence was given, and should contain the exact words alleged to be false as definitely and specifically as possible. 36 P. R. 1869 Cr. Sanction to prosecute under s. 193 I. P. Code is not required when the offence is not committed in relation to a particular proceeding in any particular Court. U. B. R. (1892-1896) Vol. I. 191. Every attempt to pervert the proceedings of a Court to an improper end is a contempt of its authority, and giving false evidence is such an attempt. The offence, therefore, if committed before a Magistrate, cannot be tried by him. 10 B. H. C. R. 73. Where a committing Magistrate had ordered the prosecution of a witness under s. 193, Penal Code, while the case in which he had deposed was pending before the Court of Session, the High Court set aside order, commenting on the impropriety of taking proceedings against a witness while the case is still pending. 18 C. W. N. 1342=16 Cr. L. J. 147=27 Ind. Cas. 211.

False answer to a question which is neither relevant nor material is not an offence. 22 Cr. L. J. 568=1921 Pat. 139=2 Pat. L. T. 380=62 Ind. Cas. 584. In a case under this section it must be proved that the accused made some statement which he knew to be false or which he did not believe to be true. 61 Ind. Cas. 521 =22 Cr. L. J. 393. A person can be charged and convicted for perjury even though his prior deposition has not been taken down in strict compliance with Order 18 rr. 5 and 6 of C. P. Code. 18 N. L. R. 192=68 Ind. Cas. 36=23 Cr. L. J. 500. Where contradictory statements are made before the same person, sanction to prosecute under s. 193 I. P. Code should be granted. 5 Lah. L. J. 407. No man can be convicted of giving false evidence except on proof of facts which if accepted as true, show not merely that it is incredible, but that it is impossible that the statements of the accused made on oath can be true. 1 Rang. 290=1924 Rang. 17. To convict person of perjury it must be shown that the statements made by the accused are on their face deliberately false or that they are so from extrinsic circumstances. 4 Pat. L. T. 683=1 Pat. L. R. 142 Cr.=72 Ind. Cas. 161=24 Cr. L. J. 321 ; see also 1 Pat. L. R. Cr. 17. A witness is not guilty of perjury if he corrects a statement of his, previously made in the same deposition. 11 O. L. J. 309=81 Ind. Cas. 951=25 Cr. L. J. 1127=83 Ind. Cas. 490.

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the First class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you , on or about the day of at , being summoned as a witness in being a judicial proceeding then pending before them and being bound on oath (or a solemn affirmation) to state the truth intentionally stated in evidence that which statement you either knew (or believed to be false or did not believe to be true), and thereby committed an offence under s. 193 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

Giving or fabricating false evidence with intent to procure conviction of a capital offence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital "by the law of British India or England" shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine ;

and, if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence, shall be punished either with death or, the punishment hereinbefore described.

if innocent person be thereby convicted and executed.

Lgislative changes.—In this section for the words "by the Code or law of England" the words quoted have been substituted by Act 9 of 1890.

Notes.—This offence ranks with murder and attempt to murder, according to the result. *Morgan and Macpherson.* No intention or knowledge can be presumed in statements made as dying declaration by a person who did not seek aid from the authorities. A. I. R. 1930 Pat. 550=129 Ind. Cas. 87. Person charged with murder may be convicted under s. 201. His conviction under s. 194 is not illegal, but he should be asked to plead to charge under s. 194. A. I. R. 1934 All 30=1932 A. L. J. 1079=34 Cr. L. J. 445=142 Ind. Cas. 803.

Procedure.—Not-cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

195. Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which, "by the law of British India or England," is not capital, but punishable with transportation for life or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

Legislative changes.—In this section for the words "by the Code of Law of England" the words quoted have been substituted by Act 9 of 1890.

Scope.—This section applies to those who make use of such evidence as is made punishable by the preceding sections. It relates not only to fabricated evidence but also to such evidence as is given or offered by the mouth of a false witness. It may include also the case of suborning false witnesses or attempting to use their evidence. But a mere inciting others by offers of reward to bear false witness or to fabricate evidence, appears not to fall within these words, there must be a use of or an attemt or offer to use evidence in a judicial proceeding or on some other occasion. The word "corruptly," which does not occur in the preceding sections, probably used here to denote that those whose duty it is, not to judge of the credibility of evidence, but to submit it for the consideration of judicial and other functionaries on behalf of their clients do not incur the penalties of using false evidence.—*Morgan and Macpherson.* Using fabricated evidence even in defence constitutes an offence under s. 145. A. I. R. 1922 Bom. 99=46 B. 317=23 Cr. L. J. 23=23 Bom. L. R. 987=64 Ind. Cas. 503. Taking photo of undertrials cannot be inferred to be for fabrication of false evidence without proof of intention to use them so. 17 Cr. L. J. 431=14 A. L. J. 688=35 Ind. Cas. 991.

Pocedure.—Not cognizable—Warrant—Not bailable—Not-compoundable—Triable by Court of Session

196. Whoever corruptly uses, or attempts to use as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

Notes.—Under this section, the mere user of false evidence is not sufficient, the user must be corrupt. 'Corruptly' is not defined in the Code. The Court must give the word "corruptly" its ordinary dictionary meanining The desire to screen an offender from the legal consequence of his act will be designated a corrupt motive, and it would not require evidence to satisfy the Court that the witness in giving false evidence had that desire. But it is doubtful whether the user cannot be corrupt

unless it involves the corruption of a third person. 23 Bom. L. R. 987. It is an essential element of the offence under this section that the documents should have been corruptly used or attempted to be used as true or genuine evidence. 85 Ind. Cas. 253=3 Bur. L. J. 349=26 Cr L. J. 509. Knowledge of the falsity of statement is necessary to support conviction. A. I. R. 1925 Mad. 609=48 M. 395=26 Cr. L. J. 801=8 M. L. J. 290=86 Ind. Cas. 449; see also A. I. R. 1923 All. 175=21 A. L. J. 88=24 Cr. L. J. 747=4 L. R. A. Cr. 6=74 Ind. Cas. 75. A mere attempt to get a medical certificate which is refused does not fall under s. 196. 17 Cr. L. J. 388=35 Ind. Cas. 820. A person cannot be prosecuted for producing false account books in pursuance of notice under s. 23(2) of the Income-tax Act. A. I. R. 1927 Cal. 724=31 C. W. N. 996=46 C. L. J. 550=28 Cr. L. J. 887=104 Ind. Cas. 903. Punishment under ss. 465 and 196 I. P. Code must be deterrent. A. I. R. 1926 Bom. 355=50 B. 783=28 Bom. L. R. 1251=27 Cr. L. J. 1173=97 Ind. Cas. 805.

Procedure.—Not-cognizable—Warrant—Bailable or not as in the offence of giving such evidence—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

Issuing or signing false certificate.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Scope.—Numerous laws require a certificate of some matter to be given, and many make a certificate admissible as evidence of some fact. The offence of certifying in any of these and the like cases, knowing or believing that the certificate is false, is put on the same footing as the offence of giving false evidence. But it will be observed that the certificate must be false in a material point. An error in a name or date, accidental and not intended for any evil purpose, or a false statement of some irrelevant matter, is not within this section. The offence of forging a certificate is not here contemplated, but that of making or issuing a certificate which, being valid and sufficient in other respects, is yet false in a materiai point. The issuing or signing must therefore be by the person or officer authorised or believed to be authorised to certify. The word "issue" means something different from using. It is the putting forth for the purpose of being used, and is preliminary to it.—*Morgan and Macpherson.* The word "certificate" in this section is a certificate which is required by law to be given or signed for the purpose of being used in evidence in the course of administration of justice. 30 C. W. N. 120=42 C. L. J. 557. The word "certificate" may be used as synonymous with *certificatum* but that is clearly not its meaning in ss. 197 and 198 I. P. Code. 20 C. W. N. 520=23 C. L. J. 423=17 Cr. L. J. 140=33 Ind. Cas. 316. Where the law does not prohibit the administration of an oath or solemn affirmation and where in fact the practice of the Court directs that an oath or solemn affirmation must be administered before the affidavit is accepted, there cannot be any protection for an accused person who commits perjury in such a document. The fact that the affidavit was made for supporting an accused is immaterial. A. I. R. 1930 Oudh. 61. Where an application is made under the Land Registration Act containing false statement, no offence is committed as the act does not require any certificate to be signed or given. 18 Cr. L. J. 978=3 Pat. L. W. 201=42 Ind. Cas. 594.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate ot the 1st class.

Using as true a certificate known to be false.

198. Whoever corruptly uses, or attempts to use any such certificate, as a true certificate, knowing the same to be false in any material point, shall be punished in same manner as if he gave false evidence.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the First Class.

False statement made in declaration which is by law receivable as evidence.

199. Whoever, in any declaration made or subscribed by him, which, declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either

knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Scope.—A declaration before it can be made the foundation of a prosecution under this section, must be one which is admissible in evidence and which the Court before whom it is filed, is bound or authorised by law to receive in evidence. 35 A. 58. A false declaration made before a Mamlatdar for obtaining a certificate is not an offence under this section, in as much as he is not bound or authorised by law to receive the declaration. 17 Bom. L. R. 222=3 Bom. Cr. C. 43=16 Cr. L. J. 309=28 Ind. Cas. 645. Where no criminal intention is made out, sale of more land than what the decree allowed is not an offence under this section. 7 A. L. J. 93=11 Cr. L. J. 202=5 Ind. Cas. 695. Assertions made by a deponent to an affidavit, not from his personal knowledge, but from what he had been told and which had not been proved to be incorrect cannot be made the subject of a sanction for perjury. 21 A. L. J. 88=L. R. 4 A. 6=74 Ind. Cas. 75=24 Cr. L. J. 747. The accused is entitled to know the exact words which are alleged to have been used by him and which are sought to be made the subject of a charge of perjury. 21 A. L. J. 211=71 Ind. Cas. 661=24 Cr. L. J. 197=1923 All. 325. Where a written statement is verified as required by Order 6, rule 15, C. P. Code, but the Court had not ordered proof of the statements made by affidavit, *held* that the allegation in the written statement could not by itself be the basis of a conviction under this section. 49 A. 482=25 A. L. J. 327=100 Ind. Cas. 707=28 Cr. L. J. 323=A. I. R. 1927 All. 313. The making of a false affidavit by an identifier as to the service of summons is punishable under section 199. 6 Pat. 760=106 Ind. Cas. 703=29 Cr. L. J. 111=A. I. R. 1928 Pat. 161. Where the accused was charged for having made a false statement in an affidavit ; *held*, that the prosecution had got to prove the falsity of the statement and that the accused need not prove that it was true. 108 Ind. Cas. 124=29 Cr. L. J. 336=A. I. R. 1928 All. 182. Where a deponent while swearing an affidavit under section 539 A, swears of his personal knowledge of the truth of his allegations and the allegations are ultimately found to be false, he is guilty under section 199 I. P. Code, although he has not separately stated what facts he had reasonable grounds to believe to be true as required by third clause of the section. 116 Ind. Cas 755=30 Cr. L. J. 643=A. I. R. 1919 Pat. 159. Burden of proof that the statement is false is on the prosecution. A. I. R. 1928=All. 182=29 Cr. L. J. 336=108 Ind. Cas. 124 ; see also A. I. R. 1933 Pat. 513=34 Cr. L. J. 912. This section does not apply where statement is made on oath administered by one who has no authority. A. I. R. 1929 Bom. 136=31 Bom. L. R. 144=30 Cr. L. J. 593=116 Ind. Cas. 248. This section does not apply to applications for execution of decrees containing false averments. A. I. R. 1934 Oudh. 65=1934 Cr. C. 234=35 Cr. L. J. 390=147 Ind. Cas. 395=11 O. W. N. 87. Affidavit not complying with requirements of Order 19, r. 3 C. P. Code is still declaration. 144 Ind. Cas. 857=1933 Cr. C. 1162=34 Cr. L. J. 972=A. I. R. 1933 Pat. 513. As regards declaration under s. 21 of the Special Marriage Act, vide A. I. R. 1934 Oudh. 155=1934 Cr. C. 499=35 Cr. L. J. 744.

Procedure.—Not-cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

Using as true such declaration, knowing it to be false

200. Whoever corruptly uses, or attempts to use, as true, any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

Scope.—The three following sections provide for the punishment of certain offences against Public Justice by which the detection of crime and apprehension of offenders is frustrated. It is the duty of every good subject of the State to aid in the due administration of the laws. The discharge of this duty must, in the absence of any direct legal obligation, rest in a great degree upon each man's sense of the duty which lies on him. But by various laws, special duties in regard to the detection of crime are imposed on landholders and certain other persons. All persons, however, if not bound by express provision of law to aid in the detection of offenders are at least under this legal obligation, that they shall not obstruct or mislead others in the pursuit, if they remain themselves inactive. Where the offence against public

justice proceeds beyond such obstructions and omissions as are made punishable by these sections, and amounts to a harbouring or assisting an offender, it is punishable by subsequent sections of this chapter.—*Morgan and Macpherson.*

Procedure.—Not cognizable——Warrant——Bailable——Not-compoundable——Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Causing disappearance of evidence or offence, or giving false information, to screen offender.

201. Whoever, knowing or having reason to believe that an offence has been committed causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence.

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

if punishable with transportation.

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ,

if punishable with less than ten years' imprisonment.

and if the offence is punishable with imprisonment for any term not extending ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one fourth part of the longest term of the imprisonment provided for offence, or with fine, or with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either desciription for seven years, and also to fine.

Scope and application.—This section applies to the person who screens the principal or actual offender, and not to a person causing disappearance of his own crime. 22 C. 538 ; 1 L. B. R., 316 ; 7 W. R. Cr. 52 ; 7 A. 749 ; 2 A. 713 ; 6 C. 789 ; 8 A. 252 ; A. I. R. 1931 Pat. 172=10 Pat. 140=32 Cr. L. J. 975=12 P. L. T. 746 ; 23 C. L. J. 333=23 C. W. N. 166=32 Ind. Cas. 132=17 Cr. L. J. 4. Alternative indictments as principal or accessory are improper. 23 C. L.J. 333=17 Cr. L.J. 4=20 C. W. N. 166. But when main offence is not proved an accused can be charged and convicted under ss. 201 to 203. A. I. R. 1930 Mad. 870=129 Ind. Cas. 230 ; see also A. I. R. 1928 Lah. 476=9 Lah. 671=29 Cr. L. J. 1019=112 Ind. Cas. 347. For conviction under s. 201 previous offence must be actually committed. 139 Ind. Cas. 89=33 Cr. L. J. 657=1932 Cr. C. 881=A. I. R. 1933 Cal. 850. The essential ingredient under this section is to cause disappearance of evidence of the commission of an offence with a view to screen the offender from legal punishment. 40 L. W. 770=152 Ind Cas. 696. In order to sustain a conviction under this section, it must be proved that an offence has been actually committed. It is not sufficient to establish that the accused had reason to believe an offence to have been committed. 19 P. R. 1895 Cr. ; 7 P. R. 1867 Cr. ; 25 P. R. 1881 Cr. ; 8 Bom. L. R. 538, 1 Weir 179 ; 19 P R. 1895 ; 11 C. 616 ; 1 Weir 180 ; 1 L. B. R. 308 ; Rat. Un. Cr. C. 799 ; 3 A. 379. Section 201 applies merely to the person who screens the principal or actual offender and not to the principal or actual offender. 27 Cr. L. J. 109=A. I. R. 1926 Lah. 209 ; see also A. I. R. 1926 All 737=97 Ind. Cas. 44. The mere removal of a dead body from one place to another so as to remove traces of the place where the murder took place, or indications which might implicate a particular individual, even though such removal does not remove undoubted evidence that a murder has taken place is within the section. A. I. R. 1926. All 737. In order to justify a conviction under s. 20, I. P. Code it is necessary that an offence for which some person has been convicted or is criminally responsible should have been committed. There must be an intention to screen a specified offender. 26 Cr. L.

J. 897=86 Ind. Cas. 961=A. I. R. 1925 Sind. 257 ; but see 47A. 306=23 A. L. J. 25= 86 Ind. Cas. 52=26 Cr. L. J. 676=A. I. R. 1925 All. 35. Section 201 of the I. P. Code does not apply to criminal causing evidence of his own crime to disappear but to a person who screens the actual offender as in such a case no question of abetment can arise. A conviction under section 201 I. P. Code, as accessories to an offence known or believed to have been committed by themselves is illegal. 21 N. L. R. 16 =A. I. R. 1925 Nag. 407. Where the act was done not voluntarily intention to screen cannot be inferred. Essence of the section is causing evidence to disappear with intention to screen offender. A. I. R. 1930 All. 45=31 Cr. L. J. 37=120 Ind. Cas. 268=1930 Cr. C. 61 ; see also A. I. R. 1927 Sind. 241=21 S. L. R. 206=28 Cr. L. J. 674=103 Ind. Cas. 402. An intention to screen an unknown offender is sufficient 21 S. L. R. 206. "Evidence" relates only to material objects which make the crime evident and does not include statements of witness. A. I. R. 1921 Bom. 115=23 Bom L. R. 823=22 Cr. L. J. 609=63 Ind. Cas. 145. Gist of the offence is causing disappearance of evidence. A. I. R. 1935 Mad. 36.

A murder cannot be charged under section 201 I. P. Code with causing evidence to disappear by concealing the corpse, because a principal cannot be convicted as an accessory. 86 Ind. Cas. 973=26 Cr. L. J. 909=A. I. R. 1925 Sind. 306. Removing corpse of murdered man is causing disappearance of evidence of offence. A. I. R. 1930 Oudh. 113 ; see also A. I. R. 1926 All 737=49A. 57=24 A. L. J. 958=27 Cr. L. J. 1068=97 Ind. Cas. 44. Accused must cause evidence to disappear in order to screen offender. A. I. R. 1930 A. 45. For the purpose of calculating the punishment to be awarded under section 231, it is necessary for the Court to decide, not so much what offence, the evidence of which has been concealed has been committed, as what offence the accused knew or had reason to believe had been committed. Where therefore, a person himself charged but acquitted of the actual crime, is convicted under section 201 the Court must treat him as a stranger to the crime, as one who had merely witnessed it, while calculating the sentences to be passed. A. I. R. 1930 Mad. 870.

Offences of three grades are specified with regard to each of which the offence punishable under this section has its appropriate punishment provided. The substantial fact that some offence has been committed, and the knowledge or reason for belief that an offence has been committed must of course be proved to the satisfaction of the Court,—since these are both essential parts of the offence here defined. Frequently the apprehension and conviction of the principal offender will remove all doubts concerning the particular offence committed. In such a case only the circumstances remain to be shown from which knowledge or belief is to be proved or inferred against the person who is charged under the present section. Where the principal offender, by flight or otherwise, has escaped from justice, it will be necessary to satisfy the Court by reasonable proof that some person, whether the person who has fled or another, has committed the offence which the accused is charged with endeavour to conceal. The criminal intention to screen the offender from punishment is a necessary part of this offence. Therefore an accidental or even mischievous effacing of marks, or anything else done thoughtlessly or in jest, is not sufficient. Foot marks may be effaced, stains of blood washed out, etc., without necessarily incurring the guilt of screening an offender. Suppose a culpable homicide has been committed and there is merely evidence to show that the accused a Hindu assisted in burning the dead body. This act, being lawful and usual among the Hindoos, does not of itself without the aid of other circumstances in any degree tend to criminate him. Whether the individual offender is known or unknown to the person charged under this section, he is guilty, if be obstructs the course of Justice in the manner indicated.—*Morgan and Macpherson.*

Causes any evidence of.—The illustration appended puts the case where a circumstance exists showing that a crime has been committed ; the dead body, bearing it may be supposed, traces of violence, and therefore of itself testifying that an offence has been committed, is hid. As the causing a circumstance to exist which is intended to mislead the Judge in the formation of an opinion is a fabrication of false evidence, and punishable,—so the causing any thing to disappear which tends to the apprehension and conviction of the offender is an offence, when the object is to defeat justice. It is not clear whether these words include (though they appear to do so) all testimony, of whatsoever description, such as oral and written testimony, as well as the evidence afforded by the existence of things,—*Morgan and Macpherson.* Where a person secretly buries murdered person he is guilty. Knowledge of conviction of

murder is unnecessary. 144 Ind. Cas. 12=1933 Cr. C. 769=34 P. L. R. 637=34 Cr. L. J. 683=A. I. R. 1932 Lah. 516.

Cases.—A separate sentence under this section, along with a conviction of the accused of murder is illegal. 16 Cr. L. J. 583. The mere fact that the accused had been suspected or even tried and acquitted of the principal crime would not in itself present his conviction under section 201, if there is clear proof that he has caused the evidence to disappear in order to screen some unknown offender from legal punishment. 110 Ind. Cas. 682=89 Cr. L. J. 746=A. I. R. 1928 Lah. 906. Section 201 is an attempt to define the position known in England as that of an accessory after the fact. It is settled law that a principal cannot be convicted as an accessory and it may be presumed that the Legislature never intended to depart from that rule. Therefore the "offender" in section 201 must needs refer to a person other than the person charged. 103 Ind. Cas. 402=29 Cr. L J. 674=A. I. R. 1927 Sind. 241.

Under section 201 mere knowledge on the part of the accused that his act is likely to screen the principal offender is not sufficient and actual intention must be established. Whether the requtsite intention is proved or not is a question to be decided on the facts of each case. Ordinarily when the crown has proved satisfactorily that (a) an offence has been committed for which some person is criminally responsible, and (b) that the accused caused the disappearence of the evidence of the commission of the offence or gave false information concerning it, as the case may be, a presumption arises in favour of the crown that the accused did act with the requisite intent. This presumption may, however be rebutted by circumstances or direct evidence. 103 Ind. Cas. 402=28 Cr. L. J. 674=A. I. R. 1927 Sind. 241. A conviction of the accessory offence under s. 201 is not illegal merely because it is suspected but not proved or admitted that the accused committed or was one of the several persons who committed the principal offence 103 Ind. Cas. 402=28 Cr. L. J. 674=A. I. R. 1927 Sind. 241. Section 201 of the. Penal Code does not apply to a person who is proved or admitted to be the principal offender. 1 L. B. R. 316. False information to police implicating innocent person and screening real offender, constitutes an offence under the section. 19 Cr. L. J. 903=46 C. 427=47 Ind. Cas. 275. There can be no conviction under this section where body is found unconcealed in a place where the deceased was killed. 131 Ind. Cas. 93=32 P. L. R. 347=32 Cr. L. J. 650=A. I. R. 1931 Lah. 278. A person cannot be convicted for doing anything to cause disappearance of the evidence of suicide. A. I. R. 1934 Sind. 139.

Where a person causes the disappearance of evidence of a murder but without intention of screening the offender from legal punishment, he is not guilty of an offence under section 201. 5 N. W. P. 186. An accused person, who is acquitted of the charge of murder, may be convicted of a minor charge under s. 201 I. P. Code, when also tried for that offence. 8 P. R. 1913 Cr.=19 Ind. Cas. 710 ; see also 6 P. R. 1902 Cr. ; 1 P. R. 1904 Cr.=30 P. L. R. 1904. See also 141 Ind. Cas. 857=1933 Cr. C. 1162=34 Cr. L. J. 912=A. I R. 1933 Pat. 513 ; 142 Ind, Cas. 803=34 Cr. L. J. 445=1932 A. L. J. 1079=A. I. R. 1933 All. 30 ; A. I. R. 1934 Sind 139=1934 Cr. C. 1070. A person cannot be convicted under section 201 of the Penal Code for causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act. 8 B. H. C. R. Cr. 126 ; 12 C. P. L. C. Cr. 17 ; 8 Bom, L. R. 538. Section 201 I. P. Code does not lay down that the accused should be aware of the identity of the offender whom he intends to screen. Illustrations, rank only as cases under the section and ought never to be allowed to control the plain meaning of the section itself. 5 S. L. R. 76=16 Ind. Cas. 753=13 Cr. L. J. 721. The taking of measurers to keep a person possessed of the knowledge of the occurrence of a crime out of the way, does not amount to causing disappearance of evidence within the meaning of the law. 21 P. R. 1882 Cr. In order to constitute a legal conviction under ss 201, 202 and 203 of the Penal Code, the proof of the two points—viz. (1) the substantial fact of an offence having been committed, and (2) the knowledge or reasonable belief on the part of the accused that such was the case—is not absolutely necessary. 2 W. R. Cr. Letters, 1 ; see also A. I. R. 1928 Lah. 858=29 P. L. R. 486=29 Cr. L. J. 865=111 Ind. Cas. 449.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session. If the offence is punishable with transportation for life or imprisonment for 10 years, in that case triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class ; if punishable with transportation with less than 10 years' imprisonment then triable by Presidency Magistrate, Magistrate of the 1st class, or Court by which the offence is triable.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows—

That you , on or about the day of , at , knowing (or having reason to believe) that certain offence to wit punishable with has been committed, did cause certain evidence of the said offence to disappear to wit (or knowingly gave false information to wit) with the intention of screening the said (*state the name of offender*) from legal punishment, and thereby committed an offence punishable under section 201 of the Indian Penal Code, and within my cognizance, or the cognizance of the Court of Session.

And I hereby direct that you be tried by the said Court on the said charge.

Intentional omission to give information of offence by person bound to inform.

202. Whoever knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Scope.—The offence under this section cannot be treated as a minor offence under the previous section for an essential ingredient of the offence under this section is the legal duty of the accused to give information and that is no part of the offence under s. 201. 13 Cr. L. J. 18. In order to constitute an offence under this section two things are absolutely necessary :—viz. (1) the substantial fact of an offence having been committed and (2) the knowledge or reasonable belief on the part of the accused that such was the case. 2 W. R. Cr. Letters, 1. This section punishes the illegal omissions of those who are by some law bound to give information, when such omissions are intentional. The knowledge or belief that some offence has been committed is part of the definition.—*Morgan and Macpherson.* This section is applicable only where the accused "knowingly or having reason to believe that an offence has been committed" intentionally omits to give information of the crime. 1 Weir 181. Failure to give information under Cr. Pro. Code s. 44 is an offence. 21 Cr. L. J. 700=16 N. L. R. 30=56 Ind. Cas. 582. This section is not punitive. When facilities for investigations have been otherwise obtained, no conviction is possible. A. I. R. 1921 Oudh. 227=8 O. L. J. 590=65 Ind. Cas. 626.

A request by a villager to the wayguard to whom an offence has been reported, not to report the offence is not such an intentional omission to give information as deserved punishment under s. 202 I. P. Code. U. B. R. (1897—1901) Vol. I, 276. Omission of police patel to report arrival of dacoit is not punishable under this section, where there is nothing to show that an offence has been committed by the persons who visited the village. Rat. Un. Cr. C. 150. Failure to report suspicious death by a police patel is not punishable where his good faith is apparent. Rat. Un. Cr. C. 783. But omission to give information of theft by lambardar is punishable under this section A. W. N. 1883, 9. A person is not bound to give information of a murder of which he is aware, if he has a reasonable excuse for not making a report. L. B. R. (1894—1900), 382.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Presidency Magistrate or Magistrate of the 1st or 2nd class.

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,

Explanation.—In sections 201 and 202, and in this section, the word 'offence' includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 383, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Application.—This section does not apply to the case of a person who gives false evidence as a witness to the police in the course of their investigation, and that only in reply to questions put to him. It contemplates information volunteered by some person, *Surju* v. *Emperor*, 7 A. L. J. 1130. A person who under such

circumstances volunteers information which he knows or believes to be false, obstructs justice, and is punished, whether, any intention to screen the offender can be proved against him or not, and whatever be the offence which the latter has committed.—*Morgan and Macpherson.* This section applies to information volunteered by the informant and not to a false statement made in the course of an examination by a police-officer. 57 Ind. Cas. 940=21 Cr. L. J. 700. A person who gives false information to the police accusing another of an offence of murder in order to screen the real offender, commits offences not only under ss. 201 and 203 I. P. Code but also under s. 211. 47 Ind. Cas. 275=19 Cr. L. J. 903. As regards the meaning of the words "gives information," vide 14 Cr. L. J. 252=19 Ind. Cas. 508. Person accompanying informant is not guilty. 142 Ind. Cas. 803=34 Cr. L. J. 445=1932 A. L. J. 1079=A. I. R. 1933 All. 30.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

Charge.—*I (name and office of Magistrate, etc.,)* hereby charge you (*name of the accused person*) as follows :—

That you knowing (or having reason to believe), that the offence of was committed by , on or about the day at , gave information respecting the said offence, to wit which you knew or believed to be false, and thereby committed an offence punishable under s. 203 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court of public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Destruction of document to prevent its production as evidence.

Gist of the offence.—In order to convict a person under this section it must be proved, that he destroyed the document with the intention of preventing it from being used or produced as evidence. 24 P. R. 1889 Cr.

Scope.—Whether the proceeding is of a civil or criminal nature, this section applies. There is no question here of the materiality of evidence. Whether material or not, it must not be secreted or destroyed to evade production in a judicial or other proceeding, if the production may lawfully be compelled—*Morgan and Macpherson.* Where rough copy of a *panchnama* was destroyed owing to obliteration and a new copy made and duly signed the destruction of the rough copy is no offence. 14 Bom. L. R. 1163=13 Cr. L. J. 913=17 Ind. Cas. 1008. This section is applicable even where the document is not valuable security. 38 C. L. J. 158=25 Cr. L. J. 167=76 Ind. Cas. 391.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court af Session, Presidency Magistrate or Magistrnte of 1st class.

205. Whoever falsely personates another, and, in such assumed character, makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

False personation for purpose of act or proceeding in suit or prosecution.

Scope.—The offence punished, is not merely cheating by using a fictitious name but by falsely assuming to be some other real person and in that character making an admission, etc.—*Morgan and Macpherson.*

Causes any process to be issued.—These words are applicable to the case of genuine process being issued by the offender in an assumed character ; as if he personates A, a creditor of B and causes a summons in A's name to issue against B

for the recovery of the debt due to A. Suppose a person procures blank forms of summons or other process, and signs them with the signature of the officer of the Court, and afterwards causes them to be issued ; this seems to be an offence within this section. The offence here defined must it appears, concern some act done "in a civil suit or criminal prosecution." An intention to injure or defraud is not made part of the definition and therefore need not be proved.—*Morgan and Macpherson.*

Procedure.—Not-cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property, or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Comment.—To bring an offence within this section there must be fraudulent removal, sale, or transfer of property, or of some interest therein intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine. 18 W. R. Cr. 65. "Civil suit" in ss. 206 and 207 is suit actually pending. A. I. R. 1930 Rang. 128=8 Rang. 268=126 Ind. Cas. 533. The owner of property is, ordinarily speaking, by virtue of his ownership, free to sell it or to give it away as he sees fit. And all other persons have equally the right to receive it from him by way of purchase or gift. But the law has provided for many offences and contraventions of the law, punishment by fine, or forfeiture of property. Thus by some sections of this code it is enacted that upon conviction of certain offences the offender shall forfeit all or a portion of his property ; by others it is enacted that such forfeiture may be awarded by the Court as part of the punishment Laws relating to customs duties usually make confiscation of goods the punishment of any contravention of their provisions. And the ordinary sanction of a law is the imposition of a fine for the breach of it recoverable usually by distress and sale of the offender's property. In all such cases, and also in the case of civil suits, the general law of the country must determine the legal effect of an ordinary transfer of property while suits or other proceedings are pending, the result of which may establish a claim against or otherwise affect such property. The penal provision in this section, which does not interfere with those of civil law concerning the recovery of the property, applies where there is an intention to defraud. A fraudulent removal, concealment, etc., with intent to withdraw property from an impending seizure under process of a Court of law or of some competent authority, is the offence made punishable. This is not only a grave offence against public justice, but a serious injury to the suitor, the object of whose suit is defeated or retarded thereby. The offence may, it seems, be committed by persons other than the owners of the property.—*Morgan and Macpherson.* A person who to protect his own property not legally liable for the decree from confusion with property which is not liable, makes it over to another person, does not commit an offence punishable under section 206 of the I. P. Code. 19 Bom. L. R. 535=4 Bom. Cr. Cas. 119. The assignment, by the decree holder, of a decree obtained upon the basis of a debt, which is under attachment, does not *per se* amount to the commission of the offence defined in section 266. In as much as such assignment cannot affect the rights of the attaching creditors. 3 A. L. J. 1=3 C. L. J. 92. A removal of crops under attachment, in execution of certificate under the Public Demands Recovery Act amounts to an offence punishable under section 206. 28 C. 217=5 C. W. N. 291. In an offence under s. 206, the accused is not entitled to be acquitted on the assertion of the vendees that the transactions were for valuable consideration and not fraudulent. 16 B. 414. Where the accused who were entrusted with articles distrained for arrears of land revenue, produced inferior article of the same description on the date of the sale, *held* that a conviction under section 206 of the Penal Code was wrong (1) since the distraint of property by a Collector was neither a forfeiture, the rights of the owner being only held in abeyance by such distraint, nor affected under a sentence pronounced by a Court of Justice or other competent authority. A.

W. N. 1888, 237. An offence under s. 206 is one which cannot be entertained without sanction of court and only such complaint without sanction is invalid and vitiates the trial and the accused can be convicted only under s. 424. 1933 M. W. N. 722.

Procedure.—Not-cognizable———Warrant———Bailable———Not Compoundable——Triable by Presidency Magistrate or Magistrate of 1st and 2nd class.

Charge.—I (*name and office of Magistrate, etc.*), hereby charge you (*name of accused*) as follows :—

That you on or about the day of at fraudulently removed (or concealed or transferred or delivered to) your property to wit intending thereby to prevent the said property from being taken , forfeiture (or in satisfaction of a fine) under a sentence of which has been pronounced on by (or which you knew to be likely to be pronounced) by and that you thereby committed an offence punishable under section 206 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which be knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Notes.—The receiver of property if he receives it with intent to defraud, is here made punishable.—*Morgan and Macpherson.* In order to convict a person under this section, the civil suit must be actually pending. A. I. R. 1930 Rang. 128.

Procedure.—Not-cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st. and 2nd class.

Fraudulent suffering decree for sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z., knowing that A is likely to obtain a decree against him, fradulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own accunt or for the benifit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Procedure —Not-cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first class.

Notes.—Vide 84 Ind. Cas. 351=26 Cr. L. J. 287=A. I. R. 1925 Lah. 289.

Dishonestly making false claim in Court.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Comment.—In order to establish an offence under this section it is essential to prove that the claim made is one which the person making it knows to be false, and it is not sufficient to show that the claim is one which he believes or has reason to believe to be false or does not believe to be true claim. 38 P. R. 1888 Cr. Not only must the claim be false within the knowledge of the person making it, but the object of it must be to defraud, to cause wrongful loss or wrongful gain, to injure or to annoy. See sections 24, 25 and 44. A claim by filing a plaint, or claim made to property attached before judgment or taken in execution of a decree are instances of the claims to which this section appears to refer. It is not an innovation in India to punish a person who has brought a suit for the purpose of annoyance. By the Regulations, a Judge was authorised when a suit appeared frivolous, vexatious, or groundless, to fine the plaintiff and to convict him to close custody till he pays the fine—*Morgan and Macpherson.* This section is not limited to cases where a part of the claim made by the accused is false. It applies even where a part of the claim isf alse. A. W. N. 1890. 1. In order to bring a case under this section, it is immaterial whether the Court on which the false claim was instituted had jurisdiction to try the suit. 52 Ind. Cas. 666=20 Cr. L. J. 698. To justify a sanction for the prosecution of a plaintiff, under this section the dismissal of of his claim is not enough, it must be shown that the claim he was making was to his knowledge false. 61 Ind. Cas. 995=22 Cr. L. J. 467.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st class.

Fraudulently obtaining decree for sum not due.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent decree.—An offence is committed when a decree is fraudulently obtained; it does not make any difference whether the decree alleged to be fraudulent has, or has not been subsequently set aside by the parties against whom it was made. 33 C. 193; see also 12 W. R. Cr. 37; 9 M. 101.

Satisfied.—In construing this section, it is necessary to attach to the word "satisfied" its ordinary meaning, and not to understand it as referring only to decree, the satisfaction of which has been certified. 10 B. 228; 16 C. 126; see also 4 M. 325; U. B. R. (1897—1901) Vol. I, 278; 7 P. R. 1885 Cr.; 59 P. L. R. 1911=12 Cr. L. J. 189. A decree holder who realises more than what is due to him, is not guilty under this section if he has done so under a mistake. 11 P. W. R. 1914 Cr.=23 Ind. Cas. 471=15 Cr. L. J. 263. Where the accused fraudulently obtains decree for sums which had been disallowed in the former suit, the Court in which the second suit is filed can take action under this section. 90 Ind. Cas. 660=26 Cr. L. J. 1588=26 P. L. R. 717. A person applying for the execution of a decree which has already been executed, is guilty not under section 209, but under section 210 of the Indian Penal Code. 12 W. R. Cr. 37; see also 88 P. L. R. 1902=13 P. R. 1902 Cr.; A. I. R. 1931 All. 305=53A. 416=32 Cr. L. J. 367=1931 A. L. J. 117=129 Ind. Cas. 264. But where execution was taken out for full decree when it has been partially satisfied, and judgment debtor did not object, it is not a fit case for sanctioning prosecution because there was no fraudulent act. A. I. R. 1929 Lah. 676=11 L. L. J. 103=30 P. L. R. 392=30 Cr. L. J. 666=116 Ind. Cas. 711; see also A. I. R. 1925 Lah. 289=26 Cr. L. J. 287=84 Ind. Cas. 351. Sanction should be granted in case of making false claim by overstating the price of goods against Railway Company. A. I. R. 1924 Nag. 35=25 Cr. L. J. 15=75 Ind. Cas. 703. In application for criminal proceedings, inquiry as to adjustment or satisfaction is permitted. A. I. R. 1931 Rang. 148=9 Rang. 104.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st class.

False charge of offence made with intent to injure.

211. Whoever, with intent to cause injury to any person institutes, or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—To constitute an offence under this section it is not necessary that any criminal proceedings should be taken on a complaint. 26 A. (F. B.) 244. A person should not be proceeded against under this section, unless he is given an opportunity of proving his case. 29 A. 587 ; 6 C. W. N. 295 ; A. W. N. 1907, 268. In order to constitute an offence of false charge under section 211 of the Indian Penal Code, the false charge must be made to an officer or to a Court who has power to investigate and send it for trial, and in order to be a "charge" the accusation must be made with the intention to set the law in motion. 15 A. L. J. 767=39 A. 715 ; see also A. I. R. 1924 All. 779=22 A. L. J. 829=25 Cr. L. J. 1239=46A. 906=82 Ind. Cas. 167. Difference between s. 182 and s. 211 is that the former does not involve any definite charge against a specified person while s. 211 does involve. A. I. R. 1928 Nag. 17=23 N. L. R. 136=28 Cr. L. J. 934=105 Ind. Cas. 454. False information to Superintendent of Police of a wrongful confinement of informant by police officer constitutes institution of criminal proceedings. A. I. R. 1930 Cal. 711. Where proceedings were erroneously taken and in good faith by Magistrate not empowered so to do, the complainant is not liable for false complaint under this section. A. I. R. 1930 Pat. 550. Accusation in dying declaration made to Magistrate stands on no better footing than one made to another *Ibid.* Where a complaint to the police was followed by a complaint to the Court based on the same allegations and the same charge and such complaint was investigated by the Court the sanction or complaint of the Court is necessary for the prosecution of the complaiant in respect of a false charge made to the police. 23 S. L. R. 225=115 Ind. Cas. 313=30 Cr. L. J. 399= A. I. R. 1929 Sind. 115. The mere communication of suspicion to the police on which an enquiry may be initiated does not amount to the institution of a criminal proceeding within the meaning of this section. 1912 M. W. N. 1125.

The intention to cause injury, that is, to cause harm illegally to some person in body, mind, reputation or property (Vide section 44) is part of this offence. Where no proceedings are actually instituted, and no false charge is made, a person is punishable under section 182, who injures or annoys another by giving false information to a public servant, with the intention of causing him to use his lawful powers to cause injury or annoyance. This code contains no provisions for the punishment (under these names) of the offence of "subsequent abetment" or of "accessories after the fact." The offences of persons falling within such descriptions at present are included among offences against publice justice and are punishable under the next following and subsequent sections of this chapter—*Morgan and Macpherson.* The offence of laying false information to the police falls under the first paragraph of s. 211. 10 A. L. J. 429=13 Cr. L. J. 855=17 Ind. Cas. 791. That the accused believed the statement to be false must be proved. 22 Cr. L. J. 393=61 Ind. Cas. 521. Application by complainant asking for judicial inquiry of the charge is a complaint. 20 Cr. L. J. 389=50 Ind. Cas. 997. Complaint without just grounds or without due care and caution is offence under s. 211. A. I. R. 1925 Sind. 184=25 Cr. L. J. 1358=82 Ind. Cas. 718=19 S. L. R. 91. Failure to form a case is not same as the institution of a false case. A. I. R. 1924 Pat. 379=4 P. L. T. 703=24 Cr. L. J. 316=72 Ind. Cas. 76. Where complaint is found true by one Court and false by Appelate Court sanction should not be given. 32 A. I. R. 1922 Pat. 160=3 Pat. L. T. 93=66 Ind. Cas. 336=23 Cr. L. J. 272. Failure to prove is not the same thing as to institute maliciously a false case. 11 Mys. L. J. 438. The gist of the offence under this section is to falsely charge a person with having committed an offence. 17 N. L. J. 189. Where two persons are falsely charged in one complaint, only one offence is committed. 1934 Cr. C. 182=151 Ind. Cas. 185=35 Cr. L. J. 1259=A. I. R. 1934 Rang. 21. Before charging a person under this section an opportunity should be given to him to prove his allegation but want of opportunity does not

vitiate the trial. A. I. R. 1934 Rang. 21=35 Cr. L. J. 1259=151 Ind. Cas. 185=7 R. R. 43. A false charge and institution of criminal proceedings are not exclusive though they are not co-extensive. A criminal proceeding is instituted by a report to the police of a cognizable offence. But where the police is falsely informed of a non-cognizable offence it is a false charge and does not amount to institution of criminal proceedings. 151 Ind. Cas. 816=7 R. Pesh. 37=A. I. R. 1934 Pesh. 112=7 R. Pesh. 37=1934 Cr. C. 1317 ; see also A. I. R. 1934 Rang. 21=35 Cr. L. J. 1259=151 Ind. Cas. 185=1934 Cr. C. 182. No sanction of Court is necessary unless some proceedings before Magistrate has preceded complaint under s. 211. A. I. R. 1934 Rang. 40=1934 Cr. C. 263=35 Cr. L. J. 802=148 Ind. Cas. 845 ; see also 151 Ind. Cas. 185=35 Cr. L. J. 1259=1934 Cr. C. 182=A. I. R. 1934 Rang. 21. The onus lies upon the prosecution to show that the complaint or charge is false and that there is no just or lawful ground for it. 11 Mys. L. J. 438.

This section contemplates a charge which is indivisible in its nature. 5 C. W. N. 727. To constitute an offence under the second portion of this section, it is necessary that the complaint which is alleged to constitute the false charge should have been made to a Police officer with a view to further proceedings or to a Magistrate competent to enquire into and investigate the matter of complaint A. W. N. 1898, 144. Where a person makes a false report of an offence without naming any one as the perpetrator thereof, he commits no offence. 4 A. L. J. 361=A. W. N. 1907, 146=5 Cr. L. J. 396. In a case under this section, it is the duty of prosecution to prove by satisfactory evidence that the charge is wilfully false to the knowledge of the maker of the charge. 18 C. W. N. 391=15 Cr. L. J. 355=23 Ind. Cas. 723. Before granting any sanction under s. 211, the Magistrate ought to observe all the formalities prescribed under ss. 201—203 Cr. Pro. Code. 12 Bom. L. R. 229=5 Ind. Cas. 971=11 Cr. L. J. 338. The answering of questions put to a person by a Magistrate in the enquiry which he has no option but to answer cannot be held to constitute a charge within the meaning of this section. 8 A. L. J. 1106=12 Cr. L. J. 433=11 Ind. Cas. 617. To sustain a conviction under this section there must be a charge of a specific offence made with the intention of setting the criminal law in motion. 10 Bur. L. T. 259. For a conviction under this section it is necessary to establish that the accused knew there was no just or lawful ground for the charge. 61 Ind. Cas. 61=22 Cr. L. J. 333. Where a criminal case is compromised before the full evidence of the complainant is given, it is not proper to direct a prosecution under this section. 74 Ind. Cas. 1054=24 Cr. L. J. 862. To fall under s. 211 I. P. Code, the false charge must be made to some person in authority i. e. to a person who is in a position to get the offender punished. 26 O. C. 44=1923 Oudh. 4. Unless there is intention to set the law in motion against any body, no offence under this section is committed. 6 N. L. J. 202=75 Ind. Cas. 158=24 Cr. L. J. 910=1923 Nag. 313. The term "institution" in this section means the institution either by the accused himself, or by the police or others in consequence of the accused's actions in some Criminal Court. 65 Ind. Cas. 434=23 Cr. L. J. 82=1922 Lah. 133. Sanction should not be given till after the complaint is properly dealt with and dismissed. A. I. R. 1924. Nag 115=24 Cr. L. J. 959=75 Ind. Cas. 543. Court can proceed against person causing proceedings to be started though he may not be a party to such proceeding. A. I. R. 1930 Cal. 671=127 Ind Cas. 65. Where person falsely complained against was not tried in any court, an offence in relation to any proceeding in Court has not been committed. A. I. R. 1928 Lah 259=9 Lah. 408=10 L. L. J. 218=29 Cr L. J. 905=29 P. L. R. 515=109 Ind. Cas. 685.

An application to the Police not being enquired into, the applicant addressed a petition to the Deputy Commissioner for enquiry into the matter. *Held*, the petition was not a complaint and action cannot be taken under s. 211. 24 Cr. L. J. 959=75 Ind. Cas. 543=1924 Nag. 115. It is not necessary that, before proceedings are taken under section 211. I. P. Code, the person to be proceeded against must be given a chance of showing causes. When the police report an information given by an informant to be false in a cognizable case and lays a complaint against that informant under section 211 ; the Court is not bound before issuing summons under section 211, to call upon the informant to show cause why he should not be prosecuted. 7 Pat. 408 ; but see 31 C. W. N. 124=A. I. R. 1927 Cal. 175. Where the person at whose instance proceedings under section 211, Penal Code, are initiated against a false complaint, is never charged in any Court, nor is he ever put upon his trial before any Magistrate, nor were any proceedings taken against him before the Court in which another person who was alleged by the false complainant to be his accomplice was involved, it cannot be said that the offence under s. 211, Penal Code, was

an offence which was committed in or in relation to any proceeding in Court though another person against whom also false complaint was made in the same transaction is tried in Court. 9 Lah. 408=10 Lah. L. J. 218=109 Ind. Cas. 685=29 Cr. L. J. 605=29 P. L. R. 415=A. I. R. 1928 Lah. 259. A false charge against a public servant must be made to an officer who has power to investigate and send it for trial. 33 C. W. N. 1958=A. I. R. 1929 Cal. 724. Where a person is charged with an offence under s. 211 of the Indian Penal Code, it is not for the accused to make out that his report to the police about the complainant was true until the whole ground of it had been clearly traversed by evidence showing that it was false. A. I. R. 1929 Mad. 496=30 Cr. L. J. 167=113 Ind. Cas. 455. Where the police after enquiry made a report to the Magistrate that the case brought by the complainant was maliciously false and the same was not challenged by the complainant, *held*, that the conviction of the complainant under section 211 I. P. Code was not invalidated by reason of the failure of the Magistrate to issue notice to the accused. 8 Pat. 734=1929 Cr. C. 378=30 Cr. L. J. 1144=A. I. R. 1929 Pat 650. Person making false charge to police of cognizable offence institutes criminal proceedings. 136 Ind. Cas. 277=1931 A. L. J. 177=1931 Cr. C. 429=32 Cr. L. J. 256=A. I. R. 1931 All. 269. False information to police of non-cognizable offence does not constitute institution of criminal proceedings. 138 Ind. Cas. 551=59 Cal. 334=1932 Cr. C. 440=33 Cr. L. J. 631=A. I. R. 1932 Cal. 511. No person should be proceeded against for making false charge under s. 211 unless he is given opportunity to substantiate his allegations. 137 Ind. Cas. 157=33 Cr. L. J. 409=13 Lah. 568=33 P. L. R. 174=1932 Cr. C. 258=A. I. R. 1932 Lah. 246 ; see also 137 Ind. Cas. 133=35 C. W. N. 1210=1932 Cr. C. 213=33 Cr. L. J. 406=A. I. R. 1932 Cal. 287 ; but see A. I. R. 1931 Pat. 302=32 Cr. L. J. 1023=12 P. L. T. 710. Investigation by police on information is not instituting proceeding against any person within meaning of s. 211. 133 Ind. Cas. 398=27 N. L. R. 275=32 Cr. L. J. 1009=1931 Cr. C. 721.

It is not a correct proposition of law to state that in every case in which a man files a complaint and that complaint is dismissed summarily by a magistrate, it is for the complainant to justify that the complaint is a good and correct complaint. 98 Ind. Cas. 465=27 Cr. L. J. 1345=A. I. R. 1927 All. 107. Where a Court granted sanction for prosecution for a false complaint relying solely on the police report without giving any oppotunity to the complainant to prove his case, *held* that the order must be set aside. 103 Ind. Cas. 63=28 Cr. L. J. 639=8 Pat. L. T. 662. When a false charge has been made only to the police or when the person making the false charge has not applied to the Magistrate and when no Court proceedings whatever have ensued, then no complaint is necessary under s. 195 of the Criminal Procedure Code before a prosecution under section 211 I. P. Code can be instituted against the informant. 105 Ind. Cas 454=28 Cr. L. J. 934. Where X made a report to the police against Y and subsequently lodged a complaint against the latter, and the accused launched a counter case against the informant under section 211, I. P. Code, and the Magistrate discharged the accused in both the cases, *held*, that the allegations in the two cases were more or less the same and that therefore no prosecution under section 211, I. P. Code could be sustained without complaint being first made by the Court which tried the case of the accused against petitioner. 53 C. 824=99 Ind. Cas. 118=28 Cr. L. J. 86=A. I. R. 1927 Cal. 95. A person cannot be proceeded against under section 211 for having made a charge unless the Magistrate to whom the complaint was lodged had first investigated according to law the original complaint which the applicant had made. 28 Bom. L. R. 409=A. I. R. 1926 Bom. 284. The fact that the complainant fails to prove his case is by itself not sufficient to sanction a prosecution under section 211 of the Indian Penal Code. It must be established satisfactorily in the mind of the Judge or the Magistrate that the complaint was made with the intent to cause injury or that it was a false compiaint made with the knowledge that it was false. 6 Pat. L. T. 365=83 Ind. Cas. 701. Where a person informs the police that he suspects, without deliberately charging him with the offence it may not amount to giving false information within section 211 I. P. Code, but where his intention was to set the criminal law in motion against X he is guilty under section 211. 4 Pat. 472=A. I. R. 1925 Pat. 678. So there is an essential difference between a mere information to the police and a definite statement to it that a certain person has committed a particular offence. Section 211 applies to the latter case 85 Ind. Cas. 818=L. R. 6. All. 71 Cr.=26 Cr. L. J. 594=A. I. R. 1925 All. 472. Where a person made a report to the police that he suspected X to have committed an offence, but on investigation the police found there was no truth in it, the report did not amount to a charge and proceedings under s. 211 I. P. Code cannot be instituted. 6 Lah. 28=26 P. L. R. 131=88 Ind. Cas. 525=A. I. R. 1925 Lah. 325=26 Cr.

L. J. 1165. Investigation by police on information is not instituting proceeding against any person within meaning of s. 211. 133 Ind. Cas. 398=27 N. L. R. 275=32 Cr. L. J. 1009=1931 Cr. C. 721=A. I. R. 1931 Nag. 134 (F. B). Statements, in course of investigation under Chapter 14, Cr. Procedure Code are not charges. 135 Ind. Cas. 590=33 Cr. L. J. 173=1932. Cr. C. 4=61 M. L. J. 860=34 M. L. W. 858=1931 M. W. N. 1138=A. I. R. 1932 Mad. 24. Court has no jurisdiction to take action against complainant in respect of persons not charged. 137 Ind. Cas. 312=1932 Cr. C. 329=33 Cr. L. J. 479=55 M. 611=35 M. L. W. 481=62 M. L. J. 425=A. I. R. 1932 Mad. 363 (F. B.). Before proceedings under ss. 211 and 182 *naraj* petition against Police report and inquiry should be dismissed. 36 C. W. N. 15=137 Ind. Cas. 849=32 Cr. L. J. 514=A. I. R, 1932 Cal. 383.

The offence under section 211 I. P. Code is a non-cognizable one. 90 Ind. Cas. 398=26 Cr. L. J. 1550=A. I. R. 1925 Mad. 672. A person who lays an information containing a false charge against a number of persons commits a distinct offence against each of the persons against whom he makes a charge and may be separately prosecuted under section 211 of the Penal Code for each of such offences. 11 Bur. L. T. 136=48 Ind. Cas. 342=19 Cr. L. J. 1002. Section 211 requires great deal more than a mere suggestion of an inference. There must be a charge of some specific offence made with the intention and object of setting the criminal law in motion against the man who is said to have committed the offence. Further the circumstances in which the statement was made and the form of words used should also be considered. 36 Ind. Cas. 834. Practice that complainant should not be tried under section 211 till disposal of his case is merely rule of safety and not based on any statute. A. I. R. 1930 Pat. 622. Where on the complaint of a person no prosecution can be started, the accused cannot be convicted under s. 211 where the complaint is found false. 7 A. L. J. 618=11 Cr. L. J. 351=6 Ind. Cas. 390. A statement made under section 162, Cr. Pro. Code, cannot be made the basis of a prosecution for an offence under section 211, I. P. Code. When the accused made his statement, the law had already been set in motion, and the proceedings cannot be said to have been instituted by the statement made by the accused under section 162 of the Cr. Procedure Code. 20 M. L. J. 132=5 Ind. Cas. 908=18 Cr. L. J. 286. Where a person is convicted under the second clause of section 211, I. P. Code he should be sentenced to undergo a term of imprisonment and not merely to payment of fine. 1 B. H. C. 34. The test to determine whether accusation amounts to charge is to see whether complaint is intended to set criminal law in motion. A. I. R. 1932 Lah. 246=1932 Cr. C. 258=33 P. L. R. 174=33 Cr. L. J. 409=137 Ind. Cas. 157.

In a prosecution under section 211, Penal Code two principles are to be kept in view ; namely first, that failure on the part of the complainant to establish the truth of his allegation does not by any means justify the inference that the complaint was false, and, secondly, that to secure a conviction in this class of cases it must be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with this contention. 16 C. L. J. 453 =17 Ind. Cas. 993=13 Cr. L. J. 894=17 C. W. N. 379. A Magistrate cannot give himself jurisdiction to try an offence under section 211 by treating it as one under section 500 I. P. Code. According to s. 195 Cr. Procedure Code, cognizance of it should not be taken without sanction. U. B. R. (1897-1991) Vol. I, 279. Where the police were told that they should search certain houses because there was reason to suspect the couduct of the owners of those houses, it does not amount to a charge within the meaning of s. 211 I. P. Code. Prosecution under s. 182, I. P. Code must be instituted on the sanction or the complaint of the public servant to whom the false information was given. 1915 M. W. N. 272. The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of section 211 ; if the offence of the accused stops at making a false charge, his case falls under the first part of the section, irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards." 5 A. 215=A. W. N. 1882, 225. Where no criminal proceeding is instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years and upwards, the accused making such charge is punishable only under the first part of section 211, Penal Code. 5 A. 598=A. W. N. 1883, 149. Section 211 of the Penal Code is not limited to attempts at substantiating false charges in Courts of Justice ; so that a false charge before the Police and never intended to be prosecuted in Court is quite within the contemplation of the section, 5 C. 281. The offence referred to in section 211, I. P. Code, consists not in the prosecution of a false complaint, but in the making of it. 1 A. 497. Section 182 applies to

information given to a public servant. Section 211 applies to false charge of an offence involving criminal proceedings. Where a charge is found to be false by the Police, Magistrate except in certain cases, is not competent to order, merely on a perusal of the Police report the prosecution of the person preferring the charge, summarily under section 182. He should be tried under s. 211. 7 C. L. R. 382.

To constitute the offence of preferring a false charge contemplated is section 211, Penal Code, it is not necessary that the charge should be made before a Magistrate. It is enough, if it appear that the charge was deliberately made before an officer of Police, with a view to its being brought before a Magistrate. 1 Weir, 184=1 M. H. C. 30 ; see also A. I. R. 1935 Nag. 69. To convict a person under s. 211, Penal Code, it must be shown, not merely that he made the charge without reasonable or probable grounds but that he knew there was no just or lawful ground for the charge. 1 Weir. 185. If a false charge had been made and if it is not pending at the time of the trial of the accused, an offence under section 211 has been committed. 1 A. 527. A person may in good faith institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings, believing there are just and lawful grounds for them but in neither case does he commit an offence under section, 211 I. P. Code. 3 N. W. P. 327. Where a person charges another with voluntarily causing hurt, and the charge is wilfully false, and is made with intent to injure, he is chargeable with the offence described in s. 211. 4 N. W. P. 6. The word "falsely charging" used in s. 211, must be construed along with the words which speak of the "institution of proceedings." These latter words are used in a technical and exclusive sense, and by a parity of reasoning, the same restricted sense must be given to the words which relate to a false charge. 19 B. 51. The word "charges" as used in the section, means something different from "gives information." The words "falsely charges" must be construed with reference to the words which speak of the institution of proceedings, 26 M. 640. A false information laid before a Magistrate complaining of the infraction of a right of a civil nature, is not an offence under section 211 of the Penal Code. Rat. Un. Cr. C. 3. A man ought not to be tried for making a false complaint under section 211 of the Penal Code, until he has had an opportunity of proving the truth of the complaint by him, if he desires to take advantage of it, not before the Police, but before the Magistrate, 7 C. 87 ; 8 C. 435 ; 6 C. 496=7 C. L. R. 466 : Cr. Rg. 65 of 1896 ; 8 C. L. R. 289 ; but see 4 C. L. R. 134 ; 7 M. 292 ; 6. C. W. N. 295, It is not in every case that a Magistrate considers to be false that he should direct a prosecution under section 211 of the Code. 34 C. 42=4 Cr. L. J. 460=11 C. W. N. 125.

Where the accused sent a petition to a Magistrate praying for inquiry as to whether a police officer was fit for his office and alleging that he (the accused) and others believed the officer to have connived at offences of various sorts, *held* that the accused had not instituted any charge of criminal proceeding within the meaning of s. 211 of the Penal Code. A. W. N. 1882, 242. Where a Magistrate dismissed a complaint upon a report by the police and without examining even the complainant, and the police thereupon prosecuted the complainant without any sanction, *held*, that the accused had not committed an offence under section 211, in as much as there was no legal evidence before the Magistrate, nor was there a legal sanction for the charge. 1 Weir 188=2 Weir 162. If a young girl, forcibly abducted, exaggerates the force used and resistance offered, such exaggeration is not a sufficient ground for prosecuting her for intentionally giving false evidence and for making a false charge. L. B. R. (1892—1900), 443. To bring a vexatious charge is not an offence under section 211, Indian Penal Cede. 1 Bom, L. R. 11. An offence under s. 211 of the Penal Code includes an offence under s. 182. A Magistrate can proceed under either section, though, in cases of serious nature, proper course may be to proceed under section 211. 5 C. 184 ; see also A. W. N. 1886, 259 ; 22 B. 596. Until a complaint is dismissed under s. 203, Criminal Procedure Code, or otherwise disposed of, no proceedings can be taken under s. 211 I. P. Code, against the complainant. 3 C. W. N. 758 ; 3 S. L. R. 119 Cr.=4 Ind. Cas. 1160. To sustain a conviction under s. 211 of the Penal Code, it is necessary that the false charge should be made to a Court or to an officer, who has powers to investigate and send up for trial. A station staff officer having neither Magisterial nor police powers, section 211 will not apply to a false charge made to him. 6. C. 620=8 C. L. R. 215. Where a Police officer made a coloured or false report that a certain offence investigated by him was proved, *held* that a sanction for his prosecution under section 211, I. P. Code could not be granted, as it could not be said that the accused instituted or caused to be instituted any criminal proceeding against any person. 4 C. W. N. 347. A District Magistrate, who, after

examining the complainant's witness, dismisses the case, disbelieving the story of the prosecution, is competent to grant sanction for the prosecution of the complaint under section 211 I. P. Code. 10 C. L. R. 4.

Where a person falsely informs the police, not only that he had been robbed, but also that a specified individual committed that offence, *held*, that he was liable to be charged with an offence under s. 211 I. P. Code, and under s. 182 I. P. Code, 7 B. 184; see also A. W. N. 1885, 95. Where a person made a complaint of criminal trespass alleging an intention to the accused, and the police, although finding that the intention alleged was not true, stated that they believed the charge of trespass, and the complainant did not desire to take further proceedings against the accused, *held*, that the Magistrate was not competent to order, under section 476 Cr. Pro. Code, the prosecution of the complainant under section 211 I. P. Code for making a false complaint, on taking evidence as there was no judicial proceedings. 4 C. W. N. 351. Petition to a Deputy Commissioner making certain complaint against a Manager of the Court of Wards,, is not a complaint under s. 4 cl. (h) of the Cr. Procedure Code. 109 P. L. R. 1904=1 Cr. L. J. 957. A false charge of murder made to the police comes under the first paragraph of s. 211, if no criminal proceedings have been instituted thereupon. 16A. 124=A. W. N. 1894; 10; 14 C. 633; 26 P. R. 1908 Cr.; 6 A. L. J. 982. The latter part of s. 211 is confined to cases in which criminal proceedings have ben instituted, and it does not apply to false charges only. 14 C. 633. There is nothing to limit the words "the institution of criminal proceedings" to the bringing of a charge before a Magistrate or to action by the Magistrate or police against the person charged. When a charge of a cognizable offence is made to the police against a specified person, criminal proceedings within the meaning of the section have been instituted just as much as if the charge had been made before the Magistrate. 20 M. 79=7 M. L. J. 16. A person who makes a false complaint to the police may be proceeded against under s. 211 of the Penal Code, and it is not competent to a Magistrate to refuse to entertain the case on the ground that the accused had not been afforded an opportunity of proving his original complaint. Rat. Un. Cr. C. 524. When a false charge is made to the police of a cognizable offence the offence committed by a person making the false charge falls within the meaning of section 211. 5 C. W. N. 727; 2 N. L. R. 119=4 Cr. L. J. 240; 27 M. 127. A person, who answers questions put to him by a police officer making an investigation under section 161, Cr. Pro. Code, does not institute or cause to be instituted criminal proceedings within the meaning of s. 211, Penal Code, nor does he thereby charge any person within the meaning of this section. 1 Weir 193; 31 M. 506.

Where a statement is made to a police of a suspicion that a particular person had committed an offence, *held*, that the information to the police would not, if the statement was false, amount to a false charge, and it would amount only toproviding the police with a possible clue for investigating the matter which they might or might not follow up as they consider fit. 8. C. L. R. 233. "A false charge" in section 211, must not be understood in any restricted or technical sense, but in its ordinary meaning of false accusation made to any authority bound by law to investigats it or to take steps in regard to it with a view to investigate or other proceeding; and the institution of criminal proceedings includes the setting of the criminal law in motion. 5 M. L. T. 269 (F. B.)=9 Cr. L. J. 170=32 M. 258. A false charge of theft of a tree made to a village Magistrate is an offence under section 182, though it does not amount to an offence under section 211, Penal Code, in as much as the Magisterial powers of a village Magistrate are confined to cases of petty thefts only 1 Weir, 122=1 Weir 194. Where a state of facts is brought to the notice of a Magistrate by a police report, which affords ground for supposing that an offence has been committed under s. 211 of the Penal Code, he has jurisdiction to enquire into or try the charge himself, or send it for enquiry or trial to one of his subordinates. 14 C. 707 (F. B). A man is presumed in law to intend the ordinary and natural consequences of his acts, and when he falsely charges another before the police with the commission of an offence, knowing the charge to be false, there can be no doubt but that he is guiity of an offence, punishable both under s, 182 and s. 211 Penal Code, even though his primary object may have been to protect himself. rather than to injure the persons falsely charged. 1 Weir 120. The police after the investigation of a charge, under section, 436, I. P. Code, laid before them by petitioner, reported the same to be false. Petitioner then presented a petition to the Sub-divisional Magistrate, impugning the Police report and praying for trial of persons charged. Without examining the petitioner and disposing of his complaint the Magistrate directed him to show cause why he should

not be prosecuted under s. 211 I. P. Code, and, in result, ordered his prosecution. *Held*, that the eptition presented to the Magistrate was a complaint and must have been dealt with as such, before a prosecution, under section 211 I P. Code, could be instituted against the petitioner and that the order for his prosecution under the section, was therefore, bad and should be set aside. 33 C. I.=2 C. L. J. 228=10 C. W. N. 158 ; 2 C. L. R. 315 ; 5 A. 387. But a prosecution under this section can be ordered where a Magistrate dismissed a complaint as false, after examining the complainant and after directing an enquiry by the Police. 4 A. 182.

A commitment for trial for false charge (s. 211 of the Penal Code) is sustainable, though based on a Police report, the complaint by the accused not having been judicially enquired into. 8 C. L. R. 255. The fact that the accused had no opportunity given to him to substantiate the complaint he made, is not a bar to his commitment for trial under section 211. A. W. N. 1882, 1. Sanction under section 195 should not be given, until the compalainant has been afforded an opportunity of proving his case, which has been thrown out merely on the report of the Police. 8 A. 38=A. W. N. 1885, 323. Where the accused charged another with assault and an offence of abetment of assault was established, he cannot be convicted under s. 211. A. W. N. 1883, 39. A conviction for false charge under section 211, Penal Code, based no the statement at the trial by the prisoner that he made the false complaint unthinkingly, there being no record on the prisoner's plea as required by s. 237 of the Criminal Pro. Code, nor a compliance with other requirements, is bad. 7 C. 96=8 C. L. R. 471. Admission of false charge without admission of malicious intent is not a plea of guilty, and conviction under section 211 is not justified. A. W. N. 1886, 66. To establish an offence under section 211. I. P. Code it must be affirmatively proved that the accused had falsely charged and that there was no just or lawful ground for such charge. 26 P. R. 1900 Cr. 29 P. R. 1894 Cr. An order for the prosecution of the complainant before the examination of all the witnesses cited by him, is bad in law. 2 Cr. L. R. 389. A prosecution for a false charge may be made under s. 182 or s. 211. If the false charge is of a serious offence, the proper course is to proceed under s. 211 ; otherwise it is enough if the sanction be for the prosecution for an offence under s. 182, 32 C. 180. Where the accused informed the police that he had been informed by certain residents of the village, that there was a suspicion that the complainant had committed an offece, and there was no proof that the accused was on inimical terms with the complainant, *held*, that the accused was not guilty under section 211. 12 P. R. 1905 Cr.=74 P. L. R. 1905= 2 Cr. L. J. 66. A criminal proceeding was instituted by a person before the police who reported the case to be false, and the matter coming on before a Magistrate empowered to dispose of police reports, he made an order making over the case to another Magistrate, for judicial enquiry. This Magistrate after holding a judicial inquiry as directed, submitted a report, upon which the other Magistrate made another to the following effect, viz :—"The complaint's charge has been established to be false and hence no process shall be issued against the accused and the complainant shall be proceeded against under s. 211, Indian Penal Code," and upon presecution, the complainant was convicted under s. 211 of the Penal Code. *Held*, that the offence of instituting a false complaint, not having been committed before a Magistrate who ordered the prosecution of the petitioner, or brought to his notice in the course of judicial proceedings, the prosecution of the petitioner was bad and contrary to law and the proceeding must be quashed. 7 C. L. J. 371=7 Cr. L. J. 338. Where an accused person was charged with having given a false information to a public servant in which he mentioned the names of two persons, in whose house he informed that stolen property would be found, *held*, the statement being one, he could be charged only with having made one false statement and could not be tried for and convicted of two distinct offences under s. 182 of the Penal Code. 13 C. W. N. 270. Whether the provisions of s. 211 I. P. Code, as to the institution of criminal proceedings are restricted to criminal proceedings in a Court, see 26 P. R. 1888 Cr. A Deputy Magistrate, prosecuting a complainant and his witnesses for having preferred a false charge of theft before him, ought to prove the falsity of the complaint of theft in the presence of the accused, without simply relying on the decision in the case of theft. 11 W. R. Cr. 35. Where a false charge before a Magistrate is merely sent for police enquiry, without the taking of any further proceedings in any Court, the false charge, does not come within the second clause of s. 211. 3 P. R. 1888 Cr. The procedure before framing a charge, under section 211 of the offence of making a false charge with intent to injure considered. 8 B. L. R. App. 11=16 W. R. Cr. 44. Rape is an offence punishable with transportation for life or with imprisonment for a term which may extend to ten years. The offence, there-

fore, of making a false charge of rape is triable exclusively by the Court of Sessions. Rat. Un. Cr. C. 953. A Magistrate, in convicting a person under s. 211 P. Code, for preferring a false charge, should state the nature of the false charge in finding and enter it in the calender. 1 B. H. C. 87.

To establish a charge under s. 211 of the Penal Code, it is necessary to show that the accused knew or had reason to believe that an offence had been committed. 1 Ind. Jur. O. S. 123. To constitute an offence under the section, it is necessary to show not merely that the criminal proceedings against the complainant have failed, but that the charge was in fact false and that the accused brought it with the knowledge that there was no just or lawful ground for the charge, and with the intention to injure these complainants. 1 P. R. 1886 Cr.; see also 14 P. R. 1879 Cr. Preferring a complaint to the police in respect of an offence which they are competent to deal with and thereby setting the police in motion is instituting a criminal proceeding within the meaning of s. 211 of the Penal Code. 5 W. R. Cr. 32; see also 14 P. R. 1872 Cr.; 17 P. R. 1881. Section 211 of the Penal Code is not limited in its application to private individuals alone. A police officer, who maliciously commences criminal proceedings against any person or charges such person with an offence or causes him to be charged falsely not only commit the offence under s. 211 but commits it in a very aggravated manner. 11 W. R. Cr. 2. Section 182 clearly refers to informations of which that given in illustration (*b*) is an instance. Section 211 on the other hand applies to the case of a person, who, with intent to cause injury to another person, institutes a criminal proceeding against that person on a false charge of an offence punishable with death, namely, of having caused the death of a child by poisoning it, knowing that there is no just or lawful ground for such a proceeding. 8 W. R. Cr. 57. In a case under section 211 for preferring a false charge with knowledge of its falsity, the Judge should be satisfied not only that the facts, on being informed of which the accused perferred the charge, were false, but also that he did not believe the information or knew it to be false. 3 B. H. C. Cr. 16. Where a person preferred a false charge against another of refusing to give him a stamped receipt for money paid by him, *held*, that the act of the accused did not fall under s. 211 I. P. Code, as there was no charge of any offence. 1. B. H. C. 92. Separate convictions under section 195 and under section 211, Penal Code are illegal, where the first offence is committed only in furtherance of the second for being used as evidence in the false complaint which the accused brought against the complainant. 8 W. R. Cr. 65.

Under section 211, Penal Code, instituting a criminal proceeding may be treated as an offence in itself, apart from "falsely charging" a person with having committed an offence. 8 W. R. Cr. 87. In order to constitute an offence of false charge under s. 211 of the Indian Penal Code, the must be made to an officer or to a Court who has power to investigate and send it for trial, and in order to be a charge the accusation must be made with the intention to set the law in motion. 15 A. L. J. 767=39 A. 715. Where an information to the police is followed by a complaint to the Court based on the same allegations and the same charge, the sanction of complaint of the Court itself under s. 195 (1) (b) of the Code is necessary before the Court could take cognizance of an offence punishable under s. 211 of the Penal Code, in respect of the false charge made to the Police, on the ground that it was an offence committed in relation to a proceeding in Court. The fact that the complaint was not investigated by the Court, does not make any difference. 43 C. 1152; 44 C. 650; 4 Pat. 323=6 Pat. L. 457.

Procedure—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the 1st class. If offence charged be punishable with imprisonment for 7 years or upwards, then triable by Court of Sessions, Presidency Magistrate or Magistrate of the 1st class. If offence charged be capital or punishable with transportation for life, in that case the offence is triable by Court of Session.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of at with intent to cause injury to one C. D. appeared before the Magistrate and instituted criminal proceedings against him charging the said C. D. with having committed the offence of knowing at that time that there was no just or lawful ground for such proceeding (or charge) against the said C. D., and that you thereby committed an offence punishable under s. 211 of the Indian Penal Code.

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment.

Harbouring offender.—

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine ;

If a capital offence ;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

If punishable with transportation for life or with imprisonment.

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

'Offence' in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 ; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Legislative changes.—The last paragraph has been inserted by Act III of 1894.

Scope.—This section does not apply to the harbouring of persons, not being criminals, who merely abscond to avoid or delay a judicial investigation, nor, necessarily, to acts of assistance given to known criminals in the shape of money, food or means of escape, etc. It supposes that some offence has actually been committed, and that the harbourer gives refuge with the intention of screening him from legal punishment in his house or in some hiding place, to one whom he knows or has reason to believe to be the offender. The precise offence may be unknown to him. Thus he may not know whether the person harboured has committed theft, or extortion, or robbery : but if he has reason to know that an offence against property : has been committed by such person, this section will apply. To support the charge the following proof is required :—

1. That an offence has been committed. The trial will not usually take place until after the guilt of the principal offender has been ascertained by his conviction ; if it takes place before, there must be sufficient proof of some offence committed.

2. The harbouring or concealment of the person of the offender must be proved. A mere receipt of the property plundered, or of the proceeds of it, will not constitute this offence.

3. Knowledge or cause for believing that the person harboured is the offender must also be proved.

The intention to screen from justice would be reasonably inferred from proof of the above circumstances. But of course if the accused can show satisfactorily that he had no intention of screening the offender this will be a good defence.

The section extends to all cases, save the two excepted ones. Thus a master receiving his servant, or a servant his master,—a brother—his brother,—or father his son,—will all be subject to punishment. In some of these instances, however,

the offence may be deemed to be deserving of a very light punishment—*Morgan and Macpherson.*

In order to constitute an offence under this section it must be established (1) that an offence has been committed (2) that the person known or reasonably believed to be the offender has been harboured or concealed, and (3) that such harbouring or concealing has been done with the intention of screening that person from legal punishment. 12 A. 434=A. W. N. 1890, 73 ; 21 P. R. 1867 Cr.

Where the accused does not know that the person staying with him is an offender a conviction under this section cannot be sustained. A. I. R. 1930 All. 33.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class. If punishable with imprisonment for 1 year and not for 10 years, in that case triable by Presidency Magistrate, or Magistrate of the 1st class, or Court by which the offence is triable.

213. Whoever accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

Taking gift, &c., to screen an offender from punishment—

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

If a capital offence ;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

if punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Application.—This section is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence and not when there is merely a suspicion of his having committed some offence. 23 C. 420.

Scope.—The compounding of a crime by some agreement not to bring the criminal to justice if the property is restored or a pecuniary or other gratification (see section 161) is given is the offence punished by this and the following section. Those offences which approach in this nature to civil wrongs admitting of compensation are excepted from those provisions—*Morgan and Macpherson.* There cannot be screening of an offence when no offence has been committed. 15 Bom. L. R. 694=20 Ind. Cas. 453=14 Cr. L. J. 453=37 B.=658. To establish the commission of offences under ss. 213 and 214 it is essential to prove commision of the offences screened. 46 Ind. Cas. 424. The offence constituted by s. 213 and s. 214, I. P. Code consists in the corrupt motive which is brought into play as much as in the delay to criminal justice. 40 C. L. J. 278=1925 Cal. 85. Actual concealment or screeing or abstention must be proved. 52 C. 151=26 Cr. L. J. 345=84 Ind. Cas. 649 ; 46 Ind. Cas. 424.

Procedure.—Cognizable—Warrent—Bailable—Not-compoundable—Triable by Court of session. If the offence be punishable with transportation for life or with imprisonment for 10 years then triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class : if with imprisonment for less than 10 years, in that case triable by Presidency Magistrate or Magistrate of the 1st class, or Court by which the offence is triable.

214. Whoever gives or causes, or offers or agrees to give or cause any gratification to any person or to restore or cause the restoration of any property to any person in consideration, of that person's concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

Offering gift or restoration of property in consideration of screening offender.—

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine ;

If a capital offence ;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine or with both.

If punishable with transportation for life, or with imprisonment.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

Illustrations.—[*Repealed by the old Criminal Procedure Code (Act X of 1882)*].

Legislative changes.—The exception to s. 214 has been substituted by the Indian Penal Code Amendment Act (8 of 1882) s. 6, for the one originally enacted.

Notes.—It is not competent for a Magistrate to permit the offences of cheating and fraudulent personation to be compounded. 3 A. 283. This section includes the offer of a bribe by a person who has committed the offence that it is desired to screen. 1 Weir, 194 ; see also 1 Weir, 196. It was not the intention of the Legislature to punish the giving of gratifications, under a delusion that an offence has been committed or that the person was guilty of such offence. 14 M. 400=1 Weir 195=1 M. L. J. 463 ; see also U. B. R. (1892-1896) Vol. I, 196. This section is not applicable to offences where they are compoundable. 6 L. B. R. 48=15 Ind. Cas. 990=13 Cr. L. J. 574.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session ; if punishable with tansportation for life, or with imprisonment for 10 years—triable by Court of Session, Presidency Magistrate or Magistrate of the First class ; if with imprisonment for less than 10 years—Triable by Presidency Magistrate, or Magistrate of the 1st class or by the Court by which the offence is triable.

215. Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code shall unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished within imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Taking gift to help to recover stolen property,&c.

Scope of section.—This section is applicable to the case of the offender himself taking gratification. 1 Weir 196 ; 23 A 81 ; 26 M. L. J. 598. An attempt to take gratification within the meaning of this section necessarily includes the idea of concurrence of wills between the giver and the taker ; with this much supper-added thereto, that some act has been done preliminary to the act of taking. 20 A. 389. This section is intended for the punishment of persons who, being usually in league with thieves, or well aware of their proceeding, obtain money, etc., for the recovery of stolen property, without making any effort to bring the offender to justice. In many places, cattle etc., are stolen by persons whose object it is to restore the stolen property to the owner on payment of a reward. The "go between," who is usually in case of cattle-stealing a professional tracker, is the person contemplated by this

section. If he aids or instigates the thieves, he is an abettor of theft. But in default of evidence of abetment, if he receivess a reward for procuring the restoration of stolen property without using "all means in his powers" to procure the apprehension and conviction of the offender, he is punishable under this section—*Morgan and Macpherson.* Where the thing is not stolen this section has no application merely because the accused took money from the complainant and failed to carry out his promise to find the thing. 9 P. R. 1915 Cr. This section is not intended to apply to the thief himself. U. B. R, 1914, 4th Qr. 43 ; see also 26 M. L. J. 598=15 Cr. L. J. 471. There can be no conviction for an offence under s. 215 until it is proved that a person has been deprived of movable property by an offence punishable under this code. 6 Ind, Cas. 250=11 Cr. L. J. 295. Where a cattle dealer takes a ransom for the restoration of stolen cattle and fails to restore that property to the owner in spite of the promise he is guilty of an offence under s. 420 I. P. Code and not of the minor offence under s. 215 I. P. Code.—73 Ind. Cas. 145=24 Cr. L. J. 529=1923 Rang. 37. Where sometime after the commission of a theft the accused proposed to find out the stolen articles on their being paid some money but took no steps after receiving the money to find out the thieves they are guilty of an attempt to commit an offence under s. 215. 46 A. 159=1923 All. 83. Where the accused assisted the owner in recovering certain horses that had been stolen, but there was no evidence connecting the accused with the thief excepting mere suspicion. *Held*, that under these circumstances the accused could not be convicted under this section. 25 A. L. J. 866. It cannot be a defence to a charge of accepting money for returning stolen property that the person who takes the money was himself the thief. When it was found that certain bullocks had been missing from the grazing field and the accused promised to recover the animals if he was paid a certain sum and on receiving the money the accused produced the animals in a short time, it is open to the Court to infer that the accused was thief or one among many thieves and that he was guilty of an offence under s. 215 I. P. Code. 22 A. L. J. 838=L. R. 5 A. 145 Cr.=1924 All. 783. This section is not intended to apply to the actual thief but to some one who takes any gratification on account of helping the owner to recover stolen property without at the same time using all the means in his power to cause the offender to be apprehended and convicted of the offence. 26 P. L. R. 303=7 L. L. J. 477=88 Ind. Cas. 353 ; see also 8 Lah. 263=28 P. L. R. 433=103 Ind. Cas. 206=28 Cr. L. J. 670=A. I. R. 1927 Lah. 500. It is no defence to a charge under s. 215 of the I. P. Code for the accused to say that he was the actual thief of the stolen property. 110 Ind. Cas. 592=29 Cr. L. J. 736=A. I. R. 1928 Sind. 168. It is necessary in order to maintain a conviction under s. 215 to prove that the complainant had been deprived of the property by an offence punishable under the Code. A. I. R. 1931 Lah. 157=131 Ind. Cas. 369=32 Cr. L. J. 729=1931 Cr, C. 269=32 P. L. R. 38. For conviction under this section evidence that articles are stolen is necessary. A. I. R. 1932 Pat. 241=11 Pat. 392=1932 Cr. C. 638=13 P. L. T. 732=33 Cr. L. J. 709=139 Ind. Cas. 76. Screening or attempting to screen is not ingredient of offence. Proviso in exception to general rule 1 and burden of proving that case comes within it is on defence. 145 Ind. Cas. 569=37 C. W. N. 360=54 Cr. L. J. 1015=1933 Cr. C. 963=A, I. R. 1933 Cal. 199. There is no offence under this section where property is not lost by commission of offence and restorer is not shown screening offender. 133 Ind. Cas. 800 =32 C. L. J. 1072=1931 Cr. C. 1046=54 A. 55=1932 A. L. J. 103=A. I. R. 1931 All. 710. Taking money in order to help to find stolen property and commit theft is not offence. A. I. R. 1935 Sind. 105.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st class.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered—

216. Whenever any person convicted of, or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be appehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person, with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if the offence for which the person was in custody or is ordered to be apprehended, is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

if a capital offence ;

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

if punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of the imprisonment provided for such offence or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of British India, which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; and every such act or omission shall, for the purpose of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

Scope.—The offence in the present section is aggravated, because the person harboured has escaped, after being actually convicted or charged with the offence, or because a warrant or order for his apprehension has issued—*Morgan and Macpherson.* It is an offence under this section to harbour or conceal a person for whose apprehension an order has been passed by a public servant, even when such apprehension is sought to be made not for the purpose of trying him for an offence that he may have committed, but for enforcing a punishment already inflicted on him for having committed the offence. 11 C. L. J. 109=5 Ind. Cas. 311=11 Cr. L. J. 95. In order to constitute an offence under this section, harbouring must be done with the intention of preventing the apprehension of such person. L. B. R. (1872—1892) 174. See also 15 Cr. L. J. 399=28 Ind. Cas. 701. The word "harbour" in this section must be construed liberally. It includes a person who harbours the offender in house belonging to a third person and who visits him there. 14 Bom. L. R. 483=16 Ind. Cas. 509=13 Cr. L. J. 701=1 Bom. Cr. C. 151. The word "harbour" does not only mean to provide shelter, food and clothing but includes "the assisting of a person in any way to evade apprehension." 5 Lah. L. J. 329=73 Ind. Cas. 691=24 Cr. L. J. 659=1923 Lah. 228 ; see also 72 Ind. Cas. 949=24 Cr. L. J. 485. The mere giving of a meal to two proclaimed offenders is not an offence under this section. 6 Lah. L. J. 481. For a conviction under this section it must be proved that the accused knew the person harboured to be a person for whose apprehension an order had been made by competent authority. 6 Lah. L. J. 478=1925 Lah. 103=26 Cr. L. J. 415=84 Ind. Cas. 1055.

In order that an offence under section 216, I. P. Code, should be committed it is necessary that the person harbouring the offender must be harbouring him with the intention of preventing him from being apprehended. 52 B. 151=30 Bom. L. R. 70 =108 Ind. Cas. 27=29 Cr. L. J. 317=A. I. R. 1928 Bom. 184. In order to sustain a conviction under s. 216 I. P. Code it is enough to show that orders of apprehension were issued against the person harboured for an alleged offence. It is not necessary to show that the said offence was actually committed. But the fact that the person harboured was acquitted may be taken into account in awarding sentence. A. I. R. 1928 Mad. 1147=55 M. L. J. 503=28 L. W. 403. The accused was not found to have known that the person he harboured was a proclaimed offender before the arrival of the police to search his house. It appeared, however, that after the Sub-Inspector had informed him that the person was a proclaimed offender he denied the fact that he harboured him and gave prevaricating answers evidently with the object

of enabling the offender to evade apprehension. *Held* that the false replies given by the accused were sufficient to bring him within the purview of s. 216 I. P. Code. 11 Lah. L. J. 377. Where false information was given to police to assist evading apprehension, an offence under s. 216 was committed. A. I. R. 1930 Lah. 99=11 L. L. J. 377=1930 Cr. C. 73=125 Ind. Cas. 178.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class. If punishable with imprisonment for 1 year and not for 10 years, triable by Presidency Magistrate, Magistrate of the first class, or Court by which the offence is triable.

Penalty for harbouring robbers or dacoits.

216A. Whoever, knowing or having reason to believe that any persons are about to commit, or have recently committed, robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

Gist of Offence.—In order to justify a conviction under this section, there must be evidence, both of knowlege and of intention. Rat. Un. Cr. C. 775. Lending a pony to certain dacoits to enable them to carry their loot away is not "harbouring" under this section. 22 A. L. J. 496=80 Ind. Cas. 711=1924 All. 676. This section requires that no one should harbour any persons who are about to commit a dacoity with the intention of facilitating the commission of such dacoity. 26 Cr. L. J. 1028=87 Ind. Cas. 916=A. I. R. 19 S. L. R. 111. The provisions of s. 110 Cr. Pro. Code, do not apply to a person suspected of harbouring dacoits. Such a man should be dealt with under s. 216 A. A. I. R. 1928 All. 682=1929 A. L. J. 93=51 A. 459=30 Cr. L. J. 694=116 Ind. Cas. 804.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Legislative Changes.—This section has been inserted by Act, III of 1894 s. 8.

Definition of 'harbour' in section 212, 216, and 216A.

216B. In section 212, 216 and 216A, the word 'harbour' includes the supplying a person with shelter, food, drink money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension.

Legislative changes.—This section has been added by Act VII of 1894.

Scope.—The words at the end of this section, "or assisting a person in any way to evade apprehension" must be meant to point to some method *ejus dem generis* with these that have been specified in the earlier portion of the section, A bare lie in order to induce the police to desist from their pursuit does not fall within that category. 25 A. 261. Where a person gives false information to the police with respect to a proclaimed offender or warns him of the approach of the police in order that he may make good the escape, he is guilty of the offence of harbouring him. 27 Punj. L. R. 218=7 Lah. 30=94 Ind. Cas. 131=27 Cr. L. J. 563=A. I. R. 1929 Lah. 206 ; see also 24 Cr. L. J. 485=72 Ind. Cas. 999. The ways in which assistance may be rendered need not for the purpose, of s. 216 be restricted to methods which may properly be regarded as *ejus dem generis* or of a like nature with supplies of food or of other necessary articles. 21 C. W. N. 1062=26 C. L. J. 141 ; 2 O. W. N. 260=89 Ind. Cas. 152 ; A. I. R. 1925 Oudh. 423 ; see also 84 Ind. Cas. 1050=26 Cr. L. J. 410=A. I. R. 1925 Lah. 289. The accused must know that the person harboured is a proclaimed offender. 84 Ind. Cas. 1055=26 Cr. L. J. 415=A. I. R. 1925 Lah. 103. Where a poney was lent to the dacoits merely to facilitate them in removing loot offence under s. 216 B. was not committed. A. I. R. 1924 All. 676=22 A. L. J. 496=26 Cr. L. J. 151=83 Ind. Cas. 711.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save or knowing that he is likely thereby to save any property from forfeiture, or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend or two years, or with fine or with both.

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

Application.—For the purpose of a conviction under the section it is sufficient that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant and that he has done this with the intention of saving a person from legal punishment. It is not further necessary to show that in point of fact, the person so intended to be saved had committed an offence or was justly liable to legal punishment. 3. C. 412 ; W. R. 1864, Cr. 5 ; 1 J. G. 45. Before a person can be convicted under this section it must be shown that there is a direction of the law as to the way in which he is to conduct himself, as such public servant, and this direction must be a direction to be found in some positive Statute or some rules or regulations which are declared by Statute to have the force of law. A. W. N. 1902, 16 ; see also 1 M. 206=1 Weir 196. It is not necessary for a conviction under ss. 217 and 218 to establish that an offence had been actually committed. 139 Ind. Cas. 84=33 Cr. L. J. 657=1932 Cr. C. 881=A. I. R. 1932 Cal. 850.

A police officer, who apprehends several persons at night on suspicion that they have committed culpable homicide, and who keeps them in the village where they have been arrested after tying them together by the hands, is not guilty of an offence under s. 217, if the prisoners escape in the course of night. 18 P. R. 1871, Cr. A police constable who retained for himself a piece of gold found in a search for stolen property but not proved to be part of the stolen property and failed to report his possession to the superior officer under s. 523 of the Code of Criminal Procedure, is guilty of an offence under s. 217. 16 Cr. L. J. 453. Where a person knowingly disobeys any direction of law he is punished under this section. 15 Bom. L. R. 578=2 Bom. Cr. C. 90=20 Ind. Cas. 601=14 Cr. L. J. 441. A Police constable who retained for himself a piece of gold found in a search for stolen property and failed to report his possession to his superior officers under s. 523 of the Code of Criminal Procedure, is guilty of an offence under this section. 29 Ind. Cas. 95.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

218. Whoever being public servant and being, as such public servant charged with the preparation of any record or other writing, frames, that record or writting in manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or any person or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

Gist of offence.—To support a conviction under this section, it is necessary to prove that the accused believed, or had reason to believe, that the person concerned had committed an offence, though it is not necessary to prove that such an offence had as a matter of fact, been committed. Rat. Un. Cr. C. 405. It is not necessary for a conviction under s. 218 to establish that an offence had been actually commited A. I. R. 1932 Cal. 850=139 Ind. Cas. 89=1932 Cr. C. 881=33 Cr. L. J. 657. This section contemplates the wilful falsification of a public document with the intent thereby to cause loss and injury, and "this" means by the document itself or by some transaction with which it is essentially connected. Rat. Un. Cr. C. 201.

To constitute an offence under this section it is not necessary that the incorrect document should be submitted to another person or be otherwise used by the writer. 13 P. R. 1881. Cr. The words "charged with the preparation" in s. 218, Penal Code, are not restricted to the narrow meaning of enjoined by a special provision of law. 27 C. 144. A village Munsif, trying a case of theft is not bound to prepare a calender. Therefore a village Munsif, who submits a false calender of a case of theft tried by him is not guilty of an offence under s. 218. 1 Weir 197. Where a police inspector had been charged with framing an incorrect record in that he entered in his diary that certain cartmen told him that "they were not beaten by dacoit" while in fact they told him that "they were beaten by dacoits," this of itself is not sufficient to sustain a conviction under s. 218 I. P. Code. 1911 M. W. N. 34 12=Cr. L. J. 155=11 Ind. Cas. 799. It is doubtful whether it is unnecessary under this section to prove an intention to screen any particular person. 23 Bom. L. R. 823=63 Ind. Cas. 145=22 Cr. L. J. 609. For a conviction under this section the actual guilt or otherwise of the alleged offender is immaterial. It is sufficient that the commission of a cognizable offence has been brought to the notice of the accused officially and in order to screen the offenders he prepared the record in a manner which he knew to be incorrect. 7 Lah. L. J. 331=26 Cr. L. J. 832=86 Ind. Cas. 661. Sub-Inspector of Police making incorrect report with intent to cause injury to complainant is guilty under s. 218 A. I. R. 1930 Lah. 153.

Procedure.—Not-Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision, which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Public servant in judicial proceeding corruptly making report, &c., contrary to law.

Notes.—Where a village Munsif maliciously and knowingly passed a decree which was contrary to law, *held* that he is guilty of an offence under s. 219 I. P. Code consisting in the malicious pronouncement of a decission. 15 A. L. J. 106. Malice in common acceptance means ill-will against a person, but in its legal sense it means a wrongful act done intentionally ; done without just cause or excuse. *Bromage* v. *Prosser* 4 B. C. 247, 255 ; see also 15 A. L. J. 106. But no malice can be inferred where a man has been unlawfully confined. 9 B. H. C. 346.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement in the exercise of that authority, knowing that, in so doing, he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

Scope.—Where an arrest is legal, there can be no guilty knowledge "superadded to an illegal act" such as is necessary to establish against an accused to justify a conviction under this section. It is only when there has been an excess by the police officer of his legal powers of arrest that it becomes necessary to consider whether he has acted corruptly or maliciously and with the knowledge that he was "acting contrary to law." 10 B. 506. To justify a conviction under this section, there must be a guilty knowledge superadded to an illegal act. 9 B. H. C. R. 346 ; Rat. Un. Cr. C. 222 ; 5 Bom. L. R. 597.

Procedure—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers

Intentional omission to apprehend on the part of public servant bound to apprehend.

such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death ; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

Notes.—A village *Chowkidar* is not legally bound, as a public servant, to apprehend a person accused of having committed murder, if the murder was not committed within his village or if the person accused was not a proclaimed offender, or if the homicide was not committed in his presence. 3 A. 60. An offence falling under the Police Act and also under the Penal Code should be punished under the latter enactment. 1 P. R. 1874 Cr. The duties of a *Chowkidar* as a private citizen ought not to be confounded with his duties as a public servant. Where the legal obligation of the *Chowkidar* to arrest or detain has not been established, there is no deviation from his statutory duty within the purview of section 221 ; and the *Chowkidar* cannot be penalized for intentionally suffering a pilferer to escape from his detention. A. I. R. 1929 A. 935=31 Cr. L. J. 12=1930 A. L. J. 242=120 Ind. Cas. 205.

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session. If punishable with transportation for life, or imprisonment for ten years, triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class ; if with imprisonment for less than 10 years, triable by Presidency Magistrate, or Magistrate of the 1st or 2nd class.

Charge—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at being a public servant to wit as being such public servant legally bound to apprehend (or keep in confinement) one X. Y. charged with the offence of (or liable to be apprehended for an offence etc.) did intentionally omit to apprehend such person (or intentionally suffered such person to escape, or intentionally aided such person in escaping or attempting to escape from such confinement) ; and thereby committed an offence punishable under section 221 of the Indian Penal Code and within my cognizance (or cognizance of the Court of Session.)

And I hereby direct that you be tried by the said Court on the said charge.

222. Whoever, being a public servant, legally bound as such public servant to apprehend, or to keep in confinement, any person under sentence of a Court of Justice for any offence, "or lawfully committed to custody," intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

with transportation for life, or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject by a sentence of a Court of Justice, or by

virtue of a commutation of such sentence, to transportatian for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine or with both if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, or if the person was lawfully committed to custody.

Notes.—The fact that the acts proved do not amount to an attempt to escape but constitute only a preparation to escape does not exculpate the accused because the offence of which he has been charged and convicted is the offence of intentionally aiding the prisoners in attempting to escape. It is necessary to see what is meant by "intentionally aiding." The meaning of the phrase can be learnt from s. 107, Expl. (2) where it is explained that whoever either prior to or at the time of the commission of an act does anything in order to facilitate the commission thereof, is said to aid the doing of that act. It cannot be gainsaid that when the accused does acts done in order to facilitate the attempt of the prisoners to escape and that he does thereby facilitate an attempt to escape he can be properly convicted under s. 222 and it makes no difference that the attempt was in fact frustrated by other circumstances. 1 9 Ind. Cas. 762=33 Cr. L. J. 1103=A, I. R. 1929 Lah. 631=1929 Cr. C. 190.

Amendment.—The words within quotations have been inserted by the Indian Penal Code (Amendment) Act 27 of 1873 s. 8.

Procedure.—Not-cognizable—Warrant—Not bailable——Not-compoundable—Triable by Court of Session ; if under sentence of imprisonment for less than 10 years or lawfully committed to custody then triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class and the offence is bailable.

Escape from confinement or custody negligently suffered by public servant.

223. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence, "or lawfully committed to custody," negligently suffer such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Amendment.—The words within quotations have been inserted by the Indian Penal Code (Amendment) Act. 27 of 1870 s. 8.

Application.—Before a man can be convicted under this section, of having negligently suffered a prisoner to escape, it must be shown, not only that he was guilty of negligence, but that the escape was at least the natural and probable consequence of his negligence. 7 A. L. J. 907 Cr. Certain police men were conveying a dangerous prisoner in a camel cart, having handcuffed him doubly and having tied a rope round his waist. The prisoner was allowed to get down in order to answer the call of nature, whereupon he gave a false alarm crying "snake" and broke away from the constables. *Held*, that the constables on the facts were not guilty of an offence under s. 223 I. P. Code. 15 A. L. J. 883=19 Cr. L. J. 78=43 Ind. Cas. 110. To constitute the offence it must be shown that escape was a natural and probable consequence of the negligence. 20 Cr. L. 7. 359=11 P. R. 1919 Cr.=50 Ind. Cas. 830. In a case of two distinct acts of omission, acquittal for one act of omission does not debar trial for other act of omission. A. I. R. 1933 Pat. 670.

Confinement.—The word "confinement" should not be restricted to confinement within circumscribed limits. Ind ss. 220, 225 I. P. C. the legislature appears to have used the words "custody" and "confinement" as co-extensive. 2 P. R. 1891 Cr. (F. B.) ; 32 P. R 1890, Cr. Where neither the original arrest nor the subsequent custody of a *Chowkidar* from whose custody a prisoner escaped, was lawful, the *Chowkidar* could not properly be convicted of an offence under this section. 29 A. 377=A. W. N. 1907, 94=5 Cr. L. J. 277. Where the accused were charged under this section, it was shown that they marched the prisoner by night. There was no evidence that they had reason to expect that any attempt would be made at rescuing the prisoner. *Held*, that an offence under this section was not made out. 6 M. L. T. 247=3 Ind. Cas. 460=10 Cr. L. J. 293. A village *vitti* is not a public servant, within s. 223,

legally bound to keep in confinement any person charged with or convicted of committing any offence. 1 Weir. 197. Where the accused police officer absented himself from the police station on the night during which the person in the police station *havalat* escaped, it cannot be said that he negligently suffered the person to escape from confinement, in which he was legally bound to keep him. 6 P. L. R. 1900 Cr. A jail warder can be convicted under this section for negligently allowing prisoner to escape. 11 P. R. Cr. 1919=50 Ind. Cas. 830=20 Cr. L, J. 350.

Procedure.—Not-cognizable——Summons—Bailable——Not-compoundable—Triable by Presidency Magistrate or Magistrate of first or second class.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted or escapes, or attempts to escape, from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Scope.—Manual detention is not essential to constitute an arrest. The mere evasion of an arrest will not amount to resistance or illegal obstruction to the arrest. 1 Weir 205. To sustain a charge under s. 224 or s. 225 the arrest or detention should be legal. A. I. R. 1924 Mad. 384=18 M. L. W. 818=25 Cr. L. J. 792=81 Ind. Cas. 312 ; see also 138 Ind. Cas. 844=33 Cr. L. J. 706=1932 Cr. C. 347=13 P. L. T. 135=A. I. R. 1932 Pat. 171. But it would be an offence for a man to escape from custody after he has been lawfully arrested on a charge of having committed an offence although he may not have been subsequently convicted of such latter offence. A. I. R. 1927 Bom. 96=29 Bom. L. R. 168=28 Cr. L. J. 380=100 Ind. Cas. 988. Escape or rescue of a person arrested by an excise officer are offences under ss 224 and 225. 43 C. 1161=17 Cr. L. J. 379=20 C. W. N. 1294=35 Ind. Cas. 811. In case of wrongful, the arrested person is not in lawful custody and has a right of private defence. A. I. R. 1923 All. 34=26 Cr. L. J. 428=85 Ind. Cas 44 ; see also 138 Ind. Cas. 844=33 Cr. L. J. 706=1932 Cr. C. 347=13 P. L. T. 135=A. I. R. 1932 Pat. 171 ; A. I. R. 1932 Lah. 263=33 Cr. L. J. 680. A person who escapes from Police custody which proceedings under s. 109 Cr. Pro. Code are pending against him commits an offence under section 225 B and not under section 244. A. I. R. 1925 Sind. 193=18 S. L. R. 301=25 Cr. L. J. 462=71 Ind. Cas. 814. Resistance to a warrant addressed to the bailiff of the Court but executed by the Naib Nazir and process-server without any endorsement by the bailiff is not illegal. 22 Cr. L. J. 145=3 Lah. L. J. 346=59 Ind. Cas. 849. see also 73 Ind. Cas. 328=A. I. R. 1923 Cal. 584=37 C. L. J. 331=27 C. W. N. 1042=24 Cr. L. J. 584. A person who resists being lawfully apprehended is guilty under this section. A. I. R. 1932 Lah. 615=34 Cr. L. J. 25=1932 Cr. C. 922=140 Ind. Cas. 442 ; A. I. R. 1923 Rang. 133=11 L. B. R. 449=2 Bur. L. J. 19=24 Cr. L. J. 307=72 Ind. Cas. 67.

Where an accused person, being sentenced to imprisonment by a village Magistrate, refused to undergo the sentence and went away, although an attempt was made to prevent him from so doing, *held*, that the accused could not be convicted under this section. I Weir. 204. An arrest of a person by an officer authorised in that behalf is a charging *i.e.*, an imputation of the alleged offence, though but *prima facie* imputation until the case goes before some functionary authorised to deal with it. Rat. Un. Cr. C. 298=Cr. Reg. 46 of 1886. Where a person accused of an offence in a Native State escapes into British territory, the British Police has no power to arrest him, unless he is a native Indian subject of Her Majesty, or unles there is any warrant under s. 11 or s. 15 of Act XXI of 1879. If he escapes from the custody of a British Police Officer, who has arrested in the absence of the conditions above mentioned, he has not committed an offence under s. 224 I. P. Code, 20 P. R. 1891, Cr. ; see also 21 P. R. 1885 Cr. Trivial resistance to unlawful force on the part of an arresting officer does not constitute an offence under this section. 1 L. B. R. 173.

Where a judgment-debtor was allowed to go by the decree-holder and the process-server, no offence was committed. 11 Cr. L. J. 447=7 Ind. Cas. 392=8 M. L. T. 286. Where the accused were convicted under s. 456 of the Penal Code for having trespassed into a house with intent to commit the offence under s. 224 in that they ran away to avoid being arrested, *held* that such running away did not amount to an offence under this section. A. W. N. 1891, 64. The conviction of a prisoner who escapes from jail in which he was confined, under s. 123 of the Cr. Pro. Code, for having failed to furnish security to be of good behaviour, should be under s. 225 B and not under section 224. 18 A. L. J. 1039=58 Ind. Cas. 831. Where and when a Sub-Inspector of police was about to arrest an accused, a crowd carrying lathis began to assemble and the Sub-Inspector considered their appearance so formidable that he desisted from his intention of arresting the accused. *Held*, that the persons forming the crowd cannot be said to have caused illegal obstruction within the meaning of s. 224 or s. 225, nor was the person to be arrested guilty under s. 224. 23 A. L. J. 32=86 Ind. Cas. 350=26 Cr. L. J. 766=A. I. R. 1925 All. 308.

Explanation.—Concurrent as well as consecutive sentences are additional sentences. A. I. R. 1934 Bom. 462=36 Bom. L. R. 963=1934 Cr. C. 1332.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd Class.

Resistance or obstruction to lawful apprehension of another person.

225. Whoever, intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue, any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued is liable, under the sentence of a Court or Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Notes.—The illegal obstruction is used in two sections namely, ss. 224 and 225, and by virtue of two other sections, namely 184 and 186 certain obstructions are punishable. 1 Weir. 211. Where a village *Chaukidar* in charge of a person handed over to him by a private person was prevented from taking such person to the police-station an offence under this section has been committed. 29A. 575=A. W. N. 1907, 179=4 A. L. J. 483=6 Cr. L. J. 10. A person rescuing another who is lawfully in the custody of a private person, is guilty of an offence under s. 225. 1 Weir. 209. Any resistance to a person who has no lawful authority to arrest him is not an offence. 5 L. B. R. 21=21 Ind. Cas. 619=10 Cr. L. J. 118. A civil warrant not addressed to a bailiff by name is not an illegal warrant. 15 Cr. L. J. 439=24 Ind. Cas. 175=15 Cr. L. J. 576. The provisions of s. 225B. were enacted by the Legislature to meet cases not provided for in section 225. 20 P. R. 1911 Cr.=14 Ind. Cas. 426=13 Cr. L. J. 234=260 P. L. R. 1912. Arrest on a warrant allowing bail without intimating that bail has been allowed, is illegal. 16 C. W. N. 549=15

Ind. Cas. 1006=13 Cr. L. J. 590. Where sometime after the commission of a theft, the accused proposed to find out the stolen articles on their being paid some money but took no steps after receiving the money, to find out the thieves they are guilty of an attempt to commit an offence under s. 225. 20. A. L. J. 927. If a person after committing a non-bailable and cognizable offence escapes but on being arrested by a private person who did not actually see him commit the offence resists and obstructs him, he is not guilty of an offence under s. 225 I. P. Code. 19 P. L. R. 1922=1922 Lah. 73=64 Ind. Cas. 371=23 Cr. L. J. 3.

The term "rescue"in this section implies intention and the use of violence to effect the object desired. 19 P. R. 1883 Cr.

The words in the second para of s. 225 of the Code describing the punishment for the offence with which the person apprehended is charged should not be read disjunctively as denoting transportation for life or imprisonment of ten years in the alternative. 1 Weir, 210. Where a woman had been arrested in pursuance of a warrant but the accused rescued her and tore up the warrant and it was found that the warrant had not been properly issued. *Held*, the accused was guilty of an offence under s. 352 I. P. Code, but not under s. 225 B. I. P. Code. 20 A. L. J. 921 =23 Cr. L. J. 174 Cr. A person was found in hiding in another house and was arrested by a private person. Some persons rescued him. *Held*, they were not guilty of an offence under s. 225. 89 Ind. Cas. 1030 =29 Cr. L. J. 1462. A person rescuing a thief from the custody of a *Chaukidar* in Bengal does not commit an offence under s. 225. 17 Cr. L. J. 104=33 Cr. L. J. 644. Threatening a Sub-Inspector of Excise in order to prevent him from making an arrest amounts to offering a resistance and illegal obstruction to lawful apprehension of an offender. A. I. R. 1930 Pat. 344=31 Cr. L. J. 465=123 Ind. Cas. 68. A Forest Officer cannot arrest, without warrant, persons (commiting) an offence under s. 63. His custody is not a a lawful custody. A. I. R. 1927 Cal. 516=54 C. 290=28 Cr. L. J. 562=102 Ind. Cas. 498.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate of the 1st or 2nd class. If charged with an offence punishable with transportion for life or imprisonment for ten years—Not Bailable and triable by Court of Session, Presidency Magistrate and Magistrate of 1st class. If charged with a capital punishment or if the person is sentenced to transporation for life or to transportation, penal servitude or imprisonment for 10 years or upwards or if under sentence of death—Not-Bailable, triable by Court of Session.

225 A. Whoever, being a public servant legally bound, as such public servant, to apprehend or to keep in confinement, any person in any case, not provided for in section 221, section 222, or section 223, or any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement shall be punished—

Ommission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for.

(*a*) if he does so intentionally, with imprisonment of either description for a term, which may extend to three years, or with fine, or with both : and

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Legislative changes.—This section has been substituted by Act 17 of 1870. s. 9.

Notes.—Omission to secure door of room where prisoner was confined is indication of negligence. A. I. R. 1930. Pat. 103. Where arrest without warrant or order of Magistrate under s. 55 was made, such confinement is legal custody. A. I. R. 1930 Pat. 103. Villagers assisting a headman in arresting a person are not public servants. (1916) 2 U. B. R. 122=18 Cr. L. J. 351=10 Bur. L. T. 170=38 Ind. Cas. 735.

Procedure.—In case of intentional omission or sufferance—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate, or Magistrate of 1st class. In case of negligent omission or sufferance—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

225B. Whoever, in any case not provided for in section 224, or section 225, or in any other law for the time being in force, intentionelly offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts te escape from any custody in which he is lawfully detained, or rescuse or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

Legislative changes.—This section has been substituted by Act 17 of 1870, s. 9.

Application.—In order to obtain a conviction under this section it is necessary for the prosecution to prove that the custody from which the accused escaped was a lawful custody, i. e., that the accused person was lawfully detained. 7 Cr. L. J. 74. A man legally arrested for an offence must submit to be tried and dealt with according to law. Even when the escape is effected by the consent or neglect of the person that kept the prisoner in custody, e. g., when the person having the custody of the accused went to sleep, the accused is no less guilty, as neither such illegal consent nor neglect absolves him from the duty of submitting to the judgment of the law. 31 M. 271. Where warrant is illegal, accused resisting public servant executing it is not guilty. 140 Ind. Cas. 118=33 Cr. L. J. 887=1932 Cr. C. 225=1932 A. L. J. 179=A. I. R. 1932 All. 227 Where warrant and notice to appear are issued simultaneously, warrant is illegal. 142 Ind. Cas. 887=34 Cr. L. J. 455=1932 P. L. J. 1073=1932 Cr. C. 940=A. I. R. 1932 All. 692 ; but see 142 Ind. Cas. 160=34 Cr. L. J. 269=13 P. L. T. 502=11 Pat. 743=1932 Cr. C. 853=A. I. R. 1932 Pat. 315. Where there is no name or description of person to whom warrant is issued for execution, release of person arrested is no offence under s. 225B. 142 Ind. Cas. 887=34 Cr. L. J. 455=1932 A. L. J. 1073=1932 Cr. C. 940=A. I. R. 1932 All. 692. Complaint of offence under s. 225 B. can be made by any person who is aware of facts. 146 Ind. Cas. 387=1933 Cr. C. 1178=A. I. R. 1933 Lah. 884.

An arrest of a person, who may be lawfully arrested without a warrant, by a *Chaukidar*, on the authority of an order in writing delivered to him in conformity with the provisions of s. 56 (1) of the Cr. Pro. Code would be legal ; and, therefore, resistance by the accused to the lawful apprehension of him by the *Chaukidar* is an offence under this section. 10 C. W. N. 287=3 Cr. L. J. 201. Where a warrant of arrest was signed by the Sheristadar of a Civil Court duly authorised to sign them, the judgment-debtor resisting its execution would be guilty of an offence under s. 225 B. of the Penal Code. 6 C. W. N. 845. A person who merely goes to his house and stays there, on seeing a warrant to arrest him in excution of a decree, does not offer resistance or illegal obstruction within the meaning of s. 225 B. U. B. R. 1906, Penal Code, 29=4 Cr. L. J. 287. Resistance to the execution of a warrant, issued to arrest a witness under s. 90 of the Criminal Procedure Code, in the first instance, without previously serving summons upon him for attendance, is not an offence. 15 C. W. N. 1001=11 Ind. Cas. 593=12 Cr. L. J. 409=38 C. 789. Where accused is charged with having offered obstruction to the lawful apprehension of a boy under 7 years of age by the police for theft, the conviction must be set aside. 1915 M. W. N. 543=30 Ind. Cas. 154=16 Cr. L. J. 602. It is illegal to convict a person under ss. 225 B. and 353, Penal Code, when the warrant attempted to be executed was addressed to the person with a wrong description to which the accused did not answer. 28 C. 399=5 C. W. N. 413. In a case of resistance to the execution of a warrant, issued by a Civil Court it must be proved that the warrant was shown to the person when he wanted to see it. 5 C. W N. 843. To convict a person under this section, the warrant in question must be legal. 27 A. 91=A. W. N. 1905, 66=2 Cr. L. J. 155. Before a person could be convicted of an offence under this section, it must be proved that the officer armed with the warrant of arrest produced his warrant before the person and that he made an attempt to arrest him or that in fact the person was arrested. 10 Cr. L. J. 3. "Escape" in this section includes an escape which is effected by the consent of the custodian. 25 M. L. T. 290=(1919) M. W. N. 695=9 L. W. 216=49 Ind. Cas. 659=20 Cr. L. J. 208. In order to constitute an offence under this section something more is required

than an evasion of arrest or a mere assertion by the person sought to be arrested that would not like to be arrested or that a fight would be the result of such arrest. 20 Cr. L. J. 84=48 Ind. Cas. 832=33 P. R. Cr. 1918. Mere absconding is not sufficient to justify a conviction under this section. 1 Rang. 218=2 Bur. L. J. 246=74 Ind. Cas. 960=24 Cr. L. J. 848. Subsequent surrender of the prisoner already rescued does not exonerate the accused. 2 Bur. L. J. 19=72 Ind. Cas. 27=24 Cr. L. J. 307=1923 Rang. 133.

It is not necessary that a bailiff executing a Civil Court warrant should in the first instance show the warrant. It is sufficient that he should appraise the person to be arrested of the contents of the warrant and show it if desired. 25 C. W. N. 815. Where a person escapes from jail in which he was confined, under section 123 Cr. Pro. Code for failure to furnish security to be of good behaviour, his conviction should be recorded under s. 225 B, and not under s. 244, Penal Code. 43A. 185=18 A. L. J. 185=58 Ind. Cas. 831=21 Cr. L. J. 831. A person against whom proceedings under s. 109 Cr. Pro. Code, are pending, if he escapes from police custody commits an offence under s. 225 B. 77 Ind. Cas. 814=25 Cr. L. J. 462. Where a warrant does not contain the name of the person who was to be apprehended thereunder except in a heading where he was described as a party to a suit which was non-existent, the warrant is bad and obstruction to the arrest is not an offence. 39 C. L. J. 452=83 Ind. Cas. 481. A person escaping from an unauthorised arrest commits no offence under s. 225. 26 Cr. L. J. 1360=89 Ind. Cas. 400=A. I. R. 1925 Lah. 623. Under section 225 B of the Penal Code resistance or obstruction to the apprehension of a person is made punishable only if the apprehension was lawful. But where the imposition of the tax for the non-payment of which warrants were issued is itself illegal and *ultra vires*, the resistance to their execution cannot be punishable. 9 Lah. 424=107 Ind. Cas. 601=29 Cr. L. J. 265=A. I. R. 1928 Lah. 332. An offence under section 225 B I. P. Code is committed only when the resistance to arrest is intentional, that can only be when the person who makes the resistance knows that he is being or is about to be arrested. 107 Ind. Cas. 772=29 Cr. L. J. 286=A. I. R. 1928 Lah. 324. The omission of the Court-seal on a warrant renders it void and a person offering resistance to apprehension on such a warrant does not commit an offence under section 225B. 29 Cr. L. J. 215=9 Lah. 424=107 Ind. Cas. 601=A. I. R. 1928 Lah. 332. Detention of a judgment-debtor in custody of a peon after giving him time to pay up a decretal amount is not lawful custody. A. I. R. 1925 All. 318=23 A. L. J. 189=26 Cr. L. J. 865=47 A. 409=86 Ind. Cas. 801. Where custody is not legal no offence has been committed. A. I. R. 1928 Pat. 550=30 Cr. L. J. 125=11 P. L. T. 31=113 Ind. Cas. 578; see also 38 Ind. Cas. 963=39 M. 928=18 Cr. L. J. 403; A. I. R. 1924 Mad. 555=47 M. 442=46 M. L. J. 447=34 M. L. T. 95=25 Cr. L. J. 563=81 Ind. Cas. 51. Escape from lawful custody of a process-server does not amount to obstruction to a public servant in the discharge of his duties but is an offence under s. 225 B. A. I. R. 1927 Lah. 708=9 L. L. J. 408=28 Cr. L. J. 753=103 Ind. Cas. 833. Detention to be valid need not be in writing. Judgment-debtor escaping from custody commits offence under s. 225 B. A. I. R. 1933 Mad. 278=34 Cr. L. J. 284=1933 Cr. C. 346=1932 M. W. N. 1222=142 Ind. Cas. 242. Refusal to accompany bailiff and sitting down on ground after arrest does not amount to attempt to escape. 143 Ind Cas. 649=1933 Cr. C. 221=34 Cr. L. J. 632=34 P. L. R. 668=A. I. R. 1933 Lah. 128. Where the warrant is an illegal one, resistance to it is not an offence. 148. Ind. Cas. 818=39 L. W. 388=35 Cr. L. J. 782=1934 M. W. N. 399=A. I. R. 1934 Mad. 206=66 M. L. J. 408.

An arrest by mere oral declaration is not a legal arrest and consequently a person so arrested cannot be convicted under s. 225B. of the Indian Penal Code. 113 Ind. Cas. 288=30 Cr. L. J. 128.

It cannot be said that no arrest can be lawfully made without compliance with the provisions of section 80, Cr. Pro. Code, because a police officer may be able to justify his action under s. 46 (2) Cr. Pro. Code. Where a person attempts to rescue a person arrested he is liable to be convicted under s. 225 B. 53 C. 831=33 C. W. N. 284=49 C. L. J. 264=116 Ind. Cas. 723=30 Cr. L. J. 703=A I. R. 1929 Cal. 174.

Where an order of detention is illegal, a person does not commit an offence under this section in leaving the Court, when he was orally directed not to leave the Court. 30 P. L. R. 147=116 Ind. Cas. 709=30 Cr. L. J. 663=A. I. R. 1929 Lah. 163.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Persidency Magistrate or Magistrate of 1st or 2nd class.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Unlawful return from transportation.

Notes.—*Vide* 23 A. L. J. 189 ; 4 M. H. C. 152.

Procedure.—Not-cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of were sentenced to transportation by the Court of Session of (or by the High Court of) for a term of and that on the day of at you did return from such transportation, the term of such transportation not having expired, and your punishment not having been remitted, and that you thereby committed, an offence punishable under section 226 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

227. Whoever, having accepted any conditional remission of punishment knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Violation of condition of remission of punishment.

Scope.—In a case under this section, it is necessary to prove the following : (1) that the accused person had been convicted and sentenced ; (2) that the accused person was granted a remission of punishment ; (3) the conditions on which the remission was granted ; (4) the fact that the accused is the person convicted, sentenced and granted remission ; (5) the fact that the accused has committed a breach of the condition of the remission. The first three requisites must be proved by documentary evidence such as a certified copy of the judgment, a certified copy of the order granting remission and a copy of the bond. The last two conditions may, however, be proved by oral evidence. Where the trying Magistrate allowed all the requirements to be proved by oral evidence but the accused had admitted all the facts, *held*, that it would be hyper-critical to interfere on the ground that documentary evidence had not been let in though properly speaking the accused should not be questioned at all until proper evidence of the fact was on record. A. I. R. 1928 Rang. 278. There is nothing in s. 227 of the Penal Code or Burma Act III of 1928 to empower any Magistrate to pass a sentence in excess of that which he is empowered under the Criminal Procedure Code to pass. Where a first class Magistrate sentenced the accused to rigorous imprisonment for two years, eight months and six days, *held*, that the setence was illegal. A. I. R. 1929 Rang. 279=7 Rang. 355=31 Cr. L. J. 174=120 Ind. Cas. 692. Court has to decide if conditionally released prisoner has violated conditions on which remission was granted to him. Jail authorities cannot assume that power by treating such prisoner as convict from the date of his admission into jail. 142 Ind. Cas. 728=1933 Cr. C. 275=34 Cr. L. J. 447=A. I. R. 1933 Rang. 28.

Procedure.—Not-Cognizable—Summons—Not-bailable—Not-compoundable—Triable by the Court by which the original offence was triable.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Intentional insult or interruption to public servant sitting in any stage of a judicial proceeding.

Application.—This section is aimed at something other than prevarication in giving evidence. 1 Weir, 214 ; but see Rat. Un. Cr. C. 69. Under this section the insult or interruption to the Court should be intentional, 6 Bom. L. R. 541. A person chewing betel, while being examined as a witness, was held guilty, under this section. 1 Weir, 217. The Court in which an offence is committed under this section should try the offender itself then and there and pass order under that section. 6 C. L. J. 713=6 Cr. L. J. 405. The judicial proceedings continue until the prisoner is discharged or removed in custody. 1 Weir, 214. Where an offence under this section is committed before an officer while he was acting in a certain capacity, he cannot in another capacity take up and try the offence. 12 W. R. Cr. 18. Abuse to *Tasildar* is not an offence under this section, where the *Tasildar* is not sitting in any stage of a judicial proceeding. 40 P. R. 1881 Cr. A coarse expression used by a litigant but not addressed to the Court can hardly be treated as an intentional insult to the Court or interruption of the proceedings under this section. 23 P. W. R. 1912 Cr.=15 Ind. Cas. 983=13 Cr. L. J. 567. To constitute an offence under this section the act must be done intentionally and with intent to insult the Court. 1 Weir, 216. Listening to evidence by a witness after being told to leave the Court is not an offence under this section, as there was no interruption. 1 Weir, 217. Defamatory statements about trying Magistrate in transfer application is not an offence under this section. A. W. N. 1898, 145 ; see also 137 P. L. R. 1903. Absence from Court is not an interruption of the Judge sitting in Court within meaning of s. 228. 1 Weir, 215. A person ordered to remain in Court, is not guilty of an offence under this section, by leaving the Court. Making signs from outside to a prisoner on his trial does not constitute an offence under this section. 1 Weir 214. Prevarication on the part of a witness may amount to an offence specified in this section. Rat. Un. Cr. C. 69 ; but see 1 Weir, 214. Under this section the insult or interruption to the Court should be intentional. Some latitude should be allowed to a member of the bar insisting, in the conduct of his case, upon his question being taken down or his objections noted, where the Court thinks the question inadmissible or the objection untenable. 6 Bom. L. R. 541=1 Cr. L. J. 612 ; see also S. C. 186, Oudh ; 29 P. L. R. 1903.

Mere audible remark by the accused, which interrupted the proceedings in a Court of Justice, is not enough to sustain a conviction for an offence under s, 228 I. P. Code. 2 L. W. 686=29 M. L. J. 274=16 Cr. L. J. 610=30 Ind. Cas. 434. Use of vulgar language for the sake of emphasis does not constitute an offence under this section. 1 Weir, 216. A mere not giving answers when asked by Court does make a defendant an accused under this section. 1 Weir, 218. Mere retracting statements in giving evidence does not constitute an offence under this section. 1 Weir, 216. The chief ingredient in the offence under this section is the intention of the offender. 1923 Lah. 88 ; see also 24 Bom. L. R. 386=66 Ind. Cas. 821=23 Cr. L. J. 325. An accused person who during the hearing of a case makes an impertinent threat to a witness in the box, clearly commits an offence under this section. 45 A. 272=21 A. L. J. 72=L. R. 4 A. 8 Cr.=74 Ind. Cas. 263=24 Cr. L. J. 756.

The gist of the offence under s. 228, I. P. Code, is not whether the Court or officer was insulted, but whether any insult was offered and intended. 23 Cr. L. J. 9=24 P. L. R. 1922=64 Ind. Cas. 377. Giving indirect answer amounts to refusal but not to insult. 84 Ind. Cas. 705=26 Cr. L. J. 354=A. I. R. 1925 All. 239. In an offence under this section the offender's intention is the main ingredient. A. I. R 1925 Lah. 210 ; see also A. I. R. 1922 Lah. 187. Refusing to answer questions put by Counsel or Court is an offence under s. 228. 14 P. R. 1918=24 P. W. R. 1918 (Cr.)=19 Cr. L. J. 676=90 P. L. R. 1918 =46 Ind. Cas. 36. Where petition for adjournment for moving for transfer is not properly worded, intentional insult cannot be inferred. 14 A. L. J. 247=17 Cr. L. J. 163=38 A. 284=33 Ind. Cas. 643. Where the court chaprasi stopped a scuffle in the verandah of a Court room and there was no interruption to the Court nor was there an intention to insult the Court, no offence under s. 228 was committed. 20 Cr. L. J. 777=53 Ind. Cas. 617. Statement by Counsel before Full Bench that his client does not wish matter to be argued before Bench as constituted is deliberate insult to Court 1932 Cr. C. 623=33 P. L. R. 872=A. I. R. 1932 Lah. 485 (F. B.). In order to bring a case within this section, intention to insult must be proved, 35 Bom. L. R. 1025=A. I. R. 1933 Bom. 478. A Judge cannot fine an assessor for dress worn by him which is not against rule of public decency nor intended to be insulting to Court. 35 Bom. L. R. 1025=A. I. R. 1933 Bom. 478. (Directions)

in s, 481, Criminal Procedure Code are mandatory and omission to record particulars contained in s. 481 is fatal to proceedings for contempt of Court. 134 Ind. Cas. 684=14 N. L. J. 106=1931 Cr. P. 831=32 Cr. L. J. 1221=A. I. R. 1931 Nag. 193. Where minor is kept in the custody of guardian appointed by Court and order forbidding any body to deal with marriage of minor, disobedience of order by marrying minor is not offence under s, 228 but one under Contempt of Courts Act. 144 Ind. Cas. 351=12 Pat. 1=1933 Cr. C. 313=34 Cr. L. J. 770=14 P. L. T. 605=A. I. R. 1933 Pat. 142; but see A. I. R. 1928 Sind. 129. No power to punish for contempt of an inferior Court now exists independently of the Indian Penal Code and the Contempt of Courts Act. A. I. R. 1930 All. 225=1930 A. L. J. 402=125 Ind. Cas. 477. The contempt of Court is a matter of substance and the jurisdiction to punish contempt has to be very cautiously exercised. When the offence is technical or trivial the court may condone it. A. I. R. 1930 All. 483=1930 A. L. J. 665=128 Ind. Cas. 14. The publication of comments on a case pending in a Court amounts to a contempt of Court if they are likely to prejudice the administration of justice in the case. A. I. R. 1928 Rang. 115=6 Rang. 39=29 Cr. L. J. 595=109 Ind. Cas. 675. For a conviction under s. 228 there should be an intentional interruption to the Court. A. I. R. 1925 Nag. 403=8 N. L. J. 190=27 Cr. L. J. 66=22 N. L. R. 1=91 Ind. Cas. 242. In the absence of a direction by the Local Government as regards the Sub-Registrar being a civil Court an offence under s. 228, Penal Code, if committed before a Sub-Registrar cannot be dealt with under ss. 480 and 482 Cr. Pro. Code. A. I. R. 1930 Cal. 366=34 C. W. N. 56=125 Ind. Cas. 853.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Court in which offence is committed, subject to provisions of Ch. XXXV. of Cr. Pr. Code.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of at intentionally offered insult (or caused interruption) to wit to a public servant to wit while he was sitting in a stage of judicial proceeding to wit and you therby committed an offence punishable under section 228 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

229. Whoever, by personation or otherwise shall intentionally cause or knowingly suffer himself to be returned, empanelled, or, sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or, knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Personation of juror of assessor.

Notes.—C was a farm-bailiff or manager, and resided at the farm. A summons to his employer to serve as a juryman at the central criminal Court was delivered at the farm. C received it, and according to the evidence, was told by his employer, who was over sixty years of age, to go to the Court and get him excused from attendance. C went to the Court answered to the employer's name, and was sworn as a juror to try a case in the first Court. C was now indicted, the first Court charging that he personated a juryman and the second Court charging him with taking false oath as a juror. *Held*, that it was not necessary in support of the indictment to prove that the defendant had any corrupt motive, or to prove that he had anything to gain by his conduct. It was no answer to the indictment to say that he did know that he was doing wrong. The words in the first Court "with intent to deceive" were ratified by proving that he did in fact commit the act the necessary consequence of which was to deceive the Court, and it was not necessary for the prosecution to prove that he had any specific intention to deceive other than that which was involved as the necessary consequence of the act which he did in going into the jury-box and taking the oath in the name of another man. It was a common law misdemeanour for any person to do that which the defendant did both as to the first and second

Courts of the indictment and that without proof that he had any corrupt motive in his mind. *R.* v. *Clurk*, 82 J. P. 295=26 Cox. 138.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st class.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

"Coin" defined.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign power in order to be so used.

Queen's coin.

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen's coin for the purposes of this chapter notwithstanding that it may have ceased to be used as money.

Illustrations.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin, in as much as they are not intended to be used as money.

(*d*) The coin denominated as the Company's rupee is the Queen's coin.

(*e*) The 'Farukhabad' rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin, although it is not longer so used.

Legislative changes.—The first paragraph has been substituted by Act 19 of 1872 and the second paragraph by Act 6 of 1896. Illustration (e) has been added by Act 6 of 1896.

Scope of the chapter.—The offences comprised in this chapter, though very different in character, all agree in this, that the intention of the offender is to produce, or to pass off upon another, something which he professes to be what it really is not. Chapter XII of the Code deals with two sorts of money, viz, coin and the Queen's coin, as defined by s. 230. and different degrees of penalties are in general applied to the same offence, when committed as regards the last sort.—*Mayne's Criminal Law* s. 590.

Coin.—A gold mohor of the reign of Shahjahan cannot be deemed to be coin within the meaning of the section. 29 A. 141 ; see also A. W. N. 1882 100.

Queen's coin.—Murshidabad rupees of the 19th year of Shah Alam formerly used with the sanction of the Government of British India for the time being as money are "Queen's coins".—1. P. R. 1903 Cr.=47 P. L. R. 1903 ; 21 A. 62=2 A. L. J. 498 ; A. W. N. 1903, 115. A coin may, still, be deemed to be a Queen's coin even though it has ceased to be used as money, and it is used an an ornament by soldering a ring to it. A. I. R. 1926 All. 321=48A. 603=24 A. L. J. 842=27 Cr. L. J. 426=93 Ind. Cas. 154.

Counterfeiting coin.

231. Whoever counterfeits, or knowingly performs any part of the processs of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation :—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Notes.—The offence of counterfeiting, or knowingly performing any part of the process of counterfeiting coin is punishable by ss. 231 and 232. The meaning of the word "counterfeit" has been explained by section 28. The offence consists in causing anything to resemble coined money for the purpose of deception. There are or may be many steps in the process of counterfeiting, during some of which the false money is not in a fit state to be issued as coin, and does not bear any resemblance to coin. But the punishment provided by this section applies equally whether the act of counterfeiting is complete or unfinished. To prove the offence of counterfeiting it is not necessary to shew that the accused person was detected in the act. But presumptive evidence, as in other cases, will be sufficient, as that false coin was found in his possession and that there were coining tools discovered in his house, etc. In support of a charge of performing any part of the process of counterfeiting, it will not be sufficient merely to show that steps have been taken towards counterfeiting as by providing materials, tools, etc., but some stage of the process itself must be proved to have been commenced. The knowledge that the process is for the purpose of counterfeiting coin, and not for an innocent purpose may be shown by such presumptive evidence as is referred to above.—*Morgan and Macpherson.* The word "counterfeit" as used in this code, is defined by s. 28 to involve an intention, by means of that resemblance, to practise deception, or a knowledge that it is likely that deception will thereby be practised, an such an intention, or knowledge, will always be inferred from the mere fact of counterfeiting, unless under circumstances which conclusively negativate it. Such circumstances must be so rare that it is unnecessary to imagine instances. *Mayne's Criminal Law* s. 590. In order to constitute an offence under this section counterfeit coin need not be made with the primary intention of its being passed as genuine. It is sufficient if the resemblance be so close that it is capable of being passed as a genuine coin. 30 A 93 ; 4 P. L. J. 525. To counterfeit a coin of the Emperor Akbar's time is no offence. 11 B. H. C. R. 172. But the coin need not be a current coin. 1 Weir 221 ; see also 5 N. W. P. 187. Copper coins issued from the mints of the Nawab of Loharu with a certain stamp impressed upon them, the stamp not resembling any legal coin, were held not to be counterfeit coins, as it was generally believed that Nawab had authority to establish the mints and issue the copper sent to him by merchants as coins. 38 P. R. 1870 Cr. The thing charged to be counterfeit coin must have some such resemblance to a piece of the genuine coin as to show that it was intended to resemble and pass for it, though the imitation may be imperfect or the process incomplete. 1 Weir, 219.

Procedure.—Cognizable—Warrant—Not bailable—Not-compoundable—Triable by Court of Session.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of accused*) as follows :—

That you , on or about the day of at , counterfeited (or knowingly performed a part of the process of the counterfeiting coin) a and that you thereby committed an offence punishable under s. 231 of the Indian Penal Code and within the cognizance of the Court of Sessions.

And I hereby direct that you be tried by the said court on the said charge.

Counterfeits Queen's coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes.—When the coin counterfeited is the Queen's coin, that is coin issued by the Indian Government, English coin, or the coin of a British Colony, or of any other part of the British Dominions the punishment of the offence is made heavier than when the coin is of any other description.—*Morgan and Macpherson.* To remove the ring from a coin used to form a part of necklace and to work up the face of the coin where the ring was is no offence. 33 A. 420. To constitute the offence described in this section there must be, an intention that the coins made, will be used as Queen's coins or a knowledge that they are likely to be used as such. A deception practised for show merely, and not for wrongful loss or gain, is not an offence under the Indian Penal Code. 26 P. R. 1868 Cr. In an offence under this section direct proof of fabrication is not necessary. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of such coin, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly

or indirectly from surrounding circumstances. 23 W. R. Cr. 4. Charges of possessing instruments for counterfeiting and of counterfeiting are not two offences as the possession of such implements and materials is part and parcel of the transaction of counterfeiting coin. A. I. R. 1924 Lah. 78=5 L. L. J. 272=24 Cr. L. J. 236=71 Ind. Cas. 700; see also A. I. R. 1930 Lah. 51=1930 Cr. C. 19=31 Cr. L. J. 527=123 Ind. Cas. 525.

Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Notes.—When the instrument is a die, by which the metal is marked so as to resemble a coin and the act of counterfeiting is completed, or any other instrument appearing by a mark on the face of it to be fit for coining, there can be little doubt of the knowledge of the guilty purpose for which it is intended. But supposing the instrument to be one which is used in other trades, as the essence of the offence is the guilty knowledge of the purpose for which it is intended, the prosecutor should prove that the act of making or mending, etc., was done with such knowledge.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant———Not bailable———Not compoundable ———Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Change.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you on or about the day of , at , did make (or mend or perform any part of the process of making or mending to wit , or buy or sell, or dispose of) a certain die (or instrument) for the purpose of being used (or knowing or having reason to believe that it was intended to be used) for counterfeiting coin, to wit , and that you thereby committed an offence punishable under s. 233 of the Indian Penal Code, and within my cognizance (or cognizance of the Court of Session or High Court.)

And I hereby direct that you be tried by the said Court on the said charge.

Making or selling instrument for counterfeiting Queen's coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or, buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—The offence relates to the Queen's coin and is therefore more severely punishd.—*Morgan and Macpherson.* This section corresponds to s. 24, of State, 24 & 25 Vict. C. 99. A guilty intention to use the dies is not necessary. *R.* v. *Harvey*, L. R. 1 C. C. R. 284. Where a die calculated to make shillings is made by an innocent agent the party procuring him to make such die is the principal. *R.* v. *Bannen*, 2 Mood. 309.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundaple-—Triable by Court of Session.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall alse be liable to fine ;

and if the coin to be couterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liabe to fine.

if Queen's coin.

Scope.—For a conviction under this section it is not only necessary that the accused should be in possession of the instruments or materials for counterfeiting coin but it should also be proved that the possession was within the accused's knowledge. 16 Cr. L. J. 264. When the offence consists in the possession of moulds, the prosecution is bound to adduce evidence to show that the moulds are capable of producing counterfeit coin. 1 Weir, 219. The possession contemplated is not possession which has never been voluntary. 6 Bom. L. R. 817. In order to convict a person under this section, instruments for counterfeiting coin must be in the exclusive possession of the accused. 7 P. L. R. 1904=4 Cr. L. J. 40. In order to constitute offences under this section, it is not necessary to prove that the accused intended that the spurious coin should go into circulation and be used as money. It is sufficient that there should be intention to practise deception by means of the imitation. 4 P. R. 1899 Cr. Where a person, who is passing counterfeit Queen's coin was, on being chased, found in possession of instruments or metals used for counterfeiting coin, *held*, that he should be convicted under s. 235, and not under s. 240, as the latter section did not apply to the actual coins. 10 P. R. 1892 Cr. Where there are moulds apparently capable of turning out the counterfeit coins there can hardly be any doubt that the moulds were used for preparing the counterfeit coin. 4 Pat. L. J. 525. Where the accused was convicted of and sentenced for an offence under s. 232 I. P. Code that is to say, for counterfeiting coin and on a second count for having in his possession implements and materials for the purpose of using the same for counterfeiting King's coin under s. 235 I. P. Code, *held*, that the possession of such implements and materials being part and parcel of the transaction of counterfeiting coin the sentence for the second offence was illegal. 5 Lah. L. J. 272=71 Ind. Cas. 700=24 Cr. L. J. 236. The mere possession of instruments and materials capable of counterfeiting coins is no offence. The possession of such instruments must be shown to have been with the intention of counterfeiting coins. Such intention is essential to sustain a charge under s. 235 I. P. Code. The mere possession of dies incapable of striking a complete coin does not necessarily lead to the inference that the accused intended to manufacture coins. 5 Lah. 392=1925 Lah. 22=84 Ind. Cas. 247. When the articles are found in the possession of the members of the joint family, the managing member is presumed to be in possession. A. I. R. 1919 Pat. 220=4 Pat. L. J. 525=20 Cr. L. J. 439=51 Ind. Cas. 263 ; see also A. I. R. 1933 Pat. 272=14 P. L. T. 256=1933 Cr. C. 738. An accused cannot be convicted when the articles are found in a room where the accused and another man with his wife lives. A. I. R. 1935 Lah. 39. A lenient sentence should not be passed for an offence under s. 235 of the Penal Code. 28 Cr. L. J. 305=100 Ind. Cas. 529=A. I. R. 1927 Lah. 22. Men possessing instruments for counterfeiting coin, should not be separately punished for possessing various parts of such instruments. A. I. R. 1930 Lah. 51.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class if the offence affect Queen's coin in that case triable, only by Court of Session.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Abetting in India the counterfeiting out of India of coin.

Notes.—Of the several modes of abetment, abetment by aid seems most likely to occur in this case. Any person in India, whether a subject or a foreigner, supplying instruments or materials to persons elsewhere for the purpose of counterfeiting any coin is punishable. Whether the coin is Queen's coin, or is a coin, which though current in some parts of India (as the Spanish Doller) is not a coin coming under the description of Queen's coin, or is a foreign coin not current in India the abetment of the counterfeiting it is punishable under this section.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not—bailable—Not-compoundable—Triable by Court of Session.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Import or export of counterfeit coin.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first Class.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of accused*) as follows :—

That you on or about the day of at , imported into (or exported from British India, certain pieces of coin, knowing (or having reason to believe) that the same were counterfeit, and that you thereby committed an offence punishable under the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried by the said court on the said charge.

238. Whoever imports into British India, or exports thorefrom, any counterfeit coin which he knows or has reason to believe, to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Import or export of counterfeits of Queen's coins.

Notes.—The offence in this and the proceeding section consists in an import or export, whether by sea or by land, of any coin known by the importer, etc., or which he has reason to believe, to be counterfeit. The same evidence which would show that an importer had reason for such a belief would, it seems, also prove a guilty knowledge on his part—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not-baliable—Not-compoundable—Triable by Court of Session.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is counterfeit.

Scope.—The offence for which punishment is provided by this section is not the offence committed by the coiner. 3 N. W. P. 150.

The Code distinguishes between two different classes of utterers. A utterer by profession, who is the agent employed by the coiner to bring counterfeit coin into circulation, is guilty of a very high offence. Such an utterer stands to the coiner in a relation not very different from that in which a habitual receiver of stolen goods stands to a thief. He makes coining a far less perilous and far more lucrative pursuit than it would otherwise be. He passes his life in the systematic violation of the law, and in the systematic practice of fraud in one of its most pernicious forms. He is one of the most mischievous, and is likely to be one of the most depraved of criminals. But a casual utterer, an utterer who is not an agent for bringing counterfeit coin into circulation, but who having heedlessly received a bad rupee in the course of business, takes advantage of the heedlessness of the next person with whom he deals to pay that bad rupee away, is an offender of a very different class. He is undoubtedly guilty of a dishonest act, but of one of the most venial of dishonest acts. It is an act which proceeds not from greediness for unlawful gain but from a wish to avoid, by unlawful means it is true, what to a poor man may be a severe loss. It is an act which has no tendency to facilitate or encourage the operations of the coiner. It is an occasional act ; an act which does not imply that the person who commits it is a person of lawless habits. This section is directed against the professional dealers in false coin. Their receipt of the false coin knowing at the time they received it that it was counterfet, is made the test of their being such dealers. The offence contemplated in this section appears to be a delivery or attempt to deliver by such a dealer to some person whether an accomplice or not,—the intention being that that person, or some other, should be defrauded—*Morgan and Macpherson.* The

offence for which punishment is provided by this section is not the offence committed by the coiner. The words "which at the time when he became possessed of it knew to be counterfeit" point to a person who possesses or often receives counterfeit coin. It is against such a person that the section is directed. 3 N. W. P. 150. Under this section previous attempts to dispose of counterfeit coins is relevant. 8 B 223; see also 8 C. W. N. 717. An accused found in possession of coins, counterfeit of Indore and Bhopal coins, was held to be rightly convicted under section 239, Penal Code, the coin being used as money in the Hoshangabad District. Colm. Dig. Cr. 25 of 1875. An accused, who in imitation of obsolete coins "not now used as money" supplied the public with ornaments found to suit the prevailing fashion using good silver and gold for the purpose, and who carried on an apparently honest business cannot be convicted under s. 239, Penal Code. Colm. Dig. Cr. 39 of 1875. Where the accused, gold smiths, being in possession of counterfeit pagodas, delivered them to the complainants as security for the due performance of a contract, *held*, that it was not necessary, for the purpose of constituting an offence under section 239, that the pagodas should be current coin. 1 Weir 221.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session Presidency Magistrate or Magistrate of the first class.

Delivery of Queen's coin possessed with knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Notes.—A heavier punishment is here given because the offence relates to Queen's coins—*Morgan and Macpherson.* Knowledge on the part of the accused, that the coin was counterfeit, when they first came to possess it, is an element of the offence as defined in this section. 1 Weir, 222; 31 P. L. R. 235=31 Cr. L. J. 736=124 Ind. Cas. 688 offences punishable under ss. 239 and 240 are separate and distinct offences and double convictions and consecutive sentences are proper. 146 Ind. Cas. 7=A. I. R. 1933 Pesh. 99. Joint trial of three persons charged under ss. 240, 243, and 240/243 109 respectively is illegal. 146 Ind. Cas. 261=1933 Cr. C. 348=A. I. R. 1933 Lah. 228.

An actual coiner cannot be punished under this section. 10 P. R. 1892.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Knowledge—To constitute an offence under this section, there must be evidence that the accused knew the coins to be counterfeit. 5 C. P. L. R. 5.

The gist of an offence under this section is that a person should deliver to another person as genuine, or attepmt to induce another person to receive as genuine, any counterfeit coin which he knows to be counterfeit but which he did not know to be counterfeit at the time when he took it into his possession. 4 N. W. P. 62; see also 12 Cr. L. J. 79.

Procedure.—Cognizable—Warrant—Not bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows :—

That you on or about the day of , at delivered to A B (or attempted to induce A B to receive) as genuine which is a counterfeit coin and which knew to be counterfeit although you did not know it to be counterfeit when you took it into your possession, and thereby you have committed an offence punishable under s. 241 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Scope.—The mere possession of counterfeit coin is an offence under ss. 242 and 243, even though no attempt is made to pass it off, provided it can be shown that it was kept for a fraudulent purpose, and was originally obtained with a guilty knowledge. The mere fact of a single base coin being found in a party's possession would not, without further evidence be sufficient to create a presumption that he knew it to be counterfeit when he obtained it and intended to make a fraudulent use of it. But where a considerable number of base coins is found in any man's possession, the presumption of guilt would be sufficient to make a conviction lawful, unless the possession could in some manner be explained or accounted for—*Mayne's Criminal law, 3rd Edition pp.* 811=812.

Procedure.—Cognizable—Warrant—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever fradulently, or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—The offence in this and the preceding section, is the possession of counterfeit coin (with intent to defraud) by a person who from his knowledge at the time when he became possessed of it, may be presumed to be a professional utterer. These sections are not intended to apply to the case of a possession by another person who can show that, although he received coin knowing it to be counterfeit, the receipt was for no guilty purpose,—as if he shows that it was for the purpose of testing the coin, or of destroying it, or for safe custody until required to be produced in a Court of Justice etc.—*Morgan and Macpherson.* Before a conviction can be had under this section, the prosecution must prove that the accused knew that the coin was counterfeit at the time he became possessed of it. The evidence of course, may be direct or presumptive. 12 Cr. L. J. 79=9 Ind. Cas. 449 ; 44 C. 477 (F. B.) Where there is nothing to show that a person charged under s. 243 of the Penal Code was in possession of counterfeit coins fraudulently or with intent that fraud may be committed, or that he knew when he became possessed of them, that they are counterfeit, the requisition of s. 243 are not fulfilled. 69 P. L. R. 1902=7 P. R. 1902 Cr. ; see also 44C. 477=21 C. W. N. 33=28 C. L. J. 400 ; 6 Bom. L. R. 887= 1 Cr. L. J. 960. Where pieces of silver of size of rupee and some counterfeit rupees of same year are found concealed in a room in accused's possession, the presumption is of guilt of offence under s. 243. 143 Ind. Cas. 152=9 O. W. N. 1198=1933 Cr. C. 113=34 Cr. L. J. 545=A. I. R. 1933 Oudh. 85.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

Notes.—The law has fixed the weight and composition of various coins and has declared in what case they shall be a legal tender. The object of this section is to secure the purity of the coinage and its correct conformity to the legal standard against the act or omission of persons employed in mints. The proof must be that the person is employed in a Government mint, and that the act or omission which is the subject of the charge was intended to cause the coin there made or issued to vary from the fixed standard. It is not part of the definition, and therefore it will be no necessary part of the proof, that any wrongful gain should accrue to the person charged, or that loss should be caused to the Government or the public.—*Morgan and Macpherson.* An accused person legally arrested must submit to be tried and dealt with according to law. If he gains his liberty before he is delivered by due course of law, he commits the offence of escaping from lawful custody under s. 244 I. P. Code. It would be an offence to escape from lawful custody before the trial, just as it would be an offence to escape from lawful custody after conviction. Thus it would be an offence to escape after a person has been lawfully arrested on a charge of having committed an offence, though he may not be susequently convicted of such offence. The words "for any such offence" in s. 244 I. P. Code mean for any offence with which a person is charged or of which he has been convicted. The word "charged" in that section is used in the popular sense as implying inculpation of an alleged offence as distinguished from a charge formulated after trial. 28 Bom. L. R. 168=100 Ind. Cas. 988=28 Cr. L. J. 380=A. I. R. 1927 Bom. 96.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Uulawfully taking coining instrument from mint.

Notes.—Suppose the instrument to be one used in an ordinary trade ; the taking may be for an innocent use in such trade. The substance of this offence consists in taking a coining tool for the purpose of using it to make counterfeit coin. If the instrument appears on its face to be intended for the purpose of making coin and it is taken without lawful authority the inference is strong that the taker means to use it improperly.—*Morgan and Macpherson.*

Procedure.– Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session

Charge.—I (*Name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you on or about the day of , at without lawful authority, took out of the mint of which is lawfully established in British India a certain coining tool (or instrument), to wit ; and thereby committed an offence punishable under s. 245 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said court on the said charge.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

Explanation.—A person who scops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

Procedure.—Cognizable—Warrant—Not bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—The coin made ligher, or its composition altered, 'fraudulently" or "dishonestly". The act of debasing, or lightening the weight, if not shown by direct evidence, may be proved by circumstances,—as by showing that the accused person had in his possession debased coin or filed coin. The intention to use it for a fraudulent purpose may be inferred from his possession of it, if the coin be found on his person. A more severe punishment is awarded when the offence concerns Queen's coin —*Margan and Macpherson.*

Procedure.—Cognizable—Warrant—Not bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Altering appearance of coin with intent that it shall pass as coin of different description.

248. Whoever, performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Notes.—The operation, whether of gilding, or silvering, or washing, etc., must, it seems, be of such a kind, and so far completed, that the coin which is subject to it, is actually altered in appearance. The evidence must show such an alteration, coupled with an intention that the altered coin shall pass as a coin of a different description. It will be observed that the words "fraudulently" and 'dishonestly" are not used. The offence is therefore complete though no fraudulent purpose can be proved. And it does not seem necessary to show that there is in fact a description of coin at all resembling or corresponding to the altered coin. The act of altering may be proved by evidence that coin so gilded, etc., was found in the prisoner's house or had been procured there, and that the wash or necessary materials were discovered in his possession.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not—bailable—Not—Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Delivery of coin possessed with knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulenty, or with intent that fraud may be committed, delivers such coin to any other person or attempts to induce to any

other person to receive the same shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Notes.—This section is intended to punish persons who are traders in debased or altered coin.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Delivery of Queen's coin possessed with knowledge that it is altered.

251 Whoever having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person or attempts, to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Punishment.—The section does not require that a sentence of fine as well as of imprisonment should be awarded. The former sentence is optional. 1 Weir, 223.

Notes.—If an accused person clips and cuts away a coin and makes up the deficient weight by solder with the intention of subsequently delivering it to a bank, he is certainly guilty of fraudulently defacing a coin even though on a previous occasion they had been used as a wearing ornament. 48 A. 603=27 Cr. L. J. 426=1926 All. 321.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Possession of coin by person who knew it to be altered when he became possessed thereof.

252. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections, 946 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Not-bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Possession of Queen's coin by person who knew it to be altered when he became possessed thereof.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Notes.—The mere possession of debased or altered coin by the professional dealer in such coin is hereby made punishable, although not dealing with it by delivering to others, etc, can be shown. The intention that the coin shall be used for the purpose of defrauding others is part of the definition. *Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time

when he took it into his possession, knows that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

Notes.—The person punished is he who, not being a dealer in debased or altered coin, but having such coin in his possession, passes it off, or attempts to pass it off to others. By Act III of 1906, coins of certain denominations are made legal tenders provided they have not been diminished below a certain weight. It will be observed that the Code does not make the circulation by innocent holders of coin which has been debased or reduced below its proper weight an offence, when those holders are unaware that it has been so debased or reduced. It is an offence to pass such coin only when the person passing it knows that it has been diminished or altered by one of the operations which previous sections have made punishable.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first class.

The remaining sections of this chapter provide for the punishment of offences relating to certain Government stamps. The stamps protected by these provisions seem to have little in common with coin, except that both may be said to be stamped and issued by the authority of Government. These stamps are in truth nothing more than impressions upon paper, parchment, or any material used for writing, made by Government or its officers, for the purpose of revenue, or in payment for service rendered. To avoid ambiguity for the use the word "stamp" it should be observed that it is used throughout the following sections to designate, not the instrument by which a particular impression is made, nor the paper or other material upon which it is made, but the impression itself,—the mark set upon the paper or other material. The Government stamps to which those sections relate, being stamps from which the Government derives a revenue, or which are issued for revenue purposes are quite distinct from stamps used by Government for other purposes, as stamps affixed to or impressed on property, denoting that it belongs to the Government.—*Morgan and Macpherson.*

Counterfeiting Government stamp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Perfoms any part of the process.—The impression and not the die is meant. It seems that some part of this impression must be, if not completed, yet sufficiently complete to shew the intention.—*Morgan and Macpherson.* The passing off of an one anna stamp as one rupee stamp, is not counterfeiting an one rupee stamp. 2 W. R. 65. The expression "forged stamp" in section 13 of the English Stamp Duties Management Act, 1891, includes a forged stamp which bears a cancellation mark. *R.* v. *Lowden*, (1919) 1 K. B. 144=83 L. J. K. B. 114. In an offence under this section, "an exact resemblance or facsimilies is not required to constitute the crime of forgery ; for if there be a sufficient resemblance to shew that a false making was intended and that the false stamp is so made as to have an aptitude to deceive, that is sufficient." *R.* v. *Collicott*, 2 Leach. 1044=4 Taunnt. 300.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable—by Court of Session.

Charge.—I (*name and office of Magistrate, etc.*) do hereby charge you (*name of the accused*) as follows :—

That you on or about the day of at counterfeited (or knowingly performed any part of the process of counterfeiting, to wit.) a certain stamp issued by Government for the purpose of revenue, to wit and thereby committed

an offence punishable under s. 255 of the Indian Penal Code and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

Having possession of instrument or material for counterfeiting Government stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—Here the punishment is directed to the offence of attempting or preparing to counterfeit. The possession of an instrument by which the counterfeit stamp impression is made, with a criminal intention, or even the possession of any material with the like intent is punished. *Morgan and Macpherson.*

Instrument.—It may denote a die or similar instrument, the mere possession of which, if not satisfactorily accounted for, may prove an intention to use it for the purpose of counterfeiting—*Ibid.* "The proprietor of a newspaper which circulated amongsts stamp collectors had in his possession a die, which he had ordered to be made for him abroad. From this die representations of a current Cape of Good Hope postage stamp could be produced. The only purpose for which he had ordered, or had in his possession, the die, was for making upon the pages of an illustrated stamp catalogue, or newspaper, illustrations in black and white, and not in colours, of the stamp in question ; such catalogues were intended for sale only to stamp collectors and others as part of the newspaper. Upon a special case the Court held that the possession of the die for making a false stamp known to be such to its possessor, was, however innocent the use that he intended to make of it, a possession without lawful excuse within section 7 (c) of the Post Office Protection Act 1884" *Russ Cr.* p. 1716 Citing, *Dickens* v. *Gill*, (1896) 2 Q, B. 310.

Material for etc.—May include the paper on which (or some one) of the ingredients (in a more or less forward state of preperation) whereby the impression is made. The possession of such materials can of course be punishable under this clause only where the criminal purpose is established to the satisfiaction of the Court—*Morgan and Macpherson.*

Making or selling instrument for counterfeiting Goverment stamp.

257 Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

Sale of counterfeit Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of session.

Having possession of counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished, with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable— Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Using as genuine a Government stamp known to be counterfeit.

Notes.—Alteration of used stamps so as to resemble genuine unused stamps amounts to counterfeiting within section 28 of the Indian Penal Code and the stamp-vendor who does so is guilty of an offence under s. 200 I. P. Code. 60 Ind. Cas. 785=22 Cr. L. J. 289.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

261. Whoever fraudulently, or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document, a stamp which has been used for such writing or document in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

262. Whoever fraudulently, or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Using Government stamp known to have been before used.

Gist of the offence.—It is incumbent on the prosecution, where, the person is charged under this section, to bring home to him, not only that he used the stamp with the knowledge that it had been before used, but also that he used it fraudulently or with intent to cause loss to the Government. The intent to defraud or to cause such loss cannot be assumed. A. W. N. 1881, 56; Rat. Un. Cr. C. 145. The provisions of s. 37 of Act XIV of 1866, enacts that postage stamps shall be considered as stamps issued by the Government for the purpose of revenue within the meaning of the Penal Code. Hence, though an accused may have been ignorant of the law, he must have known that using a stamp twice was defrauding the Government and may therefore, be rightly convicted under this section. 5 C. P. L. R Cr. 43.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

263. Whoever fraudulently, or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Prohibition of fictitious stamps.

263A. (1) Whoever—

(*a*) makes, knowingly utters, deals in, or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(*b*) has in his possession, without lawful excuse, any fictitious stamp, or

(*c*) makes, or, without lawful excuse, has in his possession any die, plate, instrument, or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp, may be seized, and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in section 255 to 263 (both inclusive), the word "Government," when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions, or in any foreign country.

Legislative changes.—Section 263A has been added by Act III of 1895 s. 2.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first class.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Fraudulent use of false instrument for weighing.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Scope of the chapter.—The offences punishable by this chapter are not defined with reference to any precise standard of weight or measure established by law. A false weight or measure here signifies that—taking the law or the ordinary usage of the place, or the common understanding of the parties to have fixed on a certain known instrument of weight or measure, with reference to which two persons deal together—the false dealer by deceit substitutes another weight or measure, in order to defraud. The intention to defraud, or that the false weight or measure shall be used by other persons in order to defraud, is an essential part of the offence. The balance or scales, weights, etc, used may be and are probably often of the rudest construction. When their defects are visible to a purchaser, and there is no attempt to conceal them, there can be no reason for imputing an intention to defraud. On the other hand, the use of a false balance artfully contrived to elude detection, carries with it a strong presumption that it is used in order to defraud.—*Morgan and Macpherson.* The section relating to weights make no mention of standard weights. *In every place there are well known customary weights* and if any resident of the place or other person, knowing that a weight is less than the customary weight which it purports to be, uses the weight dishonestly he commits a fraud and may be punished under this chapter. L. B. R. (1893-1900) 354. Intention is an essential part of the offence. 18 W. R. Cr. 7.

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class and is triable summarily.

Charge—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you on or about the day of at fraudulently used a certain instrument for weighing, to wit knowing the same to be false at the time of using it, and thereby committed an offence punishable under s. 264 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Intent.—Where the accused was charged under this section, with fraudulently using a false weight, the weight being a five seer weight and being one tola or one rupee short *held*, that the weight in question could not be regarded as a false weight in the sense of this section.—A. W. N. 1883, 224.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity, as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Notes.—Where no standard is prescribed, it is clear that no presumption of fraud can arise, and a conviction under this section cannot be sustained. U. B. R. 1908. 3rd Qr. Penal Code 17=9 Cr. L. J. 415. A conviction under this section cannot be maintained where there is no complaint by a purchaser. 38 P. W. R. 1908 Cr.=9 Cr. L. J. 4. No offence committed where the weights have been used openly and ignorantly. 1 Weir, 233. Where an accused person, a butter, milk seller sells butter, milk by means of an unstamped measure, a conviction under this section is not maintainable unless the evidence discloses fraud or falsity of the measure. 1 Weir, 223. To ascertain whether a measure is false or not, the only proper test to apply is that of measure, and the same article must be measured in each case and proof should be adduced that this has been done. The weight of the grain that a measure is found to hold is no evidence of its capacity as compared with that of another measure, unless the very same grain is used. Rat. Un. Cr. C. 989. Selling liquor in a glass which is not of prescribed measure is not an offence under this section. Rat. Un. Cr. C. 386. Seller must take proper care to see that the weights are free from defect. 1 Weir, 265. It is the duty of the prosecution, in the case of a charge under s. 265 of the Penal Code to have some evidence to prove that the accused knew the measure to be incorrect when he got it or that, before he used it, he tampered with it ; if there is no evidence on these points, the Court should not presume fraudulent intention on the part of the accused so as to convict them under this section. 116 Ind. Cas. 671=30 Cr. L. J. 692=A. I. R. 1929 Nag. 239=1929 Cr. C. 263.

Procedure.—Not-Cognizable——Summons——Bailable——Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class and is triable summarily.

Being in possession of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent Intention.—A fraudulent charge should be charged and proved. 1 B. H. C. Cr. 181. As in the case of a false coin, a weighty circumstance of suspicion is by the section made part of the definition of an offence. It is the intention that the false instrument shall be used to defraud, that is material. The proof of such intention must as in other cases, be made out to the satisfaction of the Court. The mere possession of the false instrument, if such possession cannot be satisfactorily explained and accounted for, is sufficient ground for presuming an intention to use it fraudulently.—*Morgan and Macpherson.* A person who represents himself, as using a measure of a particular standard, is bound to see that the measure he uses is correct according to that standard. 1 Weir, 225. To support a conviction under this section, it is not enough to prove the mere possession of scales or their use, with a

string not accurately tied at the centre of the beam, but which can be sifted at any time and may some times have been accurately tied. It is necessary to prove that the accused knew the scales to be false and intended to use them fraudulently. Rat. Un. Cr. C. 514=Cr. Rg. 36. of 1890. A necessary ingredient of an offence under this section is fraudulent intent. 15 A. L. J. 897=40A. 84=19 Cr. L. J. 145=43 Ind. Cas. 433. So where both purchaser and seller are aware of the actual measure used there can be no qnestion of fraudulent intent. *Ibid.* Under this section it must be proved that the accused knew the measure to be false and he intended to use it fraudulently. 11 Mys. L. J. 291.

Procedure.—Non-Cognizable——Summons——Bailable——Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class and is triable summarily.

Making, or selling false weight or measure.

267. Whoever makes, sells or disposes of any instruments for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished wlth imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Procedure.—Non-cognizable——Summons——Bailable——Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

Public nuisance.

268. A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Encroachment on street.—An encroachment by a private person building over a part of a public street is a "public nuisance' within the meaning of this section. 7 M. L. J. 95 ; but see 1 Weir, 252. Vitiating the atmosphere so as to make it noxious to health is an offence under this section. 1 Weir, 242. Where a person obstructs the whole width of high way the public has a right to pass over, he can be convicted of an offence under section 268 punishable under s. 290 of the Penal Code. 1 Weir, 232.

An obstruction to a tidal navigable river by placing a bamboo dam across the river for the purpose of fishing, although leaving a narrow opening for the passage of boats, but kept closed otherwise, is a public nuisance under section 268 of the Code. 14 C 656.

An act or omission causing injury which affects only the owners of one property, but not a number of persons will not amount to a public nuisance. 1 Weir, 29.

The making of *boras,* or enclosures, on *shamilat* land comprised in the *goora* of the village is not punishable under section 268, without proof that such *boras* are a public nuisance. In order to constitute a public nuisance, the particular way in which the obstruction has been caused must be definitely proved. 8 P. R. 1896 Cr.

Where the lambardars who were used to make sanitary arrangements on the occasion of the holding of a fair at a certain village, were found to have omitted to make the arrangement on a certain year, *held,* that they could not be convicted of an offence under s. 268 I. P. Code. 11 P. R. 1875 Cr.

Where the use of premises gives rise to "public nuisance" it is, generally the occupier for the time being who is liable for it, and nor the absent proprietor. 46 C. 515.

If any portion however small, of a public street is encroached upon the inevitable result must be to cause obstruction to persons who may have occa sion to use the highway, for the public is entitled to use every such of road that has been dedicated to the public. Hence the person who makes the encroachment is liable. 6 Lah. 203=86 Ind. Cas 1006=26 Cr. L. J. 942=26 P. L. R. 127=A. I. R. 1925 Lah. 414. Allowing a prickly pear to spread on to a road used by the public is a public nuisance within the meaning of s. 268. A. I. R. 1928 Mad. 1235=55 M. L. J. 715=28 L. W. 621. A public officer's right to prosecute as a member of the public is not taken away because he did not profess to complain as an ordinary person but as a public officer. *Ibid.* Slaughtering of cattle in a village in a particular area surrounded by walls is not necessarily a public nuisance. A. I. R. 1929 Lah. 252=30 Cr. L. J. 660=116 Ind. Cas. 705. Obstruction of a natural channel resulting in inundation of large areas in several villages is a public nuisance. A. I. R. 1927 Oudh, 122=4 O. W. N. 75=28 Cr. L. J. 203=99 Ind. Cas. 939. Unless there is public nuisance Hindus have unrestricted right of worship in temples. A. I. R. 193 All. 674=53 A, 836=1931 A. L. J. 624=137 Ind. Cas. 587. Annoyance caused to religious ideas by innocent acts of others is not nuisance. *Ibid.*

Scope.—"To constitute a public nuisance there must be some act or illegal omission, injurious, dangerous, or annoying, not merely to an individual or a small number of persons, but to the public at large or to some class of the public,—such as the neighbouring community, or those who dwell or occupy property near the place. There are many things, which may be nuisances and are offences when done in populous places, although they are either innocent or not deemed diserving of punishment when done in a retired locality. Suppose a house in the country is used for the purpose of carrying on a dangerous trade, or one which renders the air unwholesome or disagreeable to the senses ;—or suppose a private way leading to a house is obstructed or made dangerous.—the injury or annoyance, if it affects only the residents of two or three other houses, will not necessarily make this a public nuisance.

"It is not easy to say how many persons must suffer, or be in danger of suffering, to make a nuisance public or common. But it seems the thing done, though the general public need not be actually injured by it, must be of a nature to produce injury, annoyance, etc. to all and must do so in fact to all who are in the particular locality or otherwise within the influence of the act. He who indecently exposes his person to a single individual, though it be in a public place, yet not within public view, is not punishable for a nuisance. But if the exposure were to several, or if many could have seen it, being public, if they had looked, the offence here defined would be committed. The nuisance may be caused by doing a thing which is injurious or annoying, or by neglecting to do that which the public health or safety requires to be done, for example, by keeping a house, etc. in a filthy state, neglecting ordinary precautions, during repairs, etc. In the latter case the omission must be "illegal." See also 21 A. L. J, 772.

"The following are instances of public nuisances : obstructions of highways, navigable rivers, and the like injuries to such ways and places ; neglect or refusal by those whose duty it is so to do, to keep them in repair ; the carrying on, in populous localities or near a high way, of trades or occupations injurious to health or comfort , making great noises to the disturbance, to the neighbourhood ; keeping large quantities of gun powder in populous places to the danger of the public safety ; and other acts of a similar tendency."

"The latter clause of the definition seems to comprehend such nuisances as obstruction to publice roads navigable rivers, etc. In such nuisances it does not seem to be essential to show actual injury or annoyance etc., to persons who use the road. It is sufficient if the obstruction is calculated to injure all who may choose and have a right to use the way. And the person causing the obstruction or other nuisance, cannot excuse it by showing that, in other respects, and on the whole, his act has worked some advantage or improvement,—as that he has opend a better way, or has improved the navigation of a river etc. But in considering whether an act or omission which causes injury etc., in a slight degree, or in some extreme cases only, and as an uncertain and rare consequence, amounts to a public nuisance, the general exceptions contained in section 95 must be remembered.

"The general punishment provided for committing public nuisance is not applicable to acts which are otherwise expressly made punishable, This chapter contains special provisions, for the punishment of many acts as those above

mentioned and to those thus specifically dealt with, the section 290 is inapplicable—"*Morgan and Macpherson.* A prosecution under s. 268 of the Indian Penal Code is not illegal on the ground that the proceedings have not been proviously taken under Ch. XX of the Criminal Procedure Code. Rat. Un. Cr. C. 23. Gambling in a place where the Gambling Act is not in force is not an offence under s. 268, Penal Code. 7 C. W. N. 710; 16 P. R. 1867 Cr. This section contemplates acts which cause common injury, etc., to the public, or to the people in general, who dwell or occupy property in the vicinity, or which must necessarily cause injury etc., to persons using public rights. 1 L. B. R. 213. Every act which causes an offensive odour does not constitute an offence of public nuisance. The injury, danger or annoyance, referred to in s. 268, should also be proved. Rat. Un. Cr. C. 11. Acts calculated to oppose the sentiments of a class do not necessarily amount to a public nuisance. A. W. N. 1908, 64=5 A. L. J. 147=30 A. 181.

In order to constitute a nuisance, there must be not merely a nominal, but such a sensible and real damage, as a sensible person would find injurious. 12 B. 437.

A Mahomedan does not commit an offence under this section by slaughtering cows in his own compound. 10 A. 44=A W. N. 1887, 23.

It is obvious from the wording of this section, that it was not intended to apply to acts or omissions calculated to offend the sentiment of a class. 7 M. 590.

Where three prostitutes in a public road solicited a passer-by to go with them for the purpose of prostitution, *held*, that this act did not amount to a public nuisance within the meaning of this section. 22A. 113=A. W. N. 1899, 215.

The working of rice-husking machines throughout the whole night in a residential quarter being injurious to the comforts of the neighbourhood is a public nuisance within the meaning of section 268 I. P. Code. 9 P. R. 1904 Cr.=69 P. L. R. 1904=1 Cr. L. J. 512. Allowing accumulation of filth and manure by certain villagers in their village could not be construed into an act likely to spread the infection of dangerous disease within the meaning of s. 269. 25 P. R. 1872 Cr. Leaving plague-shed and travelling by rail against an order is an offence under this section. 22 P. R. 1902 Cr. When offence of nuisance is committed in French territory a Magistrate of British India has no jurisdiction to try the offence simply because that some people living in British territory are annoyed by it. A. I. R. 1935 Mad. 189.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of any disease dangerous to life.

Comment.—To support a conviction under this section, it must be established not merely that the act committed by the accused person was prejudicial to health but that it was likely to spread the infection of some particular disease dangerous to life, and that the accused person knew or had reason to believe it to be likely to spread that disease. 7 C. P. L. R. Cr. 5. "If a man is attacked by a contagious and deadly disease and needlessly goes abroad with it in the public way or if a person carries out a child so infected, he does what he may be supposed to know to be likely to spread the infection. And unless some lawful occasion or reason for his conduct can be shown, as that the sick person had been directed to be removed to a hospital, and that the removal was performed with due caution, the act will be an offence punishable under this section"—*Morgan and Macpherson.* Soaking paddy in dirty water is not an offence under this section. 1 Weir. 227. In order that there may be a conviction for inoculation under this section, it must be shown that the act is done, if not unlawfully, at least negligently, and the mere performance of inoculation is not punishable under the above section. U. B. R. (1897—1901) Vol. I. 280; see also 1 Weir, 226. Knowledge or belief that an act is likely to spread infection is necessary, in addition to the illegality of the act to support a conviction under s. 269—1 Weir. 226; see also 7 M. 276=1 Weir. 226. Where the prosecution has adduced evidence to show *prima facie* that the accused was guilty of negligence, the burden of proving that the proper precautions were taken lies upon the accused. 12 M. L. T. 664=14 Cr. L. J. 45=18 Ind. Cas. 269. Where a mother kept her daughter suffering from small-pox, confined to the house and opposed her removal to the hospital, unless she accompanied her, and there was no evidence to show that her lodgers or boarders were kept in the house, *held*, that she had not committed any offence under s. 268 and that her act was not an unlawful and negligent act within

the meaning of s. 269. 24 C. 494=. 1 C. W. N. 274. This section does not apply in case of omission to take sanitary precautions in a brick field by licence leading to out-break of cholera. A. I. R. 1923 Rang. 140=2 Bur. L. J. 11=25 Cr. L. J. 586=81 Ind. Cas 74. When the accused was directed by the Health officer of Madras City to remove his small-pox striken child to an isolation Hospital but the accused removed him to a separate and isolated house, he has not done any act negligently to spread dangerous disease. 38 M. L. J. 80=26 M. L. T. 386=20 Cr. L. J. 785=53 Ind Cas. 689.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Charge.—I (*name and office of Magistrate*) charge you (*name of the accused*) as follows :—

That you , on or about the day of at unlawfully (or negligently) did an act to wit knowing (or having reason to believe) that the said act was likely to spread infection of a disease which is dangerous to life and that you thereby committed an offence punishable under s. 269 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge,

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Malignant act likely to spread infection of any disease dangerous to life.

Scope.—The offence here is an aggravation of that which is punished by the preceding section. The malignant intention to spread the infaction is part of the definition. Suppose a person having small-pox is exposed in a-public street, either to excite charity or because, through fear, he has been removed from a house where he was lodged, the offence committed by those who exposed him would not probably come within this section. *Morgan and Macpherson.*

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Disobedience to quarantine-rule.

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, ahall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of food or drink intended for sale.

Notes.—The mixing of noxious ingredients in food or drink, or otherwise rendering it unwholesome by adulteration, whether it be intended for the use of man or of any animal, is hereby punished—*Morgan aad Macpherson.* Mixing water with milk intending to sell the compound is, in itself, no offence under s. 272, in the absence of anything to show that such milk was rendered noxious as food or drink by the admixture of water. 1 L.B.R. 153. The expression "noxious as food" means unwholesome as food or injurious to health and not repugnant to one's feelings. 21 A. L. J. 875=9 O. & A. L. R. 982 ; 83 Ind. Cas. 1004=26 Cr. L. J. 220=A. I. R. 1924 All. 214. So mixing pig's fat with ghee and selling the mixture is not selling article noxious as food. *Ibid.*

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Sale of noxious food or drink.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or, having reason to believe that the same is noxious, as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Noxious.—The word "noxious" means harmful to health or unwholesome. In the absence of evidence to show that the adulteration of ghee with vegetable oil was such as to render it noxious in the above sense, such adulteration cannot be held to constitute an offence, under this section. 12 C. W. N. 608; 26 A. 387; 28 A. 312.

Scope.—Whether it has been adulterated so as to become noxious, or has become unfit for food or drink by decay, etc., or has never been fit for food,—a sale or attempt to sell any such article by one who knows its noxiousness, is an offence if he offers it for sale as food or drink. The purpose for which the sale is made is all important. Suppose meat to be sold as food for dogs and not for man, it may be that it would not be unfit for the purpose intended, although not sufficiently good for the food of man.—*Morgan and Macpherson.* See also 3 P. R. 1908 Cr. There is no warrant in law for the presumption that the accused knew or had reason to believe that an article of food would be unfit for consumption and like other ingredients of the offence, this has to be proved. A. I. R. 1922 All. 273. As regards whether mixing water with milk is an offence under this section. *Vide.* A. I. R. 1926 Lah. 49. A person cannot be convicted of an offence under this section for selling wheat containing a large admixture of extraneous matter, *e. g.*, dust wood, matches, charcoal, black-seeds, etc. 6 Bom. L. R. 520=1 Cr. L. J. 618. Toddy in which worms have germinated is noxious and unfit for drink. 1 Weir. 228. In order to convict a person under this section the offence must be complete. 1 Weir, 227. Exposing for sale milk mixed with water is not an offence under this section as the mixture is not noxious or injurious as food or drink. 89 Ind. Cas. 961=26 Cr. L. J. 1441; see also 1 Weir. 228.

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Adulteration of drugs.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description fo a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Sale of adulterated drugs.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of drug as a different drug or preparation.

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Fouling water of public spring or reservoir.

Corrupts or fouls.—The expression must be taken in its literal sense and not in its artificial sense. 13 C. P. L. R. 92 ; 2 Bom. L. R. 1078.

Public spring.—The term "public spring" does not include a continuous stream of water running along the bed of a river. 4 M. 229=1 Weir, 230 ; Rat. Un. Cr. C. 215 Rat. Un. Cr 14 ; 2 C. 383 ; 6 Bom. L. R. 52. The water must be for public use. Spring and reservoirs are alone mentioned. The provision therefore does not extend to the waters of rivers, etc., although they may ordinarily be used for drinking and other domestic purposes.—*Morgan and Macpherson.*

The water of a nulla does not constitute a "public spring." Rat. Un. Cr. C. 963.

Voluntarily corrupts, etc.—In such acts as suffering the washing or refuse on an offensive trade to flow into a tank of drinking water, or washing skins etc, there cannot but be a voluntary fouling (*Vide*, section 39).)

The purpose for which the water is ordinarily used must be considered in determining whether there has been voluntary corrupting within the meaning of this section. *Morgan and Macpherson.*

There are two questions to be considered with reference to a charge under this section. The first is whether the water of the tank has been ordinarily used for drinking purposes, the second, whether the accused voluntarily corrupted or fouled the water so as to render it less fit for drinking. 1 Weir, 229. Mere angling in a tank is not an offence under this section. 1 Weir, 231 (1) ; see also 1 Weir, 231 (2). The mere bathing in a tank, not set apart by any lawful order for bathing purposes, without anything further, is not an offence under the section. 1 Weir, 228. Cultivating paddy in the bed of a tank used by the public for drinking purposes is a nuisance and is punishable under ss. 277 and 291. 1 Weir 229. A conviction under this section is proper for spitting in a public well. 13 N. L. R. 68=18 Cr. L. J. 650=40 Ind. Cas. 298.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by a Magistrate.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Making atmosphere noxious to health.

Scope.—In several of the subsequent section of this chapter, particular acts done so rashly or negligently as to endanger human life or the personal safety of others, or as to be likely to cause hurt, are made punishable. In a latter chapter there is a general provision the like effect (see section 336). The offences thus made punishable are completeothough no personal hurt may be sustained. Where the rashness or negligence causes bodily pain ('hurt" or "grievous hurt"), it is punishable under sections 337, 338. Where it causes death, the offender may be guilty of culpable homicide which will amount to murder if the act is of that imminently dangerous and reckless kind which is contemplated by section 300. *Morgan and Macpherson* p. 209. Section 278, I. P. Code, is directed against a public nuisance, and not a private nuisance. Where the skull of a deceased man was thrown into a private dwelling house and there was nothing to shew that the effect of it was to make the atmosphere

noxious, *held*, that the person who threw the skull could not be convicted under s. 278. 10 Pat. L. T. 87=116 Ind. Cas. 48=30 Cr. L. J. 556=A. I. R. 1929 Pat. 113.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

Notes.—The act of performing the offices of nature in front of one's door-step in a public street is not an offence under this section. Rat. Un. Cr. C. 200.

Rash driving or riding on a public way.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person shall be punished, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Essentials.—To sustain a charge under this section it must be shown that there was rashness or negligence on the part of the rider or driver. 1 Weir, 232 ; 1 C. P. L. R. 112. To constitute an offence under this section, it is not necessary that actual hurt should be caused to a human being, it is sfficient if the accused's act is likely to cause such hurt or injury. 2 P. W. R. 1912 Cr.

Scope.—This offence against the public safety is completed although rash or negligent act results in no injury to life or property. The cases contemplated in this and the following sections seem to be those in which there is indifference or rashness in performing a lawful act, and therefore criminality, but not in the same degree as where there is a determination to do wrong. If a man is so rash as to take on himself an office or duty requiring skill, which he cannot adequately discharge, his conduct has in it a taint of criminality, and it will be no defence to shew that he acted to the best of his ability—*Morgan and Macpherson.* Criminal negligence is the gross and capable neglect or failure to exercise that reasonable and proper care to guard against injury either to the public generaly or to an individual in particular which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. 152 Ind. Cas. 699=1934 Cr. C. 888=A. I. R. 1934 Rang. 194. Driving on wrong side is not always rash and negligent. *Ibid*; see also 146 Ind. Cas. 28=10 W. N. 823=1933 Cr. C. 1275=A. I. R. 1933 Oudh. 391. Speed of thirty miles on straight and open road is not by itself excessive or rash. 146 Ind. Cas. 28=10 O. W. N. 823. Simply driving a cart the bullocks of which had no strings does not coustitute an offence under this section. Rat. Un. Cr. C. 19. In case of rash driving the driver is liable. 14. W. R. Cr. 32. Rash driving is punishable even when there is no person on that part of the road. 19 B. 715. Rash driving on a public road causing thereby collision with, and injury to the horse of, another carriage is punishable under this section. 13 P. R. 1900 Cr. Where an accused was found guilty of rash and negligent driving under this section, he cannot also be convicted for mischief under s. 427. 5 S. L. R. 263=15 Ind. Cas. 808=13 Cr. L. J. 536. Where a person allowed his cart to proceed unattended along a road and run over a boy who was sleeping on the road, he could not be convicted under this section. Rat. Un. Cr. C. 198. Where a person is driving on the wrong side of the road at the time of collision, he must satisfy the Court that he was not rash or negligent in driving on that side. 23 Bom. L. R. 358=61 Ind. Cas. 52=22 Cr. L. J. 324 ; see also 84 Ind. Cas. 253=26 Cr. L. J. 253=16 S. L. R. 147 ; A. I. R. 1934 Rang. 194=1934 Cr. C. 888. Where an offence falls both under this section or under s. 5 of the Motor Vehicles Act, the trial of the accused under either is legal. 23 A. L. J. 790=26 Cr. L. J. 1254=88 Ind. Cas. 998=A. I. R. 1925 All. 798 ; see also 23 A. L. J. 790=26 Cr. L. J. 1254=88 Ind. Cas. 998 ; but see 136 Ind. Cas. 571=1932 A. L. J. 519=33 Cr. L. J. 309=A I.R. 1932 All. 69. Where a foot passenger is injured owing to the rash and negligent driving on a road which is not narrow, their being ample space for the driver to have passed the passanger and after having knocked down leaves him where he is, the driver is guilty of a serious offence punishable under ss. 279 and 337 I. P. Code. 28 Cr. L. J. 894=A. I. R. 1924 Oudh 441=4 O. W. N. 768=104 Ind. Cas. 910. A conviction under s. 279 I. P. Code cannot separately stand if the accused is convicted under ss. 337 and 304 of the Code. 1929 M. W. N. 395. If there is no danger to the public outside the car who were using the road when the car was driven rashly or negligently, no offence under s. 279 I. P. Code can be said to have been committed. 30 Cr. L. J. 1077=119 Ind. Cas. 536. The proviso to sub-section (1) of s. 562 of the Code must be read as a part of the said sub-section. It is superseded, as regards the effect

of sub-section (1 A) by the words the Court before whom he is so convicted in the aforesaid sub-section and cannot be used so as to control those words. A second class Magistrate who has convicted an accused under Penal Code. s. 229. can order his release after due admonition under Cr. Pro. Code. s. 562. 47 A. 353=26 Cr. L. J. 624=85 Ind. Cas. 848=A. I. R. 1925 All. 644. Where there is no danger to the public a conviction under this section is not maintainable. A. I. R. 1930 Sind. 64. The driver of a motor car has no business to attempt to pass a car in front of him, by going on to the wrong side unless when the road is so clear from traffic, that there can be no possible chance of an accident. 22 Cr. L. J. 324=23 Bom. L. R. 358=61 Ind. Cas. 52. A person driving a motor car has a right to expect that the persons negligently loitering on the road would make way for him, especially when he sees that they are aware of his approach. 30 N. L. R. 186=148 Ind. Cas. 541=35 Cr. L. J. 696=1934 Cr. C. 272=A. I. R. 1934 Nag. 65.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable—by any Magistrate.

Rash navigation of vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Conviction.—To support a conviction under this section, it must be proved that the immediate cause of the accident was rashness or negligence on the part of of the navigator. 15 C. W. N. 835. It is the primary duty of steam vessels to keep out of the way of vessels lying at anchor. The fact that a lunch runs into a cargo-boat at anchor is in itself *prima facie* evidence of negligent navigation. 12 Cr. L. J. 582=12 Ind. Cas. 846=4 Bur. L. T. 140. To prove the offence of rash and negligent navigation under s. 280 I. P. Code, it is not sufficient to prove that the accused navigated the ship in an extremely slovenly manner ; it is necessary to prove that he navigated it so as to endanger human life or in a manner which was likely to cause hurt to injury or other persons or property. 19 S. L. R. 136=A. I. R. 1925 Sind. 284=26 Cr. L. J. 1026=87 Ind. Cas. 917.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Exhibition of false light, mark, or buoy.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

Conveying person by water for hire in unsafe or overloaded vessel.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water, in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Scope.—Boatmen plying for hire on rivers, at ferries, etc., whose boats are overloaded, or are not in a fit condition safely to carry passengers, are criminally responsible for their neglect. It should be proved that there was risk to life caused, and the circumstances from which knowledge or negligence is to be inferred should be shewn.—*Morgan and Macpherson.* Hence of the fishery case also be convicted under this section where he does not take proper precaution to ensure that his majhis did not overload the boats though he knew that overloading is very common in monsoon time. 61 C. 253=38 C. W. N. 200=151 Ind. Cas. 660=35 Cr. L. J. 1373 =1934 Cr. C. 696=A. I. R. 1934 Cal. 490.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Trible by Presidency Magistrate or Magistrate of the first or second class.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may exetend to two hundred rupees.

Danger or obstruction in public way or line of navigation.

Gist of the offence—To warrant a conviction it must be established that the way is a public way and the act of the accused has caused danger, obstruction, or injury to some person. 25 C. 275 ; 1 Bom. L. R. 517 ; 11 C. L. R. 462 ; 25 Cr. L. J. 707=81 Ind. Cas. 195. Where there is no proof of obstruction caused, to a particular person by the act of the accused, a conviction under this section cannot be sustained. 1 Weir. 232.

Scope.—Generally a man is bound to use his property so as not to injure others. The offence here punished is the public nuisanse of causing obstruction, etc, in a public way or navigable river or canal. There must be some negligent act or improper omission. Suppose a boat sinks in the navigable channel of a river and causes obstruction or danger,—if the boat was lost by the mere negligence of those who had charge of it, they will be punished under this section. It seems from the terms of the section that there must be evidence that some person has actually suffered injury or been obstructed, etc.—*Morgan and Macpherson.* Under this section actual obstruction to specific individual requires to be proved. 38 M. 305=29 Ind. Cas. 832. Ordinarily, every shop-keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public. 13 Bom. L. R. 209=10 Ind. Cas. 804=12 Cr. L. J. 258=35 B. 368. Obstruction to the road so as to cause danger or injury to any person using the road is necessary for conviction. A. I. R. 1925 Lah. 153=25 Cr. L. J. 707=87 Ind. Cas. 19. A person cannot be convicted under this section for obstruction by his contractor, where he had not authorised the obstruction. 19 A. L. J. 125=61 Ind. Cas. 59=22 Cr. L. J. 331. A public right of way is unconnected with any dominant tenement. Such right may be acquired by user of or dedication to the public in general. There can be no such thing in law as a public right of way constituted by dedication to only a section of the public. Where the evidence was not sufficient to support an inference of dedication for the use of the public in general or to establish a customary right of way the accused was not liable to be convicted for offences under s. 283 or 339, Penal Code, as regards an obstruction made in the road. 33 C. W. N. 915 ; A. I. R. 1930 Cal. 286.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

Negligent conduct with respect to poisonous substance.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

Notice—Suppose a deadly poison is left exposed in a place usually frequented by children. This, like other sections of the chapter, proceeds on the principle that carelessness when sufficient in degree, is to be regarded as criminal notwithstanding that it may not have occasioned hurt. In this and the following section, the offences defined are not necessarily of the natue of public nuisances. For the offence may be committed in places where persons do not congregate together. It is sufficient that the life of a single person may be put in danger.—*Morgan and Macpherson.*

Procedure—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to fire or combustible matter.

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

What constitutes offence.—In order to support a conviction under the section the following matters must be proved.—(i) rash or negligent dealing with fire ; (ii) this rashness or negligence must be such as (a) endangers human life, or (b) is likely to cause hurt or injury to any other person ; or (iii) there must be found intentional or negligent omission in dealing with fire to guard against probable danger to human life. L. B. R. (1872-1892), 411.

Punishment—It will be observed that the punishment in this and the subsequent sections is directed against an act which may be dangerous or cause hurt to human life. If the expression "injury to any other person" is to be understood to mean not only a personal injury but any injury (see section 44) a risk of danger to property will be sufficient to make a man criminally responsible for his negligence.—*Morgan and Macpherson.*

The owner of a house in which a fire breaks out cannot be convicted under the above section, without proving actual carelessness or an illegal omission in the owner from which rashness or negligence can be inferred. L. B. R. (1872-1892) 134 ; see also L. B. R. (1872-1892) 569. In order to sustain a conviction under the above section, there must be evidence of rashness or of negligence of the accused. L. B. R. (1872-1892) 237 ; 1 U. B. R. (1902-1903) Penal Code, 7. This section does not render it necessary to show danger to human life ; it is sufficient to prove likelihood of injury to property. Rat. Un. Cr. C. 134. This section has no application where the act of the accused is wilful and not rash or negligent. Rat. Un. Cr. C. 126.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

Negligent conduct with respect to explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Knowingly—If a person omits to take precautions in respect of explosives in his possession sufficient to guard against any probable danger to human life being conscious of the probability of danger resulting from such omission, he "knowlingly" does that which, under this section, renders him liable to punishment. If a person omits to take such precautions without such consciousness, he is liable, by reason of his negligence, if he "has not exercised the caution incumbent on him" and which, if he had exercised it could heve created in him the consciousnes that his omission was likely to cause danger. *Queen Empress* v. *Chen Chugadu*, 8 M. 421 = 1 Weir, 233. The first part of the section is not confined to cases where the explosive is in possession of the accused at the time of the injury. 1 Weir, 236.

Explosive substance.—A revolver is not an explosive substance within this section. 1 Weir, 235.

Scope of the Section.—Keeping a large quantity of gunpowder or fire-works, etc, in a populous place, even though they be not negligently kept, may perhaps constitute an offence within this section. Any explosive substance kept in the possession of a person who knows its qualities, in whatever place it may be kept, should be guarded with a care proportionate to the risk of danger to human life which it may occasion under the first part of the section ; throwing fireworks in a frequented place where there are people on foot or horse back etc. may be punishable.—*Morgan and Macpherson.* The causing of hurt by negligence in the use of a gun would fall within

the purview of s. 337 rather than s. 286 of the Indian Penal Code. A. W. N. 1906, 91 =3 Cr. L. J. 393=3 A. L. J. 332=28 A. 464.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

Negligent conduct with respect to machinery.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Note.—Where an owner of machinery employs a competent man to work it and leaves him unfettered, he cannot be held criminally liable for any accident, due to the errors of his employee. 8 P. R. 1906 Cr. Section 287 does not say "any possible danger" and so, the owner is not required to provide perfect security against every possibility of danger, however remote. All that he ought to do is to take reasonable precautions and so much care as is sufficient to guard against such danger as can be expected within the bounds of probability. A. I. R. 1930 Pat. 507. Section 304A. only applies to such acts of the accused as are rash and negligent and are directly the cause of death of another person. But if death is not direct consequence, offence is under section 287. A person who had not taken any active part in the management of the mill when the death took place could not be held liable even under s. 287. A. I. R. 1930 Lah. 453=127 Ind. Cas. 153.

Under his care.—The words "or under his care," which do not occur in the preceding sections, are probably inserted here to include Engineers, etc, who may be in charge of the machinery. The law requires that there shall be a competent knowledge of their duty in such persons, and the words "knowingly or negligently" must be interpreted accordingly—*Morgan and Macpherson.*

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Negligent conduct with respect to pulling down or repairing buildings.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Such order as is sufficient.—The degree of caution is in proportion to the apparent necessity for it. If the building is in a retired place where there is no probability of persons passing by, measures of precaution may be sufficient which if the building is in a populous town and the repairs etc., are done at a time of day when the streets are usually thronged, would be wholly, inadequate. The words "the fall of that building," etc., "repairs" etc., seem to exclude, the not improbable case of danger of life arising from the risk of the fall of scaffolding, and other materials, provided for repairing it—*Morgan and Macpherson.*

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Negligent conduct with respect to animal.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Gist of the offence—In order to convict a person of an offence under this section, it must be established in the affirmative that the accused knowingly or negligently omitted to take such order with the animal in question as was sufficient to guard against probable danger to human life or probable danger of grievous hurt from such animal. It should therefore, be established in the affirmative that there was a probability that the animal would cause grievous hurt or danger to human life. 1 A. L. J. 605 ; 1 Weir. 237 ; 5 P. R. 1904 Cr. ; Rat. Un. Cr. C. 197 ; Rat. Un. Cr. C. 606. Before the owner or keeper of an animal can be convicted under this section, for negligence with respect to his animal, it must be made out that the animal was known to be ferocious, and that it was negligently kept. L. B. R. 1872—1892, 353. In case of animals naturally fierce, all persons acquainted with their habits are aware that danger to human life or risk of grievous hurt will be probable consequence of allowing them to be at large. 1 Weir. 238 ; 1 Weir. 237. In the case of letting loose domestic animals like a dog, no offence under s. 289 is committed unless the owner knew that the dog had a tendency to bite human beings. 19 Cr. L. J. 1=42 Ind. Cas. 913. Allowing a vicious animal to beat large is an offence under this section. 35 Ind. Cas. 815=17 Cr. L. J. 383=18 Bom. L. R. 682. Where the animal is not of such a description as is except from its ferocity to endanger the persons of those whom it meets, the owner or person in possession of it will not be criminally liable, unless he knows of the ferocity of the particular animal, and neglects to take proper measures to prevent the risk of hurting from it.

Fierce and dangerous animals, such as bears, or dogs which are known to bite people, must be kept with a care proportioned to the risk of keeping them—*Morgan and Macpherson.* ; see also L. B. R. (1872—1892) 353 ; 3 N. L. R. 90.

Danger of grievous hurt—If there is a risk which falls short of danger to life or of grievous hurt, such as the risk of being slightly bitten, it will not be sufficient—*Morgan and Macpherson.*

Where a driver left carriage unattended, *held*, that in so doing the accused was guilty of knowingly or negligently omitting to take such order with the horse in his possession as was sufficient to guard against the probable danger of grievous hurt from such animal, which is an offence under this section. Rat. Un. Cr. C. 163=Cr. C. 163=Cr. Reg. 24=4=881. The presence of stray cattle in a road at night cannot be said to involve probable danger to human life or of grievous hurt under this section. 1 Weir. 238. The essential ingredient of an offence under this section is that there should be probable danger to human life or limb. 18 Bom. L. R. 268=17 Cr. L. J. 383. Where owing to the negligence of the accused his dog bit the complainant in his arm causing three incised wounds the accused was guilty under this section. 2 Bur. L. J. 8=1923 Rang. 147.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance in cases not otherwise provided for.

Scope.—Under this section of the Penal Code, injury, danger, or annoyance must be shown to have been caused to the enjoyment of property or to the exercise of a public right on the part of a portion of the community or of any particular class of people. 9 W. R. Cr. 70 ; 1 C. P. L. R. 25 Cr. ; 1 Weir, 245 ; 22 A. L. J. 662. Annoyance to members of a single house is not a public nuisance. A. I. R. 1930 Cal. 713.

Gambling.—Gambling in a private house is not *perse* a public nuisance. 1 Weir, 240 ; L. B. R. (1872-1892) 279. But where gambling is carried on in a public place, or where there is evidence to show that a public house is maintained as a common gaming-house for game, or that a crowd of disorderly persons was assembled that caused annoyance to persons living in the neighbourhood, in such a case gambling is a public nuisance. 1 Weir, 239 ; 1 Weir, 242.

Skinning of an animal which dies a natural death does not in itself constitute a public nuisance. 12 A. L. J. 349.

Object of the section.—Many sections of this and other Chapters provide a punishment for various specific public nuisance. This section punishes any public nuisance coming within the definition given by section 268, and not otherwise expressly punishable under the code. If there are nuisances which do not fall within any

provision of this code they will at present remain punishable under any law now in force which may be found to provide a penalty.—*Morgan and Macpherson.* In order to fall under this section at least one person must have been annoyed. A. I. R. 1924 All. 194=21 A. L. J. 772=25 Cr. L. J. 332=77 Ind. Cas, 188.

Liability for acts of agent, etc.—A man may be guilty of a nuisance by act of his agent or servant. He may be personally ignorant of the particular act or omission which causes the injury, annoyance etc., and may have no intention to cause it. But if those whom he authorises to manage his property, acting within their general authority, occasion a public nuisance on such property, he must answer criminally for it—*Morgan and Macpherson.* In case of user of premises giving rise to public nuisance, occupier is liable and not proprietor who is not in occupation, unless he abets. 46 C. 515=22 C. W. N. 1062=19 Cr. L. J. 913=29 C. L. J. 262=47 Ind. Cas. 287.

Length of time whether excuses such nuisance.—It seems that no length of time makes a public nuisance lawful, or exempt those who create or continue it from criminal liability. A person who continues nuisance created by another would probably be held to come within the words "whoever commits etc." If the owner of land erects a building which is a public nuisance and lets the land, he might probably be held criminally liable for its continuing during the lease.—*Morgan and Macpherson.*

A person was selling *satta* tickets at his shop with the result that 10 or 15 customers collected out side the shop, and obstructed the traffic in public street adjoining the shop, *Held*, that the facts alleged did not constitute an offence under s. 290 I. P. Code and that the assembling of 10 or 15 customers and the obstruction of traffic could not be regarded as the direct or necessary consequence of the sale of *satta* tickets. A I. R. 1929 Lah. 801.

Under this section, the sentence of imprisonment in default of payment of fine must be one of simple imprisonment, and not of rigorous imprisonment. 1 Weir, 239; see also L. B. R. (1872—1892) 279.

Placing a *charpoy* temporarily on the road in a bazar, without any intention of obstructing traffic does not amount to the offence of causing public nuisance. 10 A. L. J. 362=13 Cr. L. J. 830=17 Ind. Cas. 574. Refusal to pay difference in Railway fare where the accused travelled in a higher class does not constitute an offence under this section. 8 B. H. C. Cr. 9. An accused cannot be convicted under this section for acts of third parties in his land. 2 Ind. Cas. 424=19 Cr. L. J. 10. The mere throwing of rubbish in one's own garden does not constitute a public nuisance. 1 Weir, 242. But keeping offensive vegetable matter in front of one's house is an offence under this section. 1 Weir, 243. The Chairman of a Municipality cannot be prosecuted under this section for an act, amounting to a public nuisance, committed by the Municipality. 1 Weir, 243. The trotting of rams trained to fight in a crowded marked place constitutes a public nuisance. 1 Weir, 243. But allowing pigs to stray in a village is not illegal. 1 Weir, 244. A person constructing a projection however small over a public road is guilty of an offence under this section. 6 Lah. 203; 86 Ind. Cas. 1006. A joint owner is responsible in law for nuisance caused by his property. A. I. R. 1928 Mad. 1235. The action of a *Choukidar* in making a noise at night by shouting 'Jagte raho, Jagte raho' so as to scare away thieves and bad characters from the house of his master does not amount to a public nuisance within the meaning of s. 290 of the I.P. Code. 29 O.C. 302=96 Ind. Cas. 876=27 Cr.L. J. 1020=3 O.W. N. 526=A. I. R. 1926 Oudh. 414. In order to constitute an offence under s. 290 I. P. Code, it is not necessary that the alleged nuisance should omit smell injurious to health, it is sufficient if they are offensive to the sense. 34 C. 73=5 C. L. J. 40=5 Cr. L. J. 45. The mere fact of an encroachment on a tidal navigable river does not necessarily, amonnt to a public nuisance so as to render the person causing obstruction liable to punishment under s. 290 Penal Code. 20 C. 665. The omission to fence a well open to highway does not constitute a public nuisance when it is situate in private premises and at a distance of eight yards from the highway. 6 M. 280. The mere establishment of a butcher's shop is not an indictable nuisance under s. 290, I. P. Code. 18 P. R. 1867 Cr. Where a person omits to keep his ponies from straying he does not commit public nuisance punishable under s. 290 of the Penal Code. 6 W. R. Cr. 71. Under s. 290 of the Penal Code, injury, danger or annoyance must be shown to have been caused to the enjoyment of property or to the exercise of a public right on the part of a portion of the community or of any particular class of people. 9 W. R. Cr. 70. A prostitute cannot be convicted under this section for visiting a *dawk bunglow* on three occasions being so requested by a person staying

there. 2 N. W. P. 349. If a crowd collects and obstructs the traffic so as to cause a nuisance, the person who is responsible for the crowd is more guilty than the other persons who form the crowd. A. I. R. 1924 All. 568=22 P. L. J. 662=26 Cr. L. J. 135=83 Ind. Cas. 695. This section covers offences punishable with fine only. A. I. R. 1935 Bom. 156.

Where certain Hiudus refused to have any social intercourse with certain Hindu *Sonars* of the village and excluded them from the use of wells ; *held*, that they were not guilty of any offence under section 290 or s. 504. 3 P. R. 1883 Cr.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

Continuance of nuisance after injunction to discontinue.

291. Whover repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injuction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months or with fine, or with both.

Elements of offence.—In order to support a conviction for the offence of continuance of a nuisance after an injunction to discontinue under the previous section, it is necessary that the order of the Magistrate forbidding the continuance of the nuisance, or evidence of notice of such a character as to make plain the precise terms of the order and notice, be recorded in the case. Rat. Un. Cr. C. 295. To support a conviction under s. 291 there must be proof of an injunction to the persons charged individually against repeating the same public nuisance. 8 A. 99=A. W. N. 1886, 27 ; 20 W. R. Cr. 55.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Sale, etc, of obscene books, etc.

292. Whoever—

(*a*) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation or for purposes of sale, hire, distribution, public exhibiton or circulation makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting representation or figure or any other obscene object whatsoever, or

(*b*) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(*c*) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported exported, conveyed, publicly exhibited or in any manner put into circulation, or

(*d*) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person, or

(*e*) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine or with both.

Exception.—This section does not extend to any book, pamphlet, writing drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or any car used for the conveyance of idols, or kept or used for religious purpose.

Legislative changes.—This section has been added by act 8 of 1925.

Test of obscenity.—The test of obscenity with reference to a charge of distributing obscene literature, is whether the tendency of the matter is to deprave and corrupt those whose minds are open to such immoral influence and into whose hands

a publication of this kind may fall. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress. The question whether a publication is, or is not obsence, is a question of fact ; ; if a publication is in fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. 28A. 100 ; see also 15 Bom. L. R. 307 ; Rat. Un. Cr. C. 620 ; 62 Ind. Cas. 401=22 Cr. L. J. 513 ; 22 M. L. T. 169=5 L. W. 237 ; 20 B. 193 ; 3A. 837 ; 22 Cr. L.J. 413. 32 C. 247 ; 36 C.W.N. 985=139 Ind. Cas. 461=56 C. L. J. 123=1932 Cr. C. 608=33 Cr. L. J. 771=60 C. 201=A. I. R. 1932 Cal. 651. Descriptions of deseases with appropriate remedies do not fall under this section. 18 Cr. L. J. 126=7 P. W. R. 1917 (Cr.)=25 P. R. 1917 (Cr.)=37 Ind. Cas. 478. Motive is immaterial if the book is obscene. 36 C. W. N. 985=56 C. L. J. 123=33 Cr. L. J. 177=60 C. 201.

Exception.—The tendency of a religious publication is not to deprave or corrupt the morals of persons and therefore a religious work is not obscene within the meaning of this section. 39 C. 377=15 C. L. J. 161. But a passage which is not obscene in its place in a religious book may become so by being published in a journal sold to the public. 5. P. R. 1917 Cr=18 Cr. L. J. 505=39 Ind. Cas. 473,

Charges.—When a charge is brought against an accused under this section or section 294, it should always specify the words or representations alleged to be obscene. L. B. R. (1872-1892), 262 ; I. C. 356 ; see also 36 C. W. N. 985=56 C. L. J. 23=60 C. 201=A. I. R. 1932 Cal. 651.

Checks to conception.—A book advocating checks to conception or explaining what apparatus helps such check, is not necessarily obscene. Rat. Un. Cr C. 620.

The mere fact that a person is proprietor and published of a newspaper does not render him criminally liable for any obscene advertisement or other matter inserted therein by his servants, in the absence of a distinct finding that it was put in by the order or owing to the negligence of the proprietor. A. W. N. 1890 175. Advertisement containing the word "asan" is not necessarily obscene. A. I. R. 1928 Pat. 649=110 Ind. Cas. 805.

The proprietor of a printing press, who had entrusted the whole working of the press to an agent, is not liable to be punished under s. 292, I. P. Code for an obscene book printed in the press, unless it has been printed with his consent, knowledge or authority. 35 P. R. 1905 Cr.=171 P. L. R. 1905=2 Cr. L. J. 717.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Sale etc., of obscene objects to young persons.

293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age twenty years any such obscene objects as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Legislative changes.—This section is new and has been inserted by Act 8 of 1925.

Scope.—Here the offence is an aggravated one, because the object of such an offence is a person who is under twenty years of age and as such their minds are more open to immoral influences by such objects. Here a more attempt is also made punishable like the substantive offence. As regards the test of obscenity see the dictum of Lord Cockburn *C. J.* in *Reg* v. *Hicklin* (L. R, 3 Q. D. B. 360), where he says : "I think the test of obscenity is this : whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall." So it appears that a book which may not be considered obscene in the case of an adult person may be considered obscene under this section because this section deals with youthful minds. So far as professional men are concerned many objects should not be considered obscene, which in cases of ordinary people are considered obscene. So in my humble opinion merely legal, medical and other scientific books should be exempt from the operation of this section—where they are meant purely for the profession or written for the advancement of science.

On a conviction of a person charged under s. 293, the Magistrate was not competent to order the destruction of the obscene books surrendered by him, under s. 418 Cr. Pro. Code. 3A. 837=A. W. N. 1181, 94.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Obscene acts and songs.

294. Whoever, to the annoyance of others,

(*a*) does any obscene act in any public place, or

(*b*) sings, recites, or utters any obscene songs, ballad or words in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months or with fine, or with both.

Legislative Changes :—This section has been substituted by Act 3 of 1895 s. 8.

Proof.—A clear and specific allegation of the words and of the person by whom they were uttered must be stated against the accused, prosecuted under this section. L. B. R. (1893-1900), 50 ; L. B. R. (1872-1892), 262 ; 1 C. 356 ; but see 1 Weir. 251. A conviction under s. 294 for singing obscence songs in a public place was set aside, in the absence of proof that the particular songs sung were obscene, though they belonged to a class of songs many of which were obscene. 4 B. H. C. Cr. 25.

Annoyance :—Must be proved. L. B. R. (1872-1892), 332.

Punishment.—As to what punishment is sufficient, *vide*, L. B. R. (1872-1892). 537 ; L. B. R. (1872-1892), 309 ; 2 Bur. L. J. 98. Where an accused has been once tried by a village headman he cannot be tried again by a Magistrate. 2 Bur. L. J. 149=A. I. R. 1923 rang 253.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by any Magistrate ;

Keeping lottery office.

294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

Legislative Changes.—This section has been inserted by the Indian Penal Code, Amendment Act (27 of 1870) s. 10.

Annoyance or injury .—In order to obtain a conviction under this section, it is necessary to give evidence of actual annoyance or injury to the public. L. B. R. (1872-1892) 59.

Lottery.—Essential factor in lottery is scheme for distribution of prizes determined solely by chance. A. I. R. 1928 Bom. 550=122 Ind. Cas. 777 ; see also 30 Cr. L. J. 9=53B. 57=30 Bom. L. R. 1426 ; 139 Ind. Cas. 644=1932 M. W. N. 904=63 M. L. J. 554=36 M. L. W. 610=33 Cr. L. J. 792=56 M. 26=A. I. R. 1933 Mad. 16 ; A I. R. 1933 Mad. 129=141 Ind Cas. 177=63 M. L. J. 917=1933 M. Cr. C. 129 ; A. I. R. 1934 Sind. 149 ; A. I. R. 1934 Mad. 136. In an offence under this section actual drawing is an essential ingredient. Here the word drawing is used in its physical sense. A. I. R. 1934 Sind. 149. 152 Ind. Cas. 911=1934 Cr. C. 1141. Where a fund was in its nature a lottery, *held*, that the mere fact of its being registered would not exonerate the persons carrying on the business from liability under s. 294A. 1 Weir. 252 ; see also 1 Weir. 251. The actual drawing of lottery is punishable. 17 P. R. 1910 Cr. The words "any such lottery" in this section mean any lottery not authorised by Goverment. 10 B. 97. An agreement to secure payment under *kuri* is not illegal under this section, 22 M. 212. It is not necessary for an offence under the first part of this section that the place should be kept solely for the purpose of drawing a lottery. 9. Bur. L. T. 124 =17 Cr. L. J. 143=33 Ind. Cas. 319. The principle underlying a lottery is that

there should be a distribution of prizes determined solely by chance. 35 P. R. 1917 Cr.=33 P. W. R. 1917 Cr ; see. also 67 M. L. J. 163=A. I R. 1934 Mad. 464=35 Cr. L. J. 1232=57 M. 923=150 Ind. Cas. 1119 ; A. I. R. 1934 Sind. 69 =35 Cr. L. J. 1249=1934 Cr. C. 638=28 S. L. R. 112 ; 57 M. 844= 152 Ind. Cas. 440=1934 M. W. N. 318=A. I. R. 1934 Mad. 482=67 M. L. J. 445. Where it is shown that the accused kept an office where they carried on the necessary preliminary work for running a lottery and received the lottery moneys and which they held out to the public as the place where the lottery would be drawn, are guilty of an offence under this section. 16 L. W. 757 ; 44 M. L. J. 595. Advertisement of unauthorised lottery is not an offence under this section. 26 Bom. L. R. 968=1925 Bom. 26. But publication of terms for prizes on horse's winning at Derby races is offence. 27 Bom. L. R. 363=87 Ind. Cas. 516=26 Cr. L. J. 980= A. I. R. 1925 Bom. 243 ; see. also A. I. R. 1926 Mad. 168'=49 M. L. J. 791=92 Ind. Cas. 968=22 M. L. W. 772 ; 143 Ind. Cas. 113=56 C. L. J. 539=1933 Cr. C. 411=34 Cr. L. J. 518=A. I. R. 1933 Cal. 332. A chit fund is not a lottery. 48 M. 661. A mere casual and gratuitous delivery of a lottery ticket is not necessarily the publication for a proposal within the meaning of section 294 A. 27 Cr. L. J. 727=95 Ind. Cas. 313. The term "goods" does not include immovable property and the running of a lottery by which a ginning factory was to be raffled at five rupees tickets constitutes an offence under that section. (1926) M. W. N. 949=A. I. R. 1927 Mad. 66. Where the accused enclosed five rupee notes in cigarettee packets and published pamphlet setting out facts of this scheme the transaction although amounted to lottery no offence under this section was committed. A. I. R. 1928 Bom. 559. Ingredients of the offence under the second part of s. 294, A I. P. Code are ; firstly, there must be a lottery, secondly, there must be a drawing of any ticket. I lot, number or figure in such lottery and thirdly, there must be a publication of the proposal to pay any money or to do something for the benefit on any person on any event applicable to such drawing. The word "drawing" is used in its fiscal sense and the actual drawing of lots is an essential ingredient of the offence. 30 Bom. L. R. 1426=A. I. R. 1928 Bom. 550 ; see also 35 P. L. R. 753=1934 Cr. C. 1182=A, I. R. 1934 Lah. 840. Delivery of ticket books of lottery is sufficient publication. A. I. R. 1930 Lah. 81. Intention of persons acting in persuance of proposal is immaterial. 138 Ind. Cas. 687=1932 Cr. C. 706=33 Cr. L. J. 696=10 Rang. 232=A. I. R. 1932 Rang. 143. Company for conduct of lottery is illegal even if some objects are philanthropic. 139 Ind. Cas. 644=1932 M. W. N. 904=63 M. L. J. 544=36 M. L. W. 610=33 Cr . L. J. 792=56 M. 26=A. I. R. 1933 Mad. 16. Officers of an association may be made liable. A. I. R. 1932 Lah. 581=138 Ind. Cas. 751=33 C. L. R. 834=1932 Cr. C. 809. District Magistrate acting under s. 155 (2) can order investigation into a case under s. 294 A. I. P. Code. 138 Ind. Cas. 751=33 P. L. R. 824=33 Cr. L. J, 678=A. I. R. 1932 Lah. 581.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

CHAPTER XV.

Of Offences Relating to Religion.

Principle of this chapter—The principle on which this chapter has been framed is this—that every man should be allowed to profess his own religion and that no man should be suffered to insult the religion of another. The question whether insults offered to religion ought to be visited with punishment, does not appear at all to depend on the question whether that religion true, or false. The religion may be false but the pain which such insults gives to the professors of that religion is real. It is often, as the most superficial observation may convince us, as real a pain, and as acute a pain, as is caused by almost any offence against the person, against property or against character. Nor is there any compensating good whatsoever to be set off against this pain. Discussion, indeed, tends to elicit truth. But insults have no such tendency. They can be employed just as easily against the purest faith as against the most monstrous superstition. It is as easier to argue against falsehood than against truth. But it is easy to pull down or defile the temples of truth as those of falsehood. It is as easy to molest with ribaldry and clamour, men assembled for purposes of pious and rational worship, as men engaged in the most absurd cere-

monies. Such insults, when directed agains erroneous opinions, seldom have any other effect than to fix those opinions deeper, and to give a character of peculiar ferocity to theological dissension. Instead of eliciting truth they only inflame fanaticism—*Morgan and Macpherson.* It is not intended by this chapter to make criminally punishable breaches of ritualistic observance committed by persons of any one creed against the canons of their own faith. 1 Weir. 253.

Injuring or defiling place of worship, with intent to insult the religion of any class.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Scope.—There is distinction, not arbitrary, between objects which are objects of respect and even of veneration and of objects which are held sacred ; and such distinction appears to have been kept in view by the legislature. 10 M. 126. The word "object" in this section is not limited to inanimate objects but includes animate object, which are held sacred, as well as idols, relics or the like. 27 P. R. 1884 Cr. But see 17 C. 1852.

Defile—The word "defile" must be taken to be used in the sense in which it is generally used with reference to religious matters. It makes no difference that the guilty person is a worshipper of the temple which he has defiled. 1 Weir, 256. See also 1 Weir, 253 ; U. B. R. (1892-96) Vol, I. 198. The word "defile" cannot be confined to the idea of making dirty but also extends to ceremonial pollution. 41 M. 980. The mere defilement of a place of worship is no offence. 7 C. P. L. R. 45.

Cases.—A person cannot be punished under this section for unintentional pollution of well water. Rat. Un. Cr. C. 979 ; see also 5 C. L. R. Cr. 20. The killing of a cow even if done with the intention of offending religious susceptibilities of others is no offence under this section. 10 P. R. Cr. 1918=1 P. W. R. Cr. 198=44 Ind. Cas. 330=19 Cr. L. J. 314 (F. B.) ; 21 Cr. L. J. 453=56 Ind. Cas. 437. A person cannot be convicted under this section for damaging mosque by placing rafters of his roof on the walls of the mosque. 3 Lah. L. J. 247. Where a band of Mahomedans entered a Hindu temple and damaged property therein they are guilty under this section. 25 Cr. L. J. 1173=82 Ind. Cas. 37=1925 Oudh. 50 ; see also 25 Cr. L. J. 155=76 Ind. Cas. 299=1921 Nag. 121.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Charge. I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :

That you, on or about the day of at destroyed (or damaged or defiled a certain place of worship, to wit (or an object, to wit) held sacred by with the intention of thereby insulting the religion of (or with the knowledge that are likely to consider such destruction, damage, or defilement as an insult to their religion) and thereby committed an offence under s. 295 of the Indian Penal Code etc.

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of his Majesty's subjects by words either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious belief of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Legislative changes—This section has been inserted by Act XXV of 1927.

Object—"The prevalence of malicious writing intended to insult the religion or outrage the religious feelings of various classes of His Magjesty's subjects had made it necessary to examine the existing provisions of the law with a view to seeing whether they require to be strengthened. Chapter XV of the India Penal Code, which deals

with offences relating to religion, provides no penalty in respect of the kind described above. Such writings can usually be dealt with under section 153 A. of the Indian Penal Code as it is seldom that they do not represent an attempt to promote feelings of enmity or hatred between different classes. It must be recognised, however, that this is only an indirect way of dealing with acts which may properly be made punishable themselves apart from the question whether they have the further effect of promoting feelings of enmity or hatred between classes. Accordingly it is proposed to insert a new section in Chapter XV of the Indian Penal Code, with the object of making it a specific offence, intentionally to insult or attempt to insult the religion or outrage or attempt to outrage the religious feelings of any class of His Majesty's subjects. Certain amendments are also proposed in the Code of Criminal Procedure in pursuance of the object of the Bill."—*Statement of Objects and Reasons of Act XXV of 1927.*

Notes.—"The proposed new section 295 A is by far the most important provision contained in the Bill and we have examined it in the lights of such criticism as have been expressed since the Bill was introduced whether by the members of the legislature or of the general public and now proceed to set forth our conclusions in detail. In the first place we are of opinion that the simple use of the word 'intentionally,' does not sufficiently bring out what we consider is the essence of the offence, namely, that the insult to religion or the outrage to religious feelings must be the sole or primarily at least the deliberate and conscious intention. We have accordingly decided to adopt the phraseology of section 298 which required deliberate intention in order to constitute the offence with which it deals.

"Secondly we think to penalise even an intentional outrage or attempted outrage upon the religious feeling of any class would be casting the net too wide for the cases with particular reference to which the Bill has been introduced. At the same time, we realize that the reference to the outraging of religious feelings was inserted to provide for cases of an insult to the founder of a religion or a person held sacred by thel followers of a particular religion (*vide Raj Paul* v. *Emperor*, A. I. R. 1927 Lah. 590 ; *but see* A. I. R. 1927 All. 654). We have therefore provided that the new section shal, only apply in cases where a religion is insulted with the deliberate intention of outraging the religious feelings of its followers ; and to make it clear that the attack on a founder is not omitted from the scope of the section, we have specifically made punishable an insult to the "religious belief" of the followers of any religion.

"Further we are impressed by an argument to the effect that an insult to religion or to the relegious belief of the followers of a religion might be inflicted in good faith by a writer with the object of facilitating some measure of social reform by administering such a shock to the followers of the religion as would ensure notice being taken of any criticism so made. We have therefore amplified the words with deliberate intention by inserting reference to notice, and we think that the section which we have now evolved be both comprehensive and at the same time of not too wide an application.—*Report of the Select Commitee.*

Deliberate and malicious intention.—"The words 'with deliberate and malicious intention,' indeed provide a fair amount of protection to a person accused under this section as burden of proof is thereby put on the prosecution in this respect." *Minute of Dissent by N. C. Keller Esqr.*

Procedure.—Not cognizable—Warrant—Not bailable—Not-compoundable—Triable by Court of Session or Presidency Magistrate.

Disturbing religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Disturbance—In order to constitute a disturbance within the meaning of this section, it is not necessary that there should be a stopping or an actual prevention of the carrying on of a religious service nor is it necessary that the religious assembly should be really disturbed. 1 Weir, 259 ; 12A. 494 (F. B.) ; An assembly can be disturbed even in a high way. 8 A. L. J. 1150 ; but see 119 P. L. R. 1909. The essential ingredients of an offence under this section is the doing of an act which causes disturbances to an assembly lawfully engaged in the performance of religious worship. 12 A. L. J. 820 ; 3 Mys. L. J. 77 ; see also 11 Mys. L. J. 455 ; 20 Cr. L. J. 421=17 A. L. J. 820=51 Ind. Cas. 197 ; A. I. R. 1933 Oudh. 196=34 Cr. L. J. 778=10 O. W. N. 582=1933 Cr. C. 706=138 Ind. Cas. 687.

The assembly must be lawfully engaged in the performance of religious worship. The place of assembly may be unfit or improper for the purpose, though the object of the assembly may be lawful. A religious assemblage held in a public street or thoroughfare, so as to cause obstruction would probably not be protected by the provisions of this section from disturbance voluntarily caused by passengers, or by public servants in the exercise of their duties.—*Morgan and Macphersan.*

Procedure—Cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Trespassing on burial-places, &c.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship, or on any place of sepulchre, or any place set apart for the performance of funeral rites or as a despository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance, to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Gist of the offence—The provision of this section is applicable where there is a trespass into a place of religious worship with the knowledge that the feeling of persons would be wounded thereby. Rat. Un. Cr. 148.

Trespass—The term "trespass" means any violent or injurious act committed in such place and with knowlege or intention as is defined in that section. 49 A. 529; 17 C. W. N. 534=40 C. 548. An adulterous intercourse is such an injurious act. 5 C. P. L. R. Cr. 32 ; 1924 All. 2=45A. 52. The meaning of the word 'trespass" in this section, is not the same as is attached to it in the expression "criminal trespass" in s. 441. The word "trespass" denotes a wrongful act, and the act of a person who destroys or disturbs a place of *sepulchre* with the intention of wounding the feeling of any person. 23 P. R. 1915 Cr. The mere act of trespassing in a place of worship or a burial place. etc, is punished when the trespasser has the intention described in the first part of this section. The intention to wound the feelings or religion, not of a class of persons but of a single individual, suffices to make the act of trespass an offence. The Court should be satisfied that the trespass was committed, or the indignity offered knowingly, and with this intention. An act which is done with the knowledge that a person is likely to consider that act as an insult to his religion, is an act by which "religion is likely to be insulted" within the meaning of this section.—*Morgan and Macpherson.* Persons who enter a burial ground and plough up land used as a grave-yard are guilty of an offence under this section, although they enter the ground with the knowledge of the owner, and apparently with his consent. 18A. 395=A. W. N. 1896, 119 ; see also 8 A. L. J. 927=12 Cr. L. J. 532.

As regards meaning of "indignity" *vide*, 1 Weir. 287 ; 26 P. R. 3897 Cr.

The stopping of a *tazia* during a *Maharram* procession does not amount to an offence under this section. A, W. N. 1895, 49.

An accused. who commits an offence by having sexual intercourse within the enclosure surrounding a *pagoda*, is punishable under this section for trespassing on a place of worship with the knowledge that the religious feelings of the worshippers are likely to be injured thereby. U. B. R. (1892—1896) Vol. I, 199. The mere utterance of the words "do not cremate the body" unaccompanied by any attempt to prevent the cremation or by any manifestation on the part of the accused of their intention to interfere if the execution was persisted in, could not be regarded as a "disturbance" within the meaning of this section. 44 P. L. R. 1919=20 Cr. L. J. 145. Where as result of political differences, the complainant was boycotted, and obstacles put in the way of burying his son but no violence was actually used no offence under the law was committed. 20 A. L. J. 93=23 Cr. L. J. 73=65 Ind. Cas. 424. Persons who have sexual connection in a mosque commits an offence under this section. 45A. 52=21 A. L. J. 455=73 Ind. Cas. 935=24 Cr. L. J. 911. The essence of an offence under this section is trespass. For conviction, trespass with intention and in the place mentioned in the section must be proved. The term trespass used in its strict legal sense means unjustifiable intrusion upon property in possession

of another. 21 Cr. L. J. 235=56 Ind. Cas. 235 ; but see A. I. R. 1924 All. 9. The term 'trespass" in this section does not have the same meaning as is attached to "criminal trespass" in s. 441. I. P. Code. The term appears to mean any violent or injurious act committed in such place and with such knowledge as is specified in this section. 1 Rang. 690 ; see also 45A. 529=21 A. L. J. 455=24 Cr. L. J. 911. Disturbing graves of others even on one's own land is an offence. 137 Ind. Cas. 872= 36 C. W. N. 544=1932 Cr. C. 449=33 Cr. L. J. 517=A. I. R. 1932 Cal. 459.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Uttering words, &c.. with deliberate intent to wound religious feelings.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Gist of the offence.—The intention to wound the religious feelings of another must be in order to convict a person under this section, a deliberate one. 4 P. R. 1890 Cr. This section treats of offences relating to religion and not to those relating to caste. 6. C. P. L. R. Cr. 7 ; Rat, Un. Cr. C. 592.

Object of the section.—The Law Commissioners thus described the object of this provision :—"In framing this clause we had two objects in view. We wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others, We do not conceive that any person can be justified in wounding with deliberate intention, the religious feelings of his neighbours by words, gestures, or exhibitions. A worm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of indicating his own, will not fall under the definition contained in this clause. The speech or gesture etc, which is punishable as an offence by this section, must be advisedly and deliberately intended to wound the religious feeling of some person."—*Morgan and Macpherson.*

Procedure.—Non-cognizable—summons—Bailable—Compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of offence affecting Life.

Culpable homicide.

299. Whoever causes death, by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely, by such act, to cause death, commits the offence of culpable homicide.

Illustrations.

(*a*) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(*b*) A knows Z to be behind a bush. R does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence ; but A has committed the offence of culpable homicide. (*vide*, 26 O. C. 18=24 Cr. L. J. 513.)

(*c*) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush ; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment, the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Offences affecting the human body.—"The first portion of the chapter of offences against the body, consists of those offences which affect human life. As this is the most important division of the chapter, the attention of the reader must be specially given to those General Exceptions which shew when the causing of the death of a human being is not an offence. Homicides, which in their circumstances can be brought within any one of the General Exceptions, cannot, it is needless to state, be deemed culpable homicides within the definition given in section 1, of the present chapter. Those homicides which are not culpable, and therefore not offences, may be generally described as being (1) accidental, or (2) justifiable.

1 "*Accidental homicide*" is, where death is caused by accident or misfortune, without any criminal intention or knowledge by one who does a lawful act in a lawful manner and with proper care and caution. See section 80 *ante*.

"There may sometimes be great difficulty in giving any legal certainty to such vague terms as "accident" "proper care and caution", and others which occur in this General Exception. But it is nevertheless the duty of the Court to ascertain in each case after a careful consideration of the facts, what is their true meaning as applied to those facts.

" Suppose A and Z engage in some game or sport together in the course of which A unintentionally causes Z's death. If the sport is not dangerous and is likely to cause no harm or only very slight harm (See section 95) A has committed no offence. But if the sport, is a very dangerous one, carried on roughly and carelessly, or if ill-will to the deceased person is proved, or unfair play, or some undue advantage taken in the course even of a harmless pastime,—the Court will probably conclude that A, having caused Z's death in a cruel or unusual manner, has committed either the offence of culpable homicide or some other offence. See section 87.

"Again suppose a parent whips his child and death follows the whipping. The Court, having acertained satisfactorily that the punishment was not of a cruel or unusual kind, but was only such moderate chastisement as the law allows to parent for his child's benefit, would doubtless decide that the death of the child was caused by accident or misfortune and that the father had committed no offence. See section 89.

In these and similar instances it is the duty of the Court first to ascertain, and then to apply, the rule of law which is applicable. It must determine the extent of the power of a parent over his child,—the lawlessness of a particular act or game or of the manner in which it is performed or played,—what degree of caution the law requires in the particular case under consideration, etc. If A causes B's death unintentionally by shooting him with a gun which A did not know to be loaded, and the question arises whether the homicide is accidental or culpable,—A if he proved that he had resonable grounds to suppose that the gun was not loaded (as if he had himself discharged it an hour before and put it in a place of safe custody where he again found it), would probably be deemed to have acted with proper care and caution. The utmost caution that can be used is not requisite—but only that resonable caution which is usual and ordinary in like cases.

"2. *Justifiable homicide* is where the taking away of life is justified because it is taken by a judicial act, or in pursuance of a judicial sentence pronounced by some Court or Judge,—or because it is taken in the exercise of a power given, or supposed in good faith to be given by law."

"The execution of a person who has been duly convicted of murder and sentenced to be punished with death, is an obvious instance of death warranted by the sentence of a Court of Justice and therefore justified."

"The execution of a criminal in pursuance of the judgment of a Court even though the Court had not jurisdiction to pass the, judgement if the executioner in good faith believed that the Court had such jurisdiction, is also an instance of justifiable homicide. And not only is the executioner justified in such a case, but the Courts or Judges passing judgment in the exercise of some authority which they believe in good faith to be conferred by law, are equally justified."

"Where life is taken in the exercise of a power given to a person by law, without any judicial act or order, the homicide is equally justifiable. Thus in the exercise of the right of private defence the causing of death is, in many cases, justifiable. See Chapter IV, sections 96, 106."

"It is also justifiable where a person in good faith believes himself bound by law to do an act which causes death. For instance the soldier who fires on a mob by the order of his superior officer and thus causes the death of an innocent person is justified. And it may be under peculiar circumstances that an officer of justice in hot pursuit of a criminal, whom he has authority to arrest would be held justified for an act intended only to stop the flight but which may have caused, and been likely to cause, the fugitive's death."

"It is also justifiable in certain cases to cause a person's death for the purpose of avoiding or preventing further loss of life, See section 81.

"Of some of these kinds of justifiable homicides, it may be observed that the conduct of both the slayer and the person slain in each case requires the most careful examination, The justification of the taking away of human life by private persons ought to be confined strictly within those limits which are compatiable with the instincts of nature, the security of society and the due administration of public justice."—*Morgan and Macpherson.*

Scope of the section.—This section clearly defines the offence of culpable homicide. 152. Ind. Cas. 271=1934 Cr. C. 1137=A. I. R. 1934 Sind. 145.

Murder and culpable homicide.—All murders are culpable homicides, but all culpable homicides are not murders. U. B. R. (1897-1901) Vol. 1. 282. Culpable homicide is not murder unless the act by which the death is caused is done with the intention stated, in one or more of the four clauses to be interpreted in the light of the four illustrations appended to it, one for each clause. *Duraj* v *Emperor*, 57 Ind. Cas. 689.

The difference between culpable homicide and murder is thus pointed out by *Sir Barnes Peacock*: "There are, in my opinion, several important distinctions between murder and culpable homicide. An offence cannot amount to murder unless it falls within the definition of culpable homicide, for s. 300 merely points out the case in which 'culpable homicide' is murder."

"Culpable homicide is not murder if it the case falls within any of the exceptions mentioned in s. 300."

"The causing of death by doing an act with the intention of causing death is culpable homicide. It is also murder, unless the case falls within one of the exceptions in section 300."

"Causing death with the intention of causing bodily injury to any person, if the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, in my opinion, falls within the words of section 299, 'with intention of causing such bodily injury as is likely to cause death,' and is culpable homicide." It is also murder, unless the case falls within one of the exceptions in section 300, clause 3.

"Causing death by doing an act with the knowledge that such act is likely to cause death is culpable homicide, but it is not murder even if it does not fall within any of the exceptions mentioned in section 300, unless it falls within clause 2, 3, or 4 of section 300, that is to say, unless the act by which the death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of a person to whom the harm is caused, or with the intention of causing bodily injury to any person; and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or unless the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death."

'In speaking of acts 1, of course, include illegal omissions.'

"There are many cases falling within the words of section 299 'or with the knowledge that he is likely by such act to cause death, that do not fall within the 2nd, 3rd or 4th clause of section 300, such for instance as the offences described in sections 279, 280, 281, 282, 284, 285, 286, 287, 288 and 289, if the offender knows that

his act or illegal omission is likely to cause death, and if in fact it does cause death. But, although he may know that the act or illegal omission is so dangerous that it is likely to cause death, it is not murder, even if death is caused thereby, unless the offender knows that it must in all probability cause death or such bodily injury as is likely to cause death or unless he intends thereby to cause death or such bodily injury as is described in clause 2 or 3 of section 300"—*Per Peacock C. J.* in Q ; v. *Gora Chand Gope*, 5 W. R. 45 Cr ; see also 1 B. 342 ; 29 Cr. L. J. 17 ; L. B. R. (1893—1899) 112 ; U. B. R. (1897—1901) Vol. I. 282 ; 8 W. R. 47 ; 35 Cr. L. J. 1113 =150 Ind. Cas. 819=11 O.W.N. 851=A. I. R. 1934 oudh. 405. Culpable homicide may not amout to murder where the degree of *means ria* specified in s. 299 is present but not the special degrees referred to by s. 300. 152 Ind. Cas. 271=1934 Cr. C. 1137=A. I. R. 1934 sind. 145.

Causes death.—The expression "causing death" in this section means putting an end to a person's life, and all the intentions mentioned in the section must be directed deliberately to putting an end to human life. The knowledge must have reference to the particular circumstances in which an accused is placed. The intention of the accused must be judged not in the light of what he supposed to be, the circumstances. 42 M. 547=37 M. L. J. 17. "It is to be observed that the section does not require that the offender should intend to kill (or know himself to be likely to kill), any particular person. It is enough if he "causes the death" of any one by doing an act with the intention of "causing death" to any one, whether the person intended to be killed or any one else. This is clear from the first illustration to the section. Nor is it necessary that the death should be caused directly by the action of the offender, without contributory action by the person whose death is caused or by some other person. That contributory action by the person whose death is caused will not necessarily prevent the act of the offender from being culpable homicide, even if the death could not have occurred without such contributory action is clear from the above illustration, and that contributory action by a third person will not necessarily prevent the act of the offender from being culpable homicide, even if the death could not have occurred without such contributory action, is clear from the second illustration..... The Indian law commissioners in their report (1896) on the Indian Penal Code call attention to the unqualified use of the words to 'cause death' in the definition of culpable homicide, and rightly point out that there is a great difference between acts which cause death immediately and acts which cause death remotely, and they point out that the difference is a matter to be considered by the Courts when estimating the effect of the evidence in each case. Almost all, perhaps all results, are accused by combination of causes, yet we ordinarily speak of a result as caused by the most conspicuous or efficient cause, without specifying all the contributory causes. In Webster's Dictionary "cause" is defined as "that which produces or effects a result ; that from which anything proceeds and without which it would not exist ;" and again "the general idea of cause that without which another thing called the effect, cannot be ; and it is divided by Aristotle into four kinds known by the name of the material, the formal, the efficent and the final cause. The efficient cause is the agent, that is prominent or conspicuous in producing a change or result." *Per Benson J.* in *Public Prosecutor* v. *Mushunooru*, 13 Ind. Cas. 833=22 M. L. J. 333 ; 11 M. L. T. 127=(1912) M. W. N. 136. The expression "causing death" in s. 299 of the Penal Code, means putting an end to a human life and all the three intentions mentioned in the section must be directed deliberately to putting an end to a human life. The knowledge must have reference to the particular circumstances in which an accused is placed. The intention of the accused must be judged, not in the light of actual circumstances, but in the light of what he supposed to be the circumstances, A man is not guilty of culpable homicide if his intention was directed to what he supposed to be a lifeless body. 42 M. 547=37 M. L. J. 17=26 M. L. T. 68=(1919) M. W. N. 340=51 Ind. Cas. 164=20 Cr. L. J. 404.

By doing any act.—According to section 32 of the Code, words which refer to acts done extend also to "illegal" omissions, According to section 43. the word "illegal" is applicable to anything which is an offence or which is prohibited by law, or which furnishes ground for civil action.—In the original draft of the Code, its authors framed the section as follows : "Whoever does any act, *or omits what he is legally bound to do*, with the intention of thereby causing or with the knowledge that he is likely thereby to cause, the death of any person, and does by such act or omission cause the death of any person, is said to commit the offence of "voluntary culpable homicibe." In support of this they observe ; "The first point to which we wish

to call the attention of his Lordship in Council is the expression 'omits what he is legally bound to do' in the definition of voluntary culpable homicide. These words or other words tantamount in effect, frequently recur in the Code. We think this the most convenient place for explaining the reason which has led us so often to employ them ; for if that reason shall appear to be sufficient in cases in which human life is concerned, it will *a fortiori* be sufficient in other csses.

"Early in the progress of the Code it become necessary for us to consider the following question : When acts are made punishable on the ground that those acts produce, or are intended to produce, or are known, to be likely to produce, certain evil effects, to what extent ought omissions which produce, which are intended to produce, or which are known likely to produce, the same evil effects to be made punishable ?

"Two things we take to be evident ; first that some of these omissions ought, to be punished in exactly the same manner in which acts are punished ; secondly, that all these omissions ought not to be punished. It will hardly be disputed that a gaoler who voluntarily causes the death of a prisoner by omitting to supply that prisoner with food, or a nurse who voluntarily causes the death of an infant intrusted to her care by omitting to take it out of a tub of water into which it has fallen, ought to be treated as guilty of murder. On the other hand, it will hardly be maintained that a man should be punished as a murderer because he omitted to relieve a begger, even though there might be the clearest proof that the death of the beggar was the effect of this omission, and that the man who omitted to give the alms knew that the death of the begger was likely to be the effect of the omission. It will hardly be maintained that a surgeon ought to be treated as a murderer for refusing to go from Calcutta to Meerut to perform an operation, although it should be absolutely certain that this surgeon was the only person in India who could perform it, and that if it were not performed, the person who required it would die. It is difficult to say whether a Penal Code which should put no omissions on the same footing with acts, or a Penal Code which should put all omission on the same footing with acts, would produce consequences more absurd and revolting. There is no country in which either of these principles is adopted. Indeed, it is hard to conceive how if either were adopted, society could be held together."

"It is plain therefore, that a middle course must be taken ; but it is not easy to determine what that middle course ought to be. The absurdity of the two extremes is obvious. But there are innumerable intermediate points ; and wherever the line of demarcation may be drawn, it will, we fear, include soms cases which we might wish to exempt, and will exempt some which we might wish to include"...

"What we propose is this, that where acts are made punishable on the ground that they have caused, or have been intended to cause, or have been known to be likely to cause certain evil effect ; omissions which have caused, which have been intended to cause, or which have been known likely to cause, the same effect shall be punishable in the same manner provided that such omissions are on other grounds illegal. An omission is illegal, if it be an offence if it be a breach of some direction of law, or if it be such a wrong as would be a good ground for a civil action."

"We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food and by that omission voluntarily causes Z's death. Is this murder? Under our rule it is murder if it was Z's gaoler, directed by the law to furnish Z with food, It is murder if Z was the infant child of A, and had therefore a legal right to sustenance, which right a civil Court would enforce against A. It is murder if Z was a forbidden invalid and if a nurse hired to feed Z. It is murder if A was detaining Z in an unlawful confinement, and had thus contracted a legal obligation to furnish Z, during the continuance of the confinement, with necessaries. It is not murder if Z is a begger who has no other claim on A save that of humanity.

"A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by his omission voluntarily causes Z's death. This is murder, if he is a peon stationed by authority to warn travellers from attempting to ford the river. It is murder if A is a guide who had contracted to conduct Z. It is not murder if A is a person on whom Z has no other claim than that of humanity."

"A savage dog fastens on Z, A omits to call off the dog knowing that if the dog be not called off, it is likely that Z will be killed. Z is killed. This is murder in A, if the dog belonged to A, inasmuch as his omission to take proper order with the dog is illegal. But if A be a mere passer-by, it is not murder."

"It is indeed, most higly desirable that men should not merely abstain from doing harm to their neighbours, but should render active services to their neighbours. In general, however, the penal law must content itself with keeping men from doing positive harm, and must leave to public opinion and to the teachers of morality and religion, the office of furnishing men with motives for doing positive good. It is evident that to attempt to punish men by law for not rendering to others all the service which it is their duty to render to others would be preposterous. We must grant impunity to the vast majority of those omissions which a benevolent morality would pronounce reprehensible, and must content ourselves with punishing such omissions only when they are distinguished from the rest by some circumstance which marks them out as peculiarly fit objects of penal legislation."—Note M. In support of this the Commissioners in their first report say: "It seems to us that the line drawn in the Indian Code by the use of the adjectives, legal and illegal" applied to the duty and the omission respectively, is perfectly plain and intelligible, at the same time it is just and right and it does not appear to differ from the rule of English law as laid "down in the Digest."—*Vide, clause 241 of the First Report on the Penal Code.*

In all the above cases the legal duty of acting arises from special circumstances whereby the particular person concerned had taken it upon himself. It will usually arise thus; for the community at large are seldom under any legal duties but negative ones—duties to abstain from the commission of certain acts. "If I saw a man, who was not under my charge, taking up a tumbler of poison, I should not become guilty of any crime by not stopping him. I am under no legal obligation to protect a stranger." But the law itself does in some cases impose upon a special class of persons some duty of positive character, a duty of acting. Thus parents are responsible for the care of their children; and consequently, if a child's death is caused, or even accelerated, by a parent's gross neglect in not providing sufficient food or clothing for his child, the parent will be guilty of man-slaughter. The mere fact that there was some degree of negligence on the parent' part will not suffice. There must be a wicked negligence, a negligence as great as to satisfy a jury that the prisoner did not care whether the child died or not. *Reg* v. *Nicholls.* 13 Cox. 75; *Kinney's Outlines of Cr. law p. 121.* Any adult who undertakes the care of a person who is helpless, whether it be through infancy. (*Reg.* v. *Nicholls.* 13 Cox. 75) or even through mere infirmity [*Reg.* v. *Instan*, L. R. (1893) 1 Q. B. 450], will similarly be guilty of man-slaughter if this person die through his wicked neglect. But the degree of negligence must be not merely a culpable but a criminal one. It is not enough to shew that there was such carelessness as would support a civil action for negligence, there must be a wicked negligence. *Reg.* v. *Paine.* The Times. Feb. 25th, 1880.

Death caused by speaking.—'A verbally directs Z to swallow a poisonous drug; Z swallows it, and dies;' and this says Mr. Livingstone, is homicide in A. It certainly ought to be so considered. The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide, if by speaking he has voluntarily caused Z's death, whether his words operated circuitously by inducing Z to swallow poison or directly by throwing Z into convulsions .....Suppose it to be proved to the entire conviction of a Criminal Court that Z, the deceased, was in a very critical state of health; that A, the heir of Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life; that A immediately broke into Z's sick room, and told him a dreadful piece of intelligence, which was a pure invention; that Z went into fits, and died on the spot; that A had afterwards boasted of having cleared the way for himself to a good property by this artifice; these things being fully proved, no Judge could doubt that A had voluntarily caused the death of Z; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine." *Note M.* The Commissioners in their first report on the Peonal Code said: "Having naturally considered the matter, we come to the same conclusion with the authors of the code that if death is certainly caused by words deliberately used by a person with the intention of causing the result, or with the knowledge that in the condition of the party to whom the words are spoken it is likely that they will make such an impression upon him as to cause his death, and without any such excuse as is admissible under any of the provisions in the chapter of General Exceptions, there is no sufficient reason why that person should be excepted from the penalty of culpable homicide, any more than one who

has caused death by the infliction of bodily injury which he knew to be likely to cause death. Here is the wilful doing of that which is known to be likely to produce evil, manifesting the *mens rea* essential to criminal responsibility ; the evil produced is death ; the efficient cause, the words spoken. It is scarcely agreeable to reason that having traced the effect to its cause, the law should refuse to acknowledge it as an effective cause ; or that the Judge should be obliged to say, it is true the effect was produced by the operation of words, but words in law are not an act, therefore the speaker is not criminally responsible." Section 249.

With the intention of causing death or such bodily injury as is likely to cause death.—The essence of murder is that there must be the intention of causing such bodily injury as is likely to cause death. Presumption of intention depends on the facts of each case. A. I. R. 1928 Pat. 169=7 Pat. 638=29 Cr. L. J. 17=106 Ind. Cas. 433=9 P. L. T. 286 ; see also A. I. R. 1927 Sind. 108=21 S. L. R. 159=28 Cr. L. J. 61 ; A I. R. 1929 Lah. 292=11 L. L. J. 20=31 Cr. L. J. 41. Onus of proving absence of intention to cause death is on the accused when he deals violent blows on head causing fracture. A. I. R. 1927 Lah. 63=28 Cr. L. J. 45=99 Ind. Cas. 77 ; see also A. I. R. 1929 Lah. 637=30 P. L. R. 357=30 Cr. L. J. 662=116 Ind. Cas. 707. Where no intention to cause death is found the offence is culpable homicide under s. 304. A. I. R. 1927 Lah. 526=28 Cr. L. J. 590=9 L. L. J. 365. When the accused commits an imminently dangerous act, such as bomb throwing, intention to cause death is presumed. A. I. R. 1930 Lah. 266=31 Cr. L. J. 290=31 P. L. R. 73=121 Ind. Cas. 726 ; see also A. I. R. 1923 Lah. 598=6 L. L. J. 62=24 Cr. L. J. 935=75 Ind. Cas. 359. An injury merely likely to cause death does not amount to murder if intention to cause death is absent. A. I. R. 1923 Rang. 174=1 Rang. 285=Bur. L. J. 94=24 Cr. L. J. 919=75 Ind. Cas. 295. The expression "causing death" means putting an end to human life and a man is not guilty of culpable homicide if his intention was directed to a lifeless body. 42 M. 547=37 M. L. J. 17=20 Cr. L. J. 404=51 Ind. Cas. 164. This section says nothing about deliberation or previous preparation but speaks only of intention and knowledge. A. I. R. 1926 Oudh. 148=27 Cr. L. J. 62=91 Ind. Cas. 238=2 O. W. N. 862. Motive is irrelevant in murder. A. I. R. 1927 Lah. 729=28 Cr. L. J. 258=100 Ind. Cas. 226.

Such bodily injury as is likely to cause death.—If a person causes death by doing an act with the intention of causing such bodily injury as is likely to cause death the offence comes under s. 299. *Gobbar* v. *Emperor*. 7 Pat. 688=9 Pat. L. T. 286=106 Ind. Cas. 433=29 Cr. L. J. 17=A. I. R. 1928 Pat.

With the knowledge that he is likely by such act to cause death.—In cases of murder, and culpable homicide not amounting to murder there is a distinction between what is likely and what is probable. The distinction is a question of degree of probability. 5 Cr. L. J. 306 ; 9 P. R. 1891 Cr. The "knowledge" must be a certainty not a probability. The difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. A. I. R. 1928 Pat. 169=7 Pat. 738=29 Cr. L. J. 17=106 Ind. Cas. 433=9 P. L. T. 286.

Five persons armed with dangs assaulted the deceased and beat him to such an extent that one of his thighs became a mass of bruises, fractured both his legs below the knee and also gave him various other minor injuries on the legs and on the trunk which caused death. But no injury was caused to the head and the injuries on the trunk also were minor. *Held*, that the offence would not come under any of the clauses of s. 300 but would come under third part of s. 299 as the assaulting persons must be credited with a knowledge that the beating that they did actually give to the deceased was likely to cause death. 10 Lah. 477=30 P. L. R. 674=113 Ind. Cas. 333=30 Cr. L. J. 141=A. I. R. 1929 Lah. 157. There is a clear distinction between a person causing death by doing an act "with the knowledge that he is likely by such act to cause death", which is culpable homicide within the definition in s. 299 I. P. Code, and causing death by an act known by the person doing it to be "so immediately dangerous that it must in all probability cause death or such bodily injury as is likely to cause death", which is murder under cl. (4) of section 300. The former includes the latter but the two descriptions are by no means co-extensive. 8 C. P. L. R. Cr. 9. All murder is culpable homicide, but all culpable homicide is not murder. Thus s. 299 covers a wider ground than s. 300. U. B. R. (1897—1901) Vol. I. 282. The last clause of section 299 and the fourth clause of s. 300 must be confined to cases, where no intentional injury has been caused. In cases of murder and culpable

homicide not amounting to murder, there is a distinction between what is likely and what is punishable ; because death has resulted from blows it cannot be held in every case that the striker intended to cause injury sufficient in the ordinary course of nature to cause death. The distinction between murder and culpable homicide not amounting to murder is a question of degree of probability, and depends generally on the nature of the weapon and on the way it is used. U. B. R. 1906. Penal Code, 33=5 Cr. L. J. 306. Where the accused, a young man of 18, knocked his wife down, struck her several times with his fist on the back and, on her falling on the ground, put one knee on her chest, and struck her violently two or three times on the face, causing thereby an extravasation of blood on the brain resulting in her death, *held* that the accused was only guilty of culpable homicide, not amounting to murder as there was no intention to cause death, and as the bodily injury was not sufficient in the ordinary course of nature to cause death. 1 B. 342. But where death has been caused by a savage attack with dangerous weapons an offence under this section has been committed. 7 S. L. R. 83=15 Cr. L. J. 375=23 Ind. Cas. 744 ; see also A. I. R. 1925 Lah. 244=6 L. L. J. 527=26 Cr. L. J. 398=84 Ind. Cas. 942. Where the accused administered *Dhutura* poison to facilitate robbery the accused must be presumed to have knowledge that death would be caused. The question of knowledge is a question of fact in the circumstances of each case. A. I. R. 1926 Bom. 518=28 Bom. L. R. 1003=27 Cr. L. J. 1134=97 Ind. Cas. 654. An injury which accelerates the death of a dying man is deemed to be the cause of it. The offender is not responsible for death unless he knew that the condition of the deceased was such that his act was likely to cause death. 19 Cr. L. J. 322=11 S. L. R. 81=44 Ind. Cas. 338 (F. B.) ; see also 23 Cr. L. J. 345=34 C. L. J. 515=66 Ind. Cas. 1000.

Explanation (1).—"It is only where death is attributable to an injury which the offender did not know would endanger life or would be likely to cause death and which in normal conditions would not do so notwithstanding death being caused the offence will certainly not be *culpable homicide* not amounting to murder, but simple hurt, and every such case depends upon the existence of abnormal conditions unknown to the person who inflicts the jury." 19 Bom. L. R. 823. See also, 19 Bom. L. R. 902.

This explanation assumes that the bodily iniury was inflicted with the intention of causing death or the knowledge that it would be likely to cause death. It was intended to repeat the English rule that an injury which accelerates the death of a dying man is deemed to be the cause of it, and where death has been caused it is no defence that the deceased was suffering from a complaint which would have caused his death in any event. 44 Ind. Cas. 335.

"An offence affecting the life of a person who must soon die, either from a mortal disease or in the course of nature from old age and decay, is not a less offence than one which affects the life of a person in strong health. The offender causes death in the one case by accelerating that event by a few months or days or hours ; in the other case, possibly he hastened the event by many years. The real difference between the two cases is not in point of law, but in respect of the degree of proof requisite to show the cause of death. For where the death of a person who receives some bodily injury while labouring under a disease is the subject of enquiry, the Court in estimating the evidence must consider whether it is sufficiently proved which of the two causes, the disease or the bodily injury to the deceased person is the cause of his dying on the day when his death occurs. It is not necessary (if it were possible) that the evidence should enable the court to apportion the two causes and the degree in which each of them contributes to the result. But the Court must be satisfied (1) that the death at the time when it occurs is not caused solely by the disease ; and (2) that it is caused by the bodily injury to this extent, that it is accelerated by such injury. Suppose A is ill of small-pox and gives him pills in such dose that the disease is aggravated and death is accelerated. Z has caused death, notwithstanding that it may be proved that A must have eventually died of the small-pox.—*Morgan and Macpherson.* If a person was suffering from an injury which would render injuries (which would not have a fatal effect to an ordinary man) fatal to that person, it does necessarily follow, as it would in the case of a healthy man that person affecting those injuries knew it to be likely that death would be caused thereby. 34 C. L. J. 513. Explanation (1) to s. 299 of the Penal Code assumes that the bodily injury was inflicted with the intention of causing death or the knowlege that it would be likely to cause death. It was intended to repeat the Eng-

lish rule that an injury which accelerates the death of a dying man is deemed to be the cause of it. *Imperator* v. *Ismail*, 11 S. L. R. 79=44 Ind. Cas. 335=19 Cr. L. J. 319.

Explanation (2).—"In the case supposed, of a bodily injury which when it is inflicted is the sole cause of death in operation, it is explained that although proof be given that the wound or other bodily injury if skilfully treated might not have resulted in death, yet if in fact death is the result, the wound causes death. And it does not avail the offender to prove that the first cause might have been removed or rendered inoperative by the application of proper remedies, and that death might thus have been prevented.

"Proper remedies and skilful treatment" may not be within the reach of the wounded man ; or, if they are at hand he may be unable or unwilling to resort to them. But this is immaterial 'so far as relates to the due interpretation of the words' "cause of death.'' The primary cause which sets in motion some other cause, as the severe wound which induces gangrene or fever—and the ultimate effect, death, are sufficiently connected as cause and effect, notwithstanding that the supervening sickness or disease might have been cured by medical skill. All that it is essential to establish is, that the death has been caused by the bodily injury, and if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one"—*Morgan and Macpherson.* Where death is avoidable by proper treatment, the fact does not take away case from operation of s. 299. 140 Ind. Cas. 706=34 Cr. L. J. 99=1932 Cr. C. 697=9 O. W. N. 655=A. I. R. 1932 Oudh. 279.

Explanation (3).—This explanation provides that the causing of the death of a child in the mother's womb is not "homicide." But it may amount to culpable homicide to cause death of a living child if any part of that child has been brought forth, though the child may not have breathed or been completely born. Under the English law complete emergence is necessary to constitute the child a human being. The law in this respect is somewhat wider than the English law. Under this explanation, it must be shown that the child lived and breathed after it had wholly or partially emerged from the mother's womb. 29 P. R. 1915 Cr.

"The life of the child while it remains, wholly within the womb, is a part of the mother's life, and not a separate and distinct existence. But as soon as any part of the child (supposing that it is not a child already without life, a dead fœrus) has been brought forth from the womb the child is accounted a living human being to cause whose death may be culpable homicide. It is further explained that this may be so, though the child may not have breathed. The mere fact of having breathed is a very uncertain indication of life in such cases, for it is well-known that many children are wholly brought forth and eventually live, and yet do not breath for sometime after their birth.

"It may be said that a child is not completely born until after the umbilical cord has been severed notwithstanding that the mother has been completely delivered, and that the child is in existence. But it is obvious that to cause the death of such a child, ought to be deemed an offence of the same nature, as the causing of the death of a child one month, one year, or ten years old. The explanation expressly states that complete birth is not requisite. Instead of an uncertain period which it would be difficult to define satisfactorily and which would, in many cases of infanticide greatly add to the difficulty of proof, a definite and readily ascertained point of time (i. e., the time when any part of the child is brought forth) is fixed, to denote when the child may become a subject of culpable homicide.

"If no part of the child has been brought forth, any bodily injury which it receives, however criminal, does not constitute an offence under this section though it may be an offence under subsequent provisions of the chapter (see sections 315 and 316) —and this, whether such injury prevents the child from being born alive, or causes the death of the child afterwards. If any part of the child has been brought forth, the causing of its death may amount to culpable homicide—not because the child in this state has necessarily and in all cases a more independent existence than while it is wholly unborn, or because it is now more likely to live than before (for the part first brought forth may be such as to put the child's life in great peril)—but, as we have already seen, because this is a definite period of time.

"As to the person who causes death,—it is enough in this place to say that, in the absence of proof of unsoundness of mind, incapacity to know the nature of the act done, or of some other of those General Exceptions applicable to homicide which declare the thing done not to be an offence, all persons who are liable to punishment under this code may commit the offence of culpable homicide"—*Morgan and*

Macpherson. It must be proved that the child breathed after it had emerged from womb. 17 Cr. L. J. 20=46 P. W. R. 1915=29 P. R. 1915=32 Ind. Cas. 148.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or,

Murder.

2ndly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or,

3rdly, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or,

4thly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficent, in the ordinary course of nature, to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as, in the ordinary course of nature, would cause death.

(*c*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d*) A, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

When culpable homicide is not murder.

The above exception is subject to the following provisos :—

Firstly.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

(*a*) A, under the influence of passion, excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B, B is by this provocation excited to violent rage. A, a by-stander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z, attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant, acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage, or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation, or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death., with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

Scope of the section. Culpable homicide is the general name given to a variety of offences, of characters so different that the Code visits them with discriminating punishments, ranging from capital punishment to a light fine. All these however, have these in common, that the death of a human being has been caused by some act or illegal omission which deserves punishment. There is one great division of the offence.—the division between culpable homicide which is murder, and culpable homicide which does not amount to murder. According to the definition given in this section culpable homicide is murder unless it be one of the mitigated descriptions of homicide mentioned in the five exceptions given in this section. The definition requires that we should consul.—fir the definition of culpable homicide in the expanded form which it appears in the present section, and then the several exceptions containing the mitigated circumstances which reduce the offence of murder to culpable homicide not amounting to murder. Each of the four clauses of the section requires that the act which causes death should be done intentionally, or with the knowledge or means of knowing that the death is a natural consequence of the act. Each clause is explained by illustration. It will be noticed that this

definition of murder does not recognise different degress of the offence. The killing of a human being with the intention or knowledge mentioned in the definition, is not less murder when it is committed under such circumstances as show no specific intention to kill, than when it is perpetrated by means of poison, or lying in wait, or by any other kind of wilful, deliberate and premeditated killing. But the Courts in awarding punishment for murder (see section 302) are enabled to distinguish between the several gradations of enormity which the cases may disclose.—*Morgan and Macpherson.* Culpable homicide is not murder unless the act by which the death is caused is done with the intention stated, in one or more of the four illustrations appended to it, one for each clause. If the question is whether the injuries caused in a case are sufficient in the ordinary course of nature to cause death, the Court has to take it into consideration the nature of the weapon used and the injuries caused. 75 Ind. Cas. 689=1723 Lah. 317. In a charge of murder it is wholly immaterial that the motive is inadequate. 28 Cr. L. J. 258=100 Ind. Cas. 226=7 A I. C. R. 371. Where facts are clear it is immaterial that no motive has been proved. 32 C. W. N. 345=47 C. L. J. 240=104 Ind. Cas. 482=29 Cr. L. J. 546=A. I. R. 928 Cal. 430. If an act does not fall within any of those explanations and of the exceptions the act is murder, but if it does fall under one or other of those explanations any of the exceptions in s. 300 the act is one of culpable homicide not amounting to murder. A. I. R. 1928 oudh. 15=3 Luck. 244=28 Cr. L. J. 1029=106 Ind. Cas. 213. A case may fall within more than one exception to s. 300. A. I. R. 1928 Mad. 136=1927 M. W. N. 796=29 Cr. L. J. 7=106 Ind Cas. 343.

English law.—In English law, it shall be sufficient in any indictment for murder to charge that the defendant did feloniously, wilfully and of his malice, aforethought, kill and murder the deceased. So murder is the unlawful killing, by any person of sound memory and discretion, of any person under the King's peace, with malice aforethough. either express or implied by law. *Russ. Cr.*. p. 655. This malice aforethought which distinguishes murder from other species of homicide is not limited to particular ill-will against the person slain but means that the fact has been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, and malignant spirit; a heart regardless of social duty, and deliberately bent upon mischief. Any formed design of doing mischief may be called malice; and therefore not only killing from premeditated hatred or revenge against the person killed; but also, in many other cases, killing accompanied with circumstances that shew the heart to be previously wicked, is adjudged to be killing of malice aforethought, and consequently murder. Malice may be either express or implied by law. Express malice is, when one person kills another with a sedate deliberate mind and formed design evidenced by external circumstances, which disclose the inward intention; as lying in wait, antecedant menaces, former grudges, and concerted schemes to do the deceased some bodily harm. And malice is implied by law from any deliberate cruel act committed by one person against another, however sudden. Thus where a man kills another suddenly without any, or without considerable provocation, the law imples malice; considering that no person, unless of an abandoned heart, would be guilty of such an act upon a slight. or no apparent cause. So if a man wilfully poisons another the law presumes malice though no particular enmity can be proved. *Russ. Cr. 656.* There are according to English law six forms of *mens rea* which have been held to be sufficiently wicked to constitute murderous malice. They are the following :—

(i) Intention to kill the particular person, who in fact, was killed.

(ii) Intention to kill a particular person, but not the one who actually was killed.

(iii) Intention to kill, but without selecting any particular individual as the victim. This has been conveniently called universal malice.

(iv) Intention only to hurt—and not kill—but to hurt by means of an act which is intrinsically likely to kill.

(v) Intention to do an act which is intrinsically likely to kill though without any purpose of thereby inflicting any hurt whatever. Such cases are usually due to the state of mind which Austin specifically terms "rashness."

(vi) Intention to commit a felonious act even though it be unlikely to kill. The illustration which Foster gives of this sixth rule is that of a man shooting at a fowl in order to steal it, and thereby accidentally killing a bystander.—*Kenney's Outlines of Cr. Law.*

The law of British India, differing from the Law of England, does not regard every case of homicide as *prima facie* murder; it throws on the prosecution the

burden of proving a certain intent of knowledge constituting an act a murder. I Weir. 288.

Culpable homicide amounting to murder and culpable homicide not amounting to murder.—Causing death by an act, which the offender knows to be likely to cause death is culpable homicide not amounting to murder, while causing death with the knowledge that the most probable result of the act done will be death or such bodily injury as will, in the ordinary course of nature, cause death, constitutes murder. L. B. R. (1893—1900), 112. Murder as defined in clauses 2 and 3 of this section, is only an amplification of that part of s. 299, which speaks of an act done "with the intention of causing such bodily injury as is likely to cause death." 18 P. R. 1893 Cr. All murder is culpable homicide, but all culpable homicide is not murder. Subject to the five exceptions to this section, every act that falls within one or more of the four clauses of that section is murder, and also falls within the definition of culpable homicide in section 299. Every act that falls within any or more of the four clauses of this section, in respect of which there co-exist one or more of the sets of circumstances described in the five exceptions to that section, is by that fact, taken out of this section, but the act notwithstanding continues to be within s. 299, and since it is not murder, it is culpable homicide not amounting to murder. Every act that falls within s. 299 and does not fall within this section, since it is not murder, is culpable homicide not amounting to murder. 6 Ind. Cas. 251=11 Cr. L. J. 295. A man who intentionally strikes such a blow with a stick, as is sufficient to cause death in the ordinary course of nature, commits culpable homicide, although he may not have intended to cause death. A. W. N. 1881 105. If an act which an accused person is said to have committed does fall within the explanations to section 300, and does not fall within any of the exceptions therein, the act is murder; but, if it does fall under one or other of the explanations and also falls within the exceptions, the act is one of culpable homicide not amounting to murder. Luck C. 579.

In delivering the judgment in the case of *Queen* v. *Gora Chand Gope*, 5 W. R. Cr. 45, *Sir Barnes Peacock* C.J. said; "There are in my opinion several important distinctions between murder and culpable homicide. An offence cannot amount to murder unless it falls within the definition of culpable homicide: for section 300 merely points out the cases in which culpable homicide is murder". But any offence may amount to culpable homicide without amounting to murder.

"Culpable homicide is not murder if the case falls within any of the exceptions mentioned in section 300.

"The causing of death by doing an act with the intention of causing death is culpable homicide. It is also murder, unless the case falls within one of the exceptions in section 300.

"Causing death with the intention of causing bodily injury to any person, if the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, in my opinion, falls within the words of section 292 'with the intention of causing such bodily injury as is likely to cause death,' and is culpable homicide. It is also murder, unless the case falls within one of the exceptions in section 300, clause 3.

"Causing death by doing an act with the knowledge that such act is likely to cause death is culpable homicide, but it is not murder even if it does not fall within any of the exceptions mentioned in section 300, unless it falls within cause 2, 3. or 4 of section 300, that is to say, unless the act by which the death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or with the intention of causing bodily injury to any person; and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or unless the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death.

"In speaking of acts, I of course include illegal omissions.

"There are many cases falling within the words of section 299, 'or with the knowledge that he is likely by such act to cause death' that do not fall within the 2nd, 3rd or 4th clause of section 300, such for instance as the offences described in sections 279, 280, 281, 282, 284, 285, 286, 287, 288, and 289 if the offender knows that his act or illegal omission is likely to cause death, and if in fact it does cause death. But although he may know that the act or illegal omission is so dangerous that it is likely to cause death, it is not murder, even if death is caused thereby unless the offender knows that it must in all probability, cause death, or such bodily injury as

is likely to cause death, or unless he intends thereby to cause death, or such bodily injury as is described in clause 2 or 3 of section 300.

"As an illustration, suppose a gentleman should drive a buggy in a rash and negligent manner, or furiously along a narrow crowded street. He might know that he was likely to kill some person, but he might not intend to kill any one or to cause bodily injury to any one. In such a case, if he should cause death, I apprehend he would be guilty of culpable homicide not amounting to murder, unless it should be found, as a fact that he knew that his act was so imminently dangerous that it must in all probability, cause death or such bodily injury, etc., as to bring the case within the 4th clause of section 300. In an ordinary case of furious driving, the facts would scarcely warrant such a finding. If found guilty of culpable homicide not amounting to murder, the offender might be punished to the extent of transportation for ten years, or imprisonment for ten years with fine (see sections 304 and 59); or if a European or American, he would be subject to penal servitude instead of transportation. It would not be right in such a case that the offender should not be liable to capital punishment for murder. The first part of section 304 would not apply to the case. That applies only to cases which would be murder if not falling within one of the exceptions in section 300. If a man should drive a buggy furiously, not merely along a crowded street, but intentionally into the midst of a crowd of persons, it would probably be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury, etc., as in clause 4, section 300.

"From the fact of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the intention of causing death, if all the circumstances of the case justify such a presumption; but I should never presume an intention to cause death merely from the fact of furious driving in a crowded street in which the driver might know that his act would be likely to cause death. Presumption of intention must depend upon the facts of each particular case.

"Suppose a gentleman should cause death by furiously driving up a Railway Station. Suppose that it should be proved that he had business in a distant part of the country, say at the opposite-terminus; that he was intending to go by a particular train; and that he could not arrive at his destination in time for his business by any other train; that at the time of the furious driving it wanted only two minutes to the time of the train's starting; that the road was so crowded that he must have known that he was likely to run over some one and to cause death. Would any one under the circumstances presume that his intention was to to cause death. Would it not be more reasonable to presume that his intention was to catch the train? If the Judge or Jury should find that his intention was to save the train, but that he must have known that he was likely to cause death, he would be guilty of culpable homicide not amounting to murder, unless they should also find that the risk of causing death was such that he must have known and did know that his act must, in all probability cause death, etc., within the meaning of Clause 4, section 300.

"If they should so further, and infer from the knowledge that he was likely to cause death, he would be guilty of murder and liable to culpable homicide." See also 1 B. 342, 344, 346; (1928) 10 Lah. 477; 32 P. R. 1887; 27 P. R. 1883; 3A. 776 (778); 33 Cr. L. J. 141. The difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. 7 Pat. 638=9 Pat. L. T. 286=106 Ind. Cas. 433=29 Cr. L. J. 17=A. I. R. 1928 Pat. 169.

Except in cases.—Without any exculpatory circumstances, other than those mentioned in the five exceptions, *vide Suba* v. *Empress*, 40 P. R. 1887 Cr.; 47 P. R. 1887. In deciding the question whether a transaction amounts to murder or to culpable homicide, not amounting to murder, the Judge should not conclude that the offence committed is murder, because there is nothing to show that the accused's act does not come within any of the exceptions mentioned in s. 300. 1 C. W. N. 545. Where a Court finds that an act causing death was done merely with the knowledge that the doer was likely by such act to cause death, as the act does not come within s. 300 there is nothing upon which the exception to s. 300, can operate. 9 P. R. 1891 Cr. When the accused gave such a blow to the deceased on the head which caused the death of the deceased it was for him to show that it was removed from the category of murder by one of the exceptions to the section. 17 A. L. J. 866=52 Ind. Cas. 224=20 Cr. L. J. 608; see also 17 A. L. J.

985=53 Ind. Cas. 495 ; 20 Cr. L. J. 767. There can be no conviction for murder or for culpable homicide not amounting to murder where the *corpus delicit* is not established. Culpable homicide is murder where the party inflicting the injury does it either with the intention that it should cause death or with the knowledge that it may do so. It will not be murder if the case falls within any of the exceptions noted under section 300 I. P. Code. Where there is neither intention, knowledge nor likelihood that the injury will or can result in death, the offence would be neither murder, nor culpable homicide not amounting to murder, but would be voluntarily causing grievous hurt under s. 322 and the conviction in such a case would be either under s. 325 or s. 326 according to the nature of the weapon used. 63 Ind. Cas. 450=22 Cr. L. J. 658.

Clause (1).—Act by which the death is caused, etc.—According to this definition, culpable homicide is murder, unless it be one of the mitigated descriptions of homicide mentioned in the five exceptions which follow (*Morgan and Macpherson*). Clause (a) of section 299 and clause (1) of this section show that where there is an intention to kill the offence is always murder. 1 B. 342. The word "act" includes omission. Vide s. 33. So where it was proved that the accused withheld all nourishment from a child with the intention of causing its death, and the child died in consequence, held that the prisoner was guilty of murder. A. W. N. 1883, 36 ; see also 5 N. W. P. 44 ; A. W. N. 1883. 231 ; 18 P. R. 1870 Cr.

The word "death" denotes the death of a human being (s. 46). The murdered person must be a person in being i. e., not a mere unborn child. [*Reg* v. *Monks*, C. C. C. Sessions Papers, (1870) L. xxii, 424 ; 21 Cr. L. J. 85=21 Bom. L. R. 1101=54 Ind. Cas. 485]. There can be no murder of a child which dies before being born or even whilst being born ; only one that has been born. and moreover born alive. Partial extrusion is not sufficient ; if but a foot be unextricated, there can be no murder ; the extrusion must be complete, the whole body of the infant must have been brought into the world. (*Rex* v. *Poulton*, 5 C. & P. 330). But it is not necessary that the umbilical cord should have been severed. (*Rex* v. *Crutchley*, 7 C. & P. 814 ; *Reg.* v. *Reeves*, 9 C. & P. 25). And to be born alive the child must have been still in a living state after it had quitted the body of the mother. Hence that life then still existed must be actually proved ; and this may be done by giving evidence of any cry, or breathing, or pulsation, or movement, after extrusion. But it is not necessary that the child should have continued to live until it was severed from the mother ; or even until it began to breathe. *Rex* v. *Sellis*, 7 C & P. 853. For a child may not breathe until sometime after full extrusion. (*Rex* v. *Brain*, 6 C. & P. 349) ; though, on the other hand, infants sometimes breathe, and even cry, before they are fully extricated. The birth must thus precede the death ; but it need not prove the injury. (*Reg* v. *Senior*, 1 Moody 346). Thus an act which causes a child to be born much earlier than in the natural course, so that the child when born is rendered much less capable of living and accordingly soon dies, may amount itself to murder. *Reg* v. *West*, 2 C. & K. 784.—*Kenney's Outlines of Criminal Law* p. 129. It must be proved that the child breathed after it had emerged from womb. 17 Cr. L. J. 20=46 P. W. R. 1915=29 P. R. Cr. 1915=32 Ind. Cas. 148.

Intention of causing death.—Where the murder of a newly born child is deliberately committed in cold blood the murder is as serious an offence in the eye of the law as that of a grown-up person, and deserves to be as severely punished. *R.* v. *Irowa*, Rat. Un. Cr. C. 401 ; *R.* v. *Basapa*, Rat. Un. Cr. C. 401. In this case death was due to strangling. The deceased was dragged along with a ligature round his neck. The Sessions Judge was of opinion that the original intention of the accused was to merely maltreat the deceased, but that in their excitement their passion got the better of them and they strangled him either before they dragged him along or in this process. He thought the crime was not a premeditated and cold-blooded murder and that therefore none of the accused were guilty under s. 302, Penal Code. He convicted the accused of culpable homicide not amounting to murder. *Held*, the Sessions Judges' view of law was wrong because the act of strangulation was murder. Those persons who were engaged in committing it must either have intended to cause death or have known that it was so imminently dangerous that it would in all probability cause death. The conviction should therefore have been of murder and not of culpable homicide of the lesser degree. 23 P. R. 1890 Cr. Mere absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. 3 W. R. Cr. 40 ; 23 P. R. 1890 Cr. No constructive but actual intention

is required to constitute murder. 5 W. R. Cr. 42. The intention in this section does not require any forethought. 62 P. R. 1887 Cr. The presumption of law is that a man intends the natural and inevitable consequences of his own act. 1 Weir 300. Inference of intent can be made from the pre-existing enmity between the accused and the deceased. 85 P. R. 1866 Cr.

Proof of motive or previous ill-will is not necessary to sustain a conviction for murder. 7 W. R. Cr. 60; but see 10 W. R. Cr. 11; see also A. I. R. 1933 Lah. 1005; 131 Ind. Cas. 439=1931 Cr. C. 241=8 O. W. N. 107=32 Cr. L. J. 697=6 Luck. 475=A. I. R. 1931 Oudh. 119. It is not murder, if a person kills another without intending to take his life, and if the acts done are not such as conclusively indicate an intention to cause such injury as was likely to cause death. 5 W. R. Cr. 41. In a case of murder, it is for the Court to consider whether the whole case does not disclose circumstances which negative the existence of a guilty intention or knowledge, which is a constituent part of the offence of culpable homicide. 22 P. R. 1868 Cr.

A man's intention can only be gathered from his acts. Death from a blow or blows on the head is probably, as a rule, associated by people unskilled in medical science only with the breaking of the skull. Ignorance of the actual causes which may bring about another's death in consequence of a blow cannot affect the question of the striker's knowledge and intention when striking the blow. If actual knowledge and experience do not do so, instinct at least tells every man that to hit another human being any violent blow on the head may possibly result, or is likely to result or will result, in serious injury to the person struck; but knowledge, belief or expectation of the amount of injury that may be caused must depend upon what is used in inflicting the blow, and the force with which the blow is delivered. A man is presumed by law to intend the ordinary and natural as well as the necessary consequences of his acts. Every man giving another a very violent blow on the head with his fist must be taken to know that the result of his blow may be, and even is likely to be, injury to the other, sufficient to kill him, but unless it must be taken that ordinary knowledge, experience or instinct tell a man that such a result is an ordinary and, therefore a probable consequence of so striking another man, the striker's act would not amount to a greater crime than culpable homicide, for, at most, it would be an act done with the knowledge that he was only likely to cause death, and an intention to cause more than he knew was likely, could not be imputed to him, unless there was further evidence showing what his actual intention was. Every man must be taken to know that, if he repeats violent blows with anything substantial and hard on another man's head, he will probably either kill the man, or cause him such injury as is sufficient, in the ordinary course of nature to cause death. 2 L. B. R. 125=1 Cr. L. J. 184; see also A. I. R. 1933 Lah. 930=1933 Cr. C. 1389; A. I. R. 1933 Lah. 883; 33 P. L. R. 279=33 Cr. L. J. 580=1932 Cr. C. 422. If intention to kill is present, act amounts to murder. If it is absent, it is only culpable homicide not amounting to murder. A. I. R. 1933 Rang. 338=1933 Cr. C. 1148=146 Ind. Cas. 315. In the absence of direct evidence intention of the accused can be gathered from established facts. 137 Ind. Cas. 282=33 Cr. L. J. 457=33 P. L. R. 1=A. I. R. 1932 Lah. 189.

The decision of the question whether the act of the accused amounts to murder or not must rest upon whether he must be held to have intended to cause bodily injury sufficient in the ordinary course of nature to cause death, or whether he only intended to cause such bodily injury as was likely to cause death. 3 L. B. R. 122=3 Cr. L. J. 355. When an act is done with the intention of causing bodily injury and that injury is sufficient, in the ordinary course of nature, to cause death and it does actually cause death, the act is murder, although the person who committed the act may not have known that it was likely to cause death. 1 J. G. 59. Every sane person of the age of discretion is presumed to intend the natural and probable consequences of his own acts. In deciding what the natural and probable consequences of an act are the Court will presume that every actual consequence is a natural and probable consequence unless the contrary is affirmatively shown. 23 Cr. L. J. 313=66 Ind. Cas. 665=(1922) Nag. 141. Where two persons armed with dangerous weapons attacked the deceased on the head, they must be deemed to have intended to cause death. 75 Ind. Cas. 359=24 Cr. L. J. 935=1923 Lah. 598; see also 35 P. L. R. 715=1934 Cr. C. 1093=A. I. R. 1934 Lah. 741. Where the injury is by a club-wound, irrespective of intention the person is guilty of murder. A. I. R. 1926 Oudh. 684=26 Cr. L. J. 1491=90 Ind. Cas. 147. Where a number of men armed with *lathis* make a concerted attack upon another man and practically kill him on the spot

inflicting injuries to the head as result of blows which must have been struck either with the intention to kill or at any rate with the intention to cause hurt, such as the striker must have known to be imminently likely to result in the death of the person struck in the case at least of the ringleaders the penalty prescribed by the law as the proper penalty in cases of murder will be inflicted. 45 A. 130=71 Ind. Cas. 234=24 Cr. L. J. 106=1923 A. 88.

An injury that is merely likely to cause death does not of necessity amount to murder. The act must be done with the intention mentioned in s. 302. Where the degree of likelihood is not sufficiently high, the intention does not extend to the intention of causing such bodily injury as is likely to cause death the offence is only the culpable homicide not amounting to murder. 1 Rang. 285=75 Ind. Cas. 295=24 Cr. L. J. 919=2 Bur. L. J. 94. Culpable homicide is not committed unless the agent either has the intention of causing such bodily injury as is likely to cause death or has the knowledge that he is likely to cause death. 11 O. L. J. 563=81 Ind. Cas. 969=21 Cr. L. J. 1145; see also 77 Ind. Cas. 292=25 Cr. L. J. 356=1924 Nag. 281; 77 Ind. Cas. 801=1924 Pat. 13=25 Cr. L. J. 449=1924 Pat. 635.

Where two persons armed with dangerous weapons attacked the deceased on the head, they must be deemed to have intended to cause death. 83 Ind. Cas. 727=26 Cr. L. J. 167=A. I. R. 1923 Lah. 663.

Motive though not a *sine qua non* for bringing the offence home to the accused is relevant and important on the question of intention.. 32 C. W. N. 345=47 C. L. J. 240=A. I. R. 1928 Cal. 430. The rule of English Criminal Law that one must be taken to intend the natural and probable consequences of his act is not always quite easy to apply to the Indian Criminal law in view of the distinction that the Indian Penal Code draws between intention and knowledge. It should also be noted that on the question of knowledge much depends on the intellectual capacity of the actor. *Ibid.* The circumstance of an act of murder being apparently motive-less is not a ground from which the existence of a powerful and irresistible influence or homicidal tendency can be safely inferred. 112 Ind. Cas. 222=29 Cr. L. J. 1006. Where the accused deliberately lay in wait for the deceased intending to beat him with *lathis* on account of enmity, and in fact did beat him with *lathis* and the deceased died on account of such beating. *Held*, that the intention of the accused must have been to cause death or such injuries as would naturally result in death. 118 Ind. Cas. 190=30 Cr. L. J. 890=A. I. R. 1929 A. 707.

Clause (2)—With the intention of causing such bodily injury, etc.— "The essence of clause (2) appears to me to be found in the words "knows to the likely" and "the persons to whom the harm is caused." The offence is murder, if the offender knows that the particular person injured is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would ordinarily cause death. The illustration given in the section is the following :—A knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury, Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature, to cause death of a person in sound state of heaith." *Per Melville J.* in *R* v. *Govinda*, 1 B. 342. As to the application of this clause *vide* illustration (b) and 4 L. B. R. 132=7 Cr. L. J. 410. Murder as defined in clauses 2 and 3 of s. 300 I. P. Code, is only an application of that part of section 299 I. P. Code, which speaks of an act done 'with the intention of causing such bodily injury as is likely to cause death.' 18 P. R. 1893 Cr. An offence may amount to culpable homicide but not murder even though none of the exceptions in s. 300 are applicable to the case. Clauses (2) and (3) of this section imply a direct mental intention and a special degree of criminality. A. I. R. 1935 Oudh. 239, For cases in which the right of private defence was exceeded, *vide* 64 Ind. Cas. 133; 8 M. L. T. 462; 12 C. L. J. 81; 13 Cr. L. J. 782=17 Ind. Cas. 414; 3 A. 253; 7 W. R. Cr. 73; A. I. R. 1933 Lah. 1048; 5 W. R. Cr. 33; 6 W. R. Cr. 50; 1. P. R. 1880. When the accused, husband and wife, in attempting to protect the latter from attempted rape by the deceased, killed him, *held*, that the right of private defence extended to the causing of death in such case and that no offence was committed. Rat. Un. Cr. C. 867. Where the accused knowing its effect administered arsenic to a boy nine years of age with the object of preventing the father of the boy from appearing as a witness against himself in a criminal case, but in such quantity that the boy died in the course of three days. *Held*, that he was guilty of murder, though his intention might not have been to cause death. 40 A. 360=16 A. L. J. 178=44 Ind. Cas. 636=19 Cr. L. J. 382.

The word "knowledge" in section 300, clause 2, I. P. Code imports certainty and not a mere probability. 7 Pat. 638 = 9 Pat. L. T. 286 = 106 Ind. Cas. 433 = 29 Cr. L. J. 17 = A. I. R. 1928 Pat. 169. If a person stabs another in the abdomen with sufficient force to penetrate the abdominal walls and the internal viscera he must be held, whatever his station of life to have intended to cause injury sufficient in the ordinary course of nature to cause death. 108 Ind. Cas. 268 = 29 Cr. L. J. 369 = 10 A. I. Cr. 37.

Clause (3)—With the intention of causing bodily injury to any person .....sufficient in the ordinary course of nature to cause death—In order that culpable homicide may amount to murder under this clause the prosecution must prove that the accused intended to cause such bodily injury as is sufficient, in the ordinary course of nature, to cause death. L. B. R. (1893—1900) 452. The offence is culpable homicide, if the bodily injury intended to be inflicted is likely to cause death ; it is murder, if such injury is sufficient in the ordinary course of nature, to cause death. The distinction is fine, but appreciable. It is much the same distinction as between clause (c) of section 299 and clause (4) of this section. It is a question of degree of probability. Practically, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part may be likely to cause death, a wound from a sword on a vital part is sufficient in the ordinary course of nature, to cause death. 1 B. 342. The accused struck a woman with a heavy billet of wood causing a fracture of the skull. She fell down senseless and died, subsequently, without having recovered consciousness. *Held*, that, as a fracture of the skull was sufficient in the ordinary course of nature to cause death, the accused must be deemed to have intended to cause such bodily injury as is referred to in the third clause of section 300 of the Penal Code. 1 N. L. R. 134 = 2 Cr. L. J. 746. A medical officer's opinion that the injuries inflicted were not serious, which is based upon a misconception of facts, should be disregarded when the evidence shows that the injuries inflicted were one inch deep and they pierced the plura, which in the ordinary course of events, is sufficient to cause death. 16 Cr. L. J. 543 = 29 Ind. Cas. 671. An accused's intention should be inferred from his act, but not solely from the consequences of that act. The result of cutting a man on the head with a heavy chopper being generally death, the accused must be taken to have known that, that is the natural consequence of such an act, and that he must therefore be presumed to have intended to cause death. 4 L. B. R. 306 = 9 Cr. L. J. 5. In all cases where death results as a result of blows given on head with a blunt weapon such as a stick, the intention of the a assailant must be judged by the circumstances under which the blows were delivered, the weapon used, the force with which the blows were inflicted and the extent of the injuries caused. A. I. R. 1934 Rang. 100 = 35 Cr. L. J. 1112 = 1934 Cr. C. 573.

Certain snake-charmers by professing themselves to be able to cure snake bites induced several persons to let themselves be bitten by a poisonous snake. From the effects of the bite, three of those persons died. *Held*, that the offence was murder under clauses 2 and 3 of s. 300 of Penal Code, unless it could be brought within the fifth exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death the offence would be culpable homicide not amounting to murder. 3 B. L. R. H. Cr. 25 = 12 W. R. Cr. 7. If a person strikes another on a vital part with a cutting instrument, the striker should be presumed to have intended to cause bodily injury sufficient in the ordinary course of nature to cause death. 15 Cr. L. J. 513 = 24 Ind. Cas. 601 ; see also 134 Ind. Cas. 205 = 32 P. L. R. 401 = 32 Cr. L. J. 1127 ; A. I. R. 1934 Pat. 603 = 1934 Cr. C. 1255 = 152 Ind. Cas 636 ; A. I. R. 1934 Sind. 172 = 1934 Cr. C. 1274 = 152 Ind. Cas. 1032 ; A. I. R. 1934 Bom. 156 = 36 Bom. L. R. 210 = 148 Ind. Cas. 1004 = 35 Cr. L. J. 829 = A. L. R. 1934 Bom. 243 ; A. I. R. 1934 Oudh. 499 = 1934 Cr. C. 1379 = 11 O. W. N. 1309 = 152 Ind. Cas. 103 ; A. I. R. 1934 Lah. 20 = 35 Cr. L. J. 619 = 148 Ind. Cas. 191. Where the degree of probability referred to in s. 299 was all that was proved and fell short of that defined in s. 300 (3) I. P. Code, the accused cannot be convicted of murder. 8 S. L. R. 337 = 16 Cr. L. J. 472 = 29 Ind. Cas. 104. In cases of death caused by reckless violence and without premeditation, a safer criterion to determine the question whether the accused is guilty of an offence of murder or of culpable homicide not amounting to murder is the nature of the weapon rather than the nature of the injuries inflicted. 7 S. L. R. 29 = 14 Cr. L. J. 459 = 20 Ind. Cas 619 ; see also 12 P. R. 1911 Cr. = 41 P. W. R. 1911 = 12 Ind. Cas. 967 = 12 Cr. L. J. 591. Where a man strikes another with a heavy iron-bound stick on the head, with such force as to smash in one side of his skull, he must be held to have intended to cause such bodily injury as he knows to

be likely to cause death. U. B. R. (1897—1901) Vol. I. 288. In order that culpable homicide may amount to murder under s. 300 (3), the prosecution must prove that the accused intended to cause such bodily injury as is sufficient in the ordinary course of nature to cause death. L. B. R. (1893—1900). 452. Where the accused had given to the deceased some substance which caused his death, but which the accused alleged to have been administered with intent to bring madness, *held* that, as the person knew that his act was likely to cause death, he was guilty of murder 8. P. R. 1869 Cr. Any act of stabbing into what are ordinarily considered to be vital parts of the body *prima facie* falls within s. 300 (3), Penal Code. The intention with which such an act is done must be gathered from the act itself, and if a person strikes another in a vital part with a cutting instrument, it must be held that the striker's intention is to cause such bodily injury as is sufficient in the ordinary course of nature to cause death. 2 L. B. R. 63.

Where A and his party attacked B, a strongly built man of about thirty five years of age, in a violent and determined manner, inflicting not less than sixteen wounds on his body and causing severe ruptures of his spleen which was in a healthy condition, and so caused his death, *held*, these facts leave no doubt that A and his party who attacked B either intended to cause B's death, or that they attacked him in such a brutal manner, regardless of consequences well knowing that they would be likely to cause death, and that the offence comitted by A and his party therefore amounted to murder. 37 C. 315= 6 Ind. Cas. 921=11 Cr. L. J. 417. Owing to a quarrel which the deceased had with the accused, the latter armed himself with an iron-shod stick and struck one blow with it on the head of the deceased which caused his death. He was convicted of murder. On appeal *held*, that, in as much as it was possible that the blow struck by the accused exceeded in violence the injury he had in view at the moment of striking it, the conviction should be altered from murder to culpable homicide not amounting to murder. 18 Bom. L. R. 793=3 Bom. Cr. C. 211=17 Cr. L. J. 530=36 Ind. Cas. 578. A man who cuts another, even on the leg with such a ferocity and with such a weapon as to cause such an injury as that which the deceased received must be presumed to intend to cause injury sufficient in the ordinary course of nature to cause death, and if death results is guilty of murder unless the case is shown to fall within the exception provided in the Code, 2 Bur. L. J. 103=1923 Rang. 247. A stab in the abdomen with sufficient force to pierce the abdomenal walls is sufficient in the ordinary course of nature to cause death and if death ensues, the offence committed is murder. 1 Rang. 436. Where the assailants scrupulously avoided the vital parts of the body, it is clear that they did not intend either to cause death or to cause such bodily injury as they knew was likely to cause death. 1923 Lah. 319. When a person gave the deceased a club-wound sufficient to cause the death of a man in the ordinary course of nature. *Held*, that the person was guilty of murder irrespective of intention to cause death. A. I. R. 1926 Oudh. 184. A blow on the head with a *lathi* is certainly likely to cause death and the person who inflicts *lathi* blow on the head of another person must be presumed to have the intention of causing such bodily injury as is likely to cause death. But it does not necessarily follow that a *lathi* blow on the head is always sufficient in the ordinary course of nature to cause death. 7 Pat. 638=9 Pat. L. T. 286=106 Ind. Cas. 433=29 Cr. L. J. 17=A. I. R. 1928 Pat. 169.

Intention.—No construction but actual intention is required to constitute murder. 5 W. R. Cr. 42. The intention in this section does not require any forethought. 62 P. R. 1887 Cr. Intention necessary for murder is presumed from nature of wound. 144 Ind. Cas. 282=1933 Cr. C. 577=34 Cr. L. J. 747=A. I. R. 1933 Rang. 95. Mere intention to beat deceased is not sufficient to prove charge of murder. 146 Ind. Cas. 381=10 O. W. N. 557=A. I. R. 1933 Oudh. 333=1933 Cr. C. 780. In a crime committed by several persons acting together, intention must be determined by proved facts of the case. No general rule can be laid down upon such subject. 130 Ind. Cas. 355=8 Rang. 603=32 Cr. L. J. 495=A. I. R. 1931 Rang. 1 (F. B.). Prosecution need not prove adequate motive for commission of crime by accused. 146 Ind. Cas. 381=10 O. W. N. 557=1933 Cr. C. 780=A. I. R. 1933 Oudh. 333. Intention to murder is presumed from striking with sharp-edged weapon upon head with sufficient force to break it. 135 Ind. Cas. 670=33 Cr. L. J. 184=32 P. L. R. 810=1932 Cr. C. 15=A. I. R. 1932 Lah. 5 ; see also 137 Ind. Cas. 65=33 P. L. R. 145=1932 Cr. C. 278=33 Cr. L. J. 375=A. I. R. 1932 Lah. 254. Drunkenness short of proved incapacity to form intent necessary to constitute crime does not rebut presumption of

"intent" arising from this act. 137 Ind. Cas. 86=33 P. L. R. 130=33 Cr. L. J. 378=A. I. R. 1932 Lah. 244.

Premeditation.—Mere absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. 3 W. R. Cr. 40 ; see also 23 P. R. 1890 Cr.

Clause 4.—Person committing the act knows etc.—Clause (c) of section 299 and clause (4) of this section are intended to apply (but they are not necessarily limited) to cases in which there is no intention to cause death or bodily injury. Furious driving, firing at a mark near a public road, would be cases of this description. Whether the offence is culpable homicide or murder, depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide : if it is the most palpable result, it is murder. 1 B. 342. It may be useful here to point out that the Indian Penal Code contemplates that when an act is culpable homicide, whether amounting to murder, or not amounting to murder, by reason of the act being done with the knowledge described in clause (3) of s. 299 (or with the knowledge described in clause 4 of s. 300, which knowledge satisfies the definition in clause 3 of s. 299), an intention to cause death or to cause such bodily injury as is likely to cause death must be absent. When intention of either kind co-exists with the knowlege described, the knowledge merges in the intention, and a higher degree of guilt is imputable. That the degree of guilt is higher when a murderous intention exists (which intention seems to be deemed to impart the specified knowledge), and is lower when the knowledge is unaccompained by such intention, seems a necessary inference from the language of s. 304 as to punishment. 32 P. R. 1887. This clause says nothing about intention. 31 P. R. 1914 ; 73 Ind. Cas. 49. This clause appears to be designed to provide for that class of cases where the acts resulting in death are calculated to put lives of many persons in jeopardy without being armed at any one in particular, and are perpetrated with a full consciousness of the probable consequence. As, for example, where death is caused by firing a loaded gun into a crowd, by poisoning a well from which people are accustomed to draw water, by opening the draw of a bridge just as a railway passenger train is about to pass over it. In such and the like cases, the imminently dangerous act, the extreme depravity of mind and the regardlessness of human life, properly place the crime upon the same level as the taking of life by deliberate intention. The concluding words of this clause, "and commits such act without any excuse, etc." probably refer to such an act as is contemplated by section 81.—*Morgan and Macpherson.*

Where the accused person caught a boy stealing toddy, and being angry, struck the boy a blow on his forehead with a heavy stick he was carrying in his hands and caused the boy's death, *held*, that the accused should be convicted of culpable homicide not amounting to murder, in as much as it was doubtful whether the accused knew more than that a blow, with such a stick and with the force used by him was possibly dangerous to life. 1 Weir, 299. The fourth clause of s. 300 of the Penal Code is intended, primarily. and especially, to apply to cause death or bodily injury to any specific person. 1 N. L. R. 134=2 Cr. L. J. 746. Causing death by an act, which the offender knows to be likely to cause death, is culpable homicide not amounting to murder, punishing murder under latter part of s. 300. While causing death with the knowledge that the most probable result of the act done will be death or such bodily injury as will, in the ordinary course of nature cause death, constitute murder punishable under s. 302. L. B. R. (1893—1900), 112. S with the intention of killing N gave him poisoned sweat-meet. N, after eating a little, threw the rest away and this was picked up by R, who ate it and died. *Held*, that S was guilty of the murder of R. 1912 M. W. N. 136=13 Ind. Cas. 833=11 M. L. T. 127=13 Cr. L. J. 145. The intention of causing death can be inferred from reasonable and probable result of the act or conduct of the accused. If death is caused, even though there is no desire on the part of the accused to kill the deceased, they must be taken to have had the knowledge that their act must in all probability cause death or such bodily injury as is likely to cause death. 11 A. L. J. 926=14 Cr. L. J. 685=35 A. 560=21 Ind. Cas. 1005. The cases in which the fourth clause of s. 300, Penal Code, has any application, are extremely rare, and though it is not easy, and perhaps not desirable, to attempt to define with any strictness the kind of cases in which that clause comes in still there is one very broad distinction between it and the first three clauses —in the latter the important thing is an intention to kill or hurt, while the fourth clause says nothing about intention. 263 P. L. R. 1914=15 Cr. L. J. 610=31 P. R. 1914 Cr.=25 Ind. Cas. 522=45 P. W. R. 1914 Cr. As regards the true construction

of the words "without any excuse in this clause" *vide* 40 P. R. 1888 Cr ; see also 47 P. R. 1887. Men attacking opponents with spears and *vaholas* must be held to have knowledge that they are likely to inflict injuries as will result in death and are guilty under s. 302. 1933 Cr. C. 396=A. I. R. 1933 Lah. 296 ; see also A. I. R. 1933 Pat. 147=34 Cr. L. J. 1071=1933 Cr. C. 402.

Where a poisonous drug was administered to a woman to procure a mis-carriage and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, etc., they were acquitted of murder and convicted of an offence under s. 314 of the Penal Code. 10 W. R. Cr. 59. Where Cl. 4 of s. 300 is applicable at all, it is (1) after negating the application of all the previous clauses, (2) or on a double finding of facts (a) that the act was one of extraordinary recklessness, and (b) that the act was wholly inexcusable. The exceptions to s. 300 are equally applicable to cl. 4 as to the other clauses. The intention mentioned in s. 300 does not require some previous design or fore-thought of murder. The intention spoken of is actual intention, the existing intention of the moment and is proved by or inferred from, the acts of the accused and the circumstances of the case irrespective of the question of the applicability of any of the exceptions to the section. *Per Powell J* in 62 P. R. 1887 Cr. The fourth clause is not applicable to a person who does the fatal act with the intention of causing death, or the intention of causing such bodily injury as is likely to cause death. *Ibid*, per *Plowden J*.

Under the influence of drink and apparently without any motive, two persons setting upon a third brutally assaulted him and caused his death. They were convicted under s. 302, Penal Code, but one of them was sentenced to death and the other to transportation for life. On appeal by them, held that neither s. 325 nor s. 304A. Penal Code, applied to the case, but that, having regard to the merciless nature of the beating inflicted on the deceased, they must, inspite of their intoxication, be held to have had the knowledge referred to in s. 300 (fourthly) and that their act was clearly murder. 28 P. R. 1917 Cr.=35 P. W. R. 1917 Cr. In the absence of any evidence to indicate that a blow was given on a more vital part it must be held that the offender inflicted the blow where he intended. The fourth para of s. 300 I. P. Code, can never be invoked in a case where there was intention of causing specific bodily injury to a particular person. Illustration (d) shows that it only applies to a case of dangerous action without an intention to cause specfic bodily injury to a person. 9 O. L. J. 490=26 O. C. 18=73 Ind. Cas. 49=24 Cr. L. J. 513. Having regard to the extent to which *Dhatura* poisoning takes place in India there is very adequate ground for attributing to ordinary Indians a knowledge of the dangerous results that may occur from administering it. In such cases the burden of proving that they were not possessed of the ordinary knowlege of adults is on the person alleging it. 28 Bom. L. R. 1003=97 Ind. Cas. 654=27 Cr. L. J. 1134.

Constitutes murder.—To constitute murder, there must have been the intention to cause death, or the knowledge that death would be the most probable result of the act done by the accused and such intent and knowledge should be set out in the charge. L. B. R. (1893-1900) 328. The knowledge that an act is likely to cause death does not constitute the offence of murder, but it must be proved that the act was done with the knowledge that it must in all probability cause death. 6 N. W. P. 26 ; see also 75 Ind. Cas. 689. Where in an attack on deceased with sticks, several contusions are caused on head of which first three are fatal, offence was held to fall under s. 302. 142 Ind. Cas. 901=34 Cr. L. J. 462=32 P. L. R. 718=1932 Cr. C. 820 =A. I. R. 1932 Lah. 606. So also in case of stabbing in chest or abdomen with sufficient force to penetrate such structures, the offence *prima facie* amounts to murder. 14 P. L. T. 464=1933 Cr. C. 1079=A. I. R. 1933 Pat. 508. In the course of a murderous attack on his wife by the accused, the former ran to the deceased woman for protection and clasped her arms round her waist. The accused thereupon gave a fatal stab to the deceased with the sole object of making her let go his wife, so that he might wreck his vengence on her. The accused had no quarrel with the deceased and had no intention of killing her. *Held*, that the accused was only guilty of culpable homicide not amounting to murder, as he did not intend to inflict such injury on the deceased as was likely to cause her death or was sufficient in the ordinary course of nature to cause her death. 1912 M. W. N. 193=13 Ind. Cas. 817=13 Cr. L. J. 129. A person, who caused death by stabbing with a knife in such a way that the knife penetrated the cavity of the chest of the person stabbed, must be presumed to have known that he was likely by his act to cause death ; and such a person should be at least found guilty of culpable homicide not amounting to

murder. L. B. R. (1872-1892) 300. Where it is clear that the act by which the death of the accused was caused was so dangerous that it must be presumed that the accused knew it to be likely to cause death, then, unless the accused rebuts this presumption, he must be convicted under s. 299, and if the case does not fall within the exceptions specified under s. 300, then under s. 300. Rat. Un. Cr. C. 411, If is not imperatively necessary, in order to justify a conviction for murder, that the *corpus delicti* should be forth coming. 3 A. 383. Before a person can be convicted of murder, it must be proved beyond reasonable doubt, that murder has been perpetrated and that a veritable *corpus delicti* exists. P. L. R. 1900, 54. Where the whole proof of the *corpus delicti* consists of uncorroborated statements of the accused, great caution is required in placing reliance upon them. 15 P. R. 1890. There is no rule of law that no person should be convicted of murder, unless the body of the murdered person has been discovered. 6 P. R. 1886 Cr. But the strongest possible evidence, as to the fact of the murder, is required when the dead body is not forth coming. 11 C. 635. The fact that the murdered body was not found is no reason for not passing a sentence of death when the offence of murder is clearly proved. A W. N. 1882. 160 ; see also 7 W. R. Cr. 14 ; but see 11 W. R. Cr. 20.

A plea that the accused, who caused the death of the deceased was acting under the impulse of delusion caused by superstitious belief is invalid unless it is shown that the impulse was such as to render him unconscious of what he was doing or to make him ignorant of the fact that the act which he was about to commit was wrong. Otherwise the accused cannot be excepted from criminal liability for the wrongful act. 18 Cr. L. J. 766=41 Ind. Cas. 142. Where the accused caused the death of the deceased by giving an unmerciful thrashing with sticks, smashed both bones of each forearms the right elbow and the right knee cap and occipital area on the right temporal bone of the skull, etc., the act amounted to murder. 3 P. R. Cr. 1919=49 Ind. Cas. 349=20 Cr. L. J. 157. Where a man strikes another on the head with a not very formidable weapon one blow only no greater intention can be attributed to him than that of causing injury likely to cause death. But each case must depend on its own facts, on the circumstanes surrounding the assault, on the motives and the particular weapon used. 65 Ind. Cas. 495=23 Cr. L. J. 111. Where death ensues as the result of a reckless administration of *Dhutura*, the offence is one of murder and not anything smaller. 45 A 557=A. I. R. 1923 All. 608=75 Ind. Cas. 361=24 Cr. L. J. 937. Where the accused had engaged the deceased to carry on negotiations for the divorce of a woman when accused had abducted from her husband but the deceased had failed to settle the matter to the satisfaction of the accused and the deceased gave evidence against accused in an enquiry under s. 202. Criminal Procedure Code. *Held*, there was sufficient motive for the crime. 1923 Lah. 619. Where the deceased was given an unmerciful beating, but although the injuries inflicted upon him were so numerous, no bones were broken and not a single one of the injuries individually amounted to more than simple hurt. *Held*, that if it had been the accused's intention to kill him or to cause him such injury as they knew to be likely to cause his death or such as was sufficient in the ordinary course of nature to cause his death, they would have inflicted wounds of much more serious nature. There the offence committed by him is not murder but culpable homicide not amounting to murder. 7 Lah. L. J. 524=26 P. L. R. 702=A. I. R. 1924 Lah. 733 ; see also 103 Ind. Cas. 843=28 Cr. L. J. 763=A. I. R. 1927 Lah. 654. It is not neccessary for the prosecution to prove the motive for the crime. It is enough if it is established that the crime was committed. 41 C. L. J. 35=86 Ind. Cas. 453=26 Cr. L. J. 805=A. I. R. 1925 Cal. 525 ; 7 Lah. L. J. 59=86 Ind. Cas. 406=26 Cr. L. J. 774 =A. I. R. 1925 Lah, 328. If a person intends to cause an injury, which was in fact sufficient in the ordianary course of nature to cause death, he is guilty of murder. 90 Ind. Cas. 147=26 Cr. L. J. 1491. A person who strikes a blow on the head with a deadly weapon and with such violence as to cut through the skull does so undoubtedly with the intention of causing death or such bodily injury as is likely to cause death. 26 Cr. L. J. 1251=7 Lah. L. J. 175= 26 P. L. R. 221=88 Ind. Cas. 995=A. I. R. 1925 Lah. 373 ; see also 99 Ind. Cas. 77=28 Cr. L. J. 45=A. I. R. 1927 Lah. 63 ; see also 28 Cr. L. J, 452=A. I. R. 1927 Oudh. 174.

In a case of murder once the Court is satisfied that the murder has been committed and that the accused person has committed it, the question of sentence must be determined by the gravity of the offence irrespective of the circumstances whether the body has or has not been discovered. A. I. R. 1931 Lah. 25. Mere fact that they had no deliberate intention of killing any particular individual does not take their case outside cl. (4) s. 300=A. I. R. 1930 Lah. 266.

Exception 1—Principle—"Homicide committed in the sudden heat of passion or great provocation is not murder, althongh it is an offence which ought to be punished, and which in some cases deserves severe punishment. We have seen that the immaturity of understanding, the unsoundness of mind, or, in certain cases, the intoxication, of the person doing an act, exempts him from all criminal responsibility in respect of the act, and its consequences. The law does not extend this exception to the acts of those who are deprived by passion of the power of-self control; but it grants some indulgence to such persons. It punishes their acts, in order to teach men to entertain a peculiar respect for human life, and in order to give men a motive for accustoming themselves to govern their passions. But ordinarily it does not punish such persons as murderers, when they cause death. For anger is a passion to which good and bad men are both subject, and mere human frailty and infirmity ought not to be punished equally with ferocity or other evil feelings.

'The Indian law commissoners, by whom the Code was framed say—In general we would not visit homicide committed in violent passion which had been suddenly provoked with the highest penalties of the law. We think that to treat a person guilty of such homicide as we should treat a murderer, would be a highly inexpedient course—a course which would shock the universal feeling of mankind and would engage the public sympathy on the side of the delinquent against the law."—*Morgan and Machperson.*

Scope.—It is incumbent on an accused person, who seeks to reduce the nature of his crime, by bringing his case under this exception, to prove that the provocation received by him was such as might reasonably be deemed sufficient to deprive him of his selfcontrol, and that the killing took place whilst that absence of self-control lasted and may be fairly attributed to it. 14 C. P. L. R. 188; see also A. I. R. 1934 Lah. 600=35 P. L. R. 588=1934Cr. C. 927. Where, therefore, grave and sudden provocation is pleaded in a case of murder, the question that the Court has to decide is whether, between the cause of the grave and sudden provocation and the dealing of the fatal blow, there was time for the blood to cool and for reason to resume its seat. Rat. Un. Cr. C. 122; 12 W. R. Cr. 68. When the evidence in a case leaves room for doubt as to whether the accused has committed murder or the lesser offence culpable homicide not amounting to murder, the benefit of that doubt should be given to the accused. (1927) M. W. N. 796.

Deprived of self-control.—"When the derangement of the mind reaches that degree that the judgment and reason cease to hold dominion over it,—their authority being suspended and yielding place to violent and ungovernable passion,—the man who was before a rational being is no longer the master of his own understanding becomes incapable of cool reflection, and ceases to have control over his passions. It is to such a state of mind that the law in judging of acts which cause death, gives indulgent consideration. And no mental perturbation or agitation which falls short of this, and leaves a way to reason and the power of self-control can reduce a murder to an offence within the range of this mitigating exception. Terror or fear, no less than anger, may deprive a man of the power of self control.

'If the act is not done under the immediate influence of the excitement but after such an interval of time as in the common course of human feelings is sufficient for reflection, or with the intervention of such circumstances as must naturally produce reflection, the exception is inapplicable. However great the provocation, if there is time enough for passion to subside and for reason to interfere and to regain her dominion, the homicide will be murder.

"If a man finding another in the act of adultery with his wife, kills him at the time, the provocation would ordinarily be deemed sufficient to excuse or mitigate his offence. But if he kills the adulterer, deliberately and in revenge, after considerable interval of time has elapsed, this would probably be held to deprive him of the benefit of the exception. The question whether any act of provocation is grave or sudden enough to mitigate an offence is always, it should be remembered, a question of fact, and not one of law.

"Sometimes the act itself which causes death is so deliberate that it cannot proceed merely from the reason being suspended owing to the grave and sudden provocation. Thus putting a rope round the neck of a man who has been knocked down, and strangling him,—or procuring a deadly weapon, thought and contrivance being shown in doing this after provocation given, and again replacing it immediately after the blow has been struck,—in both these cases the act is done from some cause

beyond the sudden provocation. The length of time will always be an important consideration in such cases ; and the distance travelled. The existence of an old grudge is also important.

"With respect to the interval of time allowed for passion to subside, it has been observed, that it is much easier to lay down rules for determining what cases are without the limits, than how far exactly those limits extend. It must be remembered that in these cases the immediate object of enquiry is, whether the suspension of reason arising from sudden passion continued from the time of the provocation received, to the very instant of the mortal stroke given. For if, from any circumstance whatever, it appears that the party was reflected, deliberated, or cooled, anytime before the mortal stroke given, or if there was time or opportunity for cooling, the killing will amount to murder, it being attributable to malice and revenge, rather than to human frailty. The following are stated as general circumstances amounting to evidence in disproof of the party's having acted under the influence of passion only. If, between the provocation received and the stroke given, the party giving the stroke fall into other discourse or diversions and continue so engaged, during a reasonable time for cooling ; or if he take up and pursue any other business or design not connected with immediate object of his passion or sub-servient thereto, so that it may be resonably supposed that his intention, was once called off from the subject of his provocation ; or again, if it appear that he meditated upon his revenge, or used trick or circumvention to effect it which shows a deliberation inconsistent with the excuse of sudden passion ;—in these cases the killing will amount to murder. It may further be observed, in respect of time, that in proportion to the lapse of time between the provocation, and the stroke, less allowance ought to be made for any excess of retaliation, either in the instrument or the manner of it, The mere length of time intervening between the injury and the retaliation is evidence in itself of deliberation." *Morgan and Macpherson.*

Causes the death of the person who gave the provocation.—"This exception, unlike the general Exceptions of Insanity, Infancy, etc., holds good only against certain persons. Provocation will not mitigate or excuse an act which proceeds from a general determination to injure any man who may come in the offender's way. Suppose a person under provocation to declare that he will stab any man entering or leaving a room,—or that if any man strikes him he will make him repent,—this exception would not avail him, except as against the person provoking him"—*Morgan and Macpherson.* The question of provocation is purely psychological question. 136 Ind. Cas. 314=33 Cr. L. J. 273=1932 Cr. C. 5=A. I. R. 1932 Mad. 25. It is for the accused to make out sudden provocation. 135 Ind. Cas. 337=1931 M. W. N. 167=33 M. L. W. 348=54 M. 678=60 M. L. J. 404=33 Cr. L. J. 115=A. I. R. 1931 Mad. 430. Provocation given by any thing done in obedience to law or by public servant in lawful exercise of his power is not covered by this exception. 14 P. L. T. 464=1933 Cr. C. 1079=A. I. R. 1933 Pat. 508. Grave and sudden provocation need not come from victim within hearing or sight of offender. 139 Ind. Cas. 772=26 S. L. R. 266=1932 Cr. C. 741=33 Cr. L. J. 870=A. I. R. 1932 Sind. 168. Mere vulgar abuse is not grave and sudden provocation. 136 Ind. Cas. 715=33 P. L. R. 382=33 Cr. L. J. 338=1932 Cr. C. 487=A. I. R. 1932 Lah. 369 ; but see 136 Ind. Cas. 715=33 P. L. R. 382=33 Cr. L. J. 338=1932 Cr. C. 487=A. I. R. 1932 Lah. 369.

Causes the death of any other person by mistake or accident.—"Illustrations (a) and (b) belong to this topic. "Passions against one man will not qualify or bring within the exception the homicide of another, unless it proceeds from accident or mistake (see section 80) ; as if the blow aimed at one alights on another. Cases like those which are not infrequent of a person under excitement running amuck and killing all whom he meets, are not mitigated by this exception.

"Where several persons are concerned in the commission of the criminal act which causes death they may be guilty of different offences by means of that act (see section 38). In the illustration (f) appended to the exception now under consideration. A the bystander abets B by intentionally aiding him.

"It will be borne in mind that it is not necessary that the person abetted should have the same guilty intention as that of the abettor" (see section 108, Explanation 3) "*Morgan and Macpherson.*"

First.—"The provocation, however grave and sudden in itself, is not to cloak an act which really proceeds from previous deliberation and design. Suppose A and

B having quarrelled, A says he will not strike but will give B a rupee it he dares to touch him, on which B strikes and A kills him,—or A otherwise invites B to some act of provocation and then kills him for it :—The act being done by A's consent or invitation, given with a view to excuse what he deliberately proposes to do in return, is not sufficient, provocation. Again A without consent or invitation may voluntarily (that is intentionally or by means of which he knows to be likely to have the effect) offer provocation as by introducing in general discourse topics known to be offensive, touching a mans domestic affairs etc. ordinarily a provocation sought on the part of the slayer, would seem rather to aggravate than to mitigate his offence.

"Where the act which causes death appears to be the consequence of premeditation, the exception is inapplicable whether the provocation is sought for or not. If the act does not in truth proceed from the provocation or its consequence, *i. e.* the deprivation of the power of self-control, it is not mitigated."—*Morgan and Macpherson 251.*

Secondly.—"A man is not allowed to extenuate murder, however great the provocation he has received if the provoction be given by public servants or other persons who are acting in obedience to the law's commands or are justified by law, or if the provocation be given by public servants in the lawful exercise of their powers. Ministers of Justice especially, and all public servants while in the execution of their offices, are under the peculiar protection of the law. And this protection is not confined to them but extends to private persons who come to their aid and act by their direction.

"We have seen that under the General Exceptions of the Code not only public servants, but all persons, are justified in respect of acts which the law commands or authorizes them to do. (See sections 76-79). Their acts being justified, it follows that resistance is unlawful, and that such acts afford no legal ground of provocation. This is founded in reason and public utility. A man would not quietly submit to an arrest, if the lawful acts of the person empowered to make the arrest should be held to mitigate his homicide by the person to be arrested. The consequence would be, that in every case of resistance the officer would desist and leave business undone. It is plain that if the state makes the duty of A, a police constable, to arrest B, it would be unjust to A, and would paralyze the administration of the law, if it were justifiable for B to kill A, on the plea of provocation etc.

"But the protection of the law being in general extended only to persons who have lawful authority, and who use that authority in a proper manner, this proviso confines within the same limits, those acts which shall be deemed not to contitute a sufficient provocation. Questions of much nicety and difficulty may often arise touching the legality of process, regularity of the proceeding, and, in the case of public servants, notice of the character in which they act, etc.

"But the homicides which in their circumstances fall within the operation of this proviso, are those only in which the public servant or other person killed has not gone beyond the law in doing that which has the caused provocation. It will happen usually in such cases, that before the blow or other act which causes death, there have been acts of violence on both sides.—force used and repelled by force, the blood already heated kindling afresh at every blow, until in the tumult of passion the voice of reason is not heard. Suppose the public servant or other person acting in obedience to the law is met with violence, and in opposition to such violence and in self-defence strikes a blow, and then is killed by his antagonist. The blow struck under such circumstauces should be regarded as struck not vindicatively or by way of punishment, or for the purpose of offence, but in self-defence only, and to diminish the violence which is unlawfully brought into operation against him. It cannot therefore be any such provocation as will mitigate murder.

"But if the public servant or other person uses force or violence unnecessary, and not justified by law, this provision will not operate to prevent due weight being given to such acts, by the Court in considering the question of fact,—that is to say in considering whether the provocation was not grave enough to prevent the offence from amounting to murder. Thus, if a police officer make an arrest not in a manner authorized by law, but violently by knocking down the person to be arrested, provocation so given would not come within this proviso.

"It will be remembered that acts 'not strictly justifiable by law" (if they do not cause the apprehension of death or of grievous hurt), done in good faith, and under colour of office by or by direction of a public servant, are protected to this extent and there is no right of private defence against them. (See section 99). But such acts seem not to fall within the terms of this proviso concerning provocation.

"Nothing is expressed in the proviso to limit its operation to cases in which a person has notice or knowledge of the character of his opponent i. e. that he is a public servant or that he is a person acting under the authority of a public servant or under some lawful power or authority. When the provocation is given by a private person acting in obedience to law, it may be that a knowledge of the law must be presumed and that notice of his authority is not requisite. But when the provocation proceeds from a thing done by, or by direction of, a public servant, it seems to hold that (in other analogous cases, see sections 99, 183, etc.) some knowledge, or reason for belief, that the person resisted fills a particular character or office, is essential"—*Morgan and Macpherson*; *Vide*, illustrations (c) and (d).

Thirdly.—"The chapter of General Exceptions defines, with such precision as the subject admits of, the limits of the right of private defence and in what cases it extends to causing death. (See sections 90-106). The right being thus given by law, the case is withdrawn from operation of the present exception. When the acts which are supposed to provoke, are acts of resistance which the law allows, it cannot also allow such resistance to be regarded as a provocation sufficient to mitigate or excuse the commission of homicide. Suppose a police officer in the lawful exercise of his power arrests A who not knowing and not having reason to know his intention, resists the arrest but without needless violence. This resistance is as yet lawful in respect of its falling within the limits of A's right of self-defence. (See section 99). But suppose further that the officer repels the force used against him by greater force, and is thereupon killed by A. (See section 100). Here A's conduct may be wholly justifiable; or if he has exceeded the limits of self-defence and has committed culpable homicide his offence may admit of mitigation by reason of provocation given. (See the next Exception). But if the officer, excited by the provocation received from A, had killed him, he would be entitled to no benefit from this first Exception."—*Morgan and Macpherson.*

Explanation.—"It is not sufficient extenuation that the act is done under the influence of passion or some other feeling which takes away the power of self-control. The passion, etc., must have an adequate cause.

"The Code does not attempt to enumerate or define what causes shall be admitted to be adequate causes. It declares only that the excitement or want of self-control must proceed from grave and sudden provocation; and it then leaves it to the Court to decide as a question of fact, whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. The general principle being ascertained to be the loss of self-control arising from great human infirmity,—which is so general, and almost universal as to render it proper to make allowance for it in admeasuring punishment,—the subject is left to be dealt with in each particular case as a matter of fact unfettered by arbitrary distinctions. But notwithstanding that it is declared to be a question of fact, it is not to be supposed that in a matter so important the mere private opinion of each judicial officer is the true rule of judgment. Certain general rules for the guidance of his discretion must be recognized, although, subject to them, each case is to be disposed on a due consideration of its special circumstances.

"Bearing in mind that the exception is founded upon a principle of indulgence shewn by the law to human frailty but not to human ferocity,—it may be safely laid down that the provocation which is allowed to extenuate, must be something which a man is conscious of, and which he feels keenly, and resents, at the instant the act which he would extenuate is committed. A permanent subjection to a wicked and cruel disposition does not mitigate or excuse an offence. So, if the act can be traced to a previous brutal malignity, and not merely to the influence of passion arising from provocation, however grave and sudden the provocation, it will not extenuate.

"Sometimes the act itself must point to a previous determination to murder. Suppose B is poisoned by A. It is proved that A had previously brought the poison and prepared the cup, but that at or immediately before the time of administering it, he received from B in a quarrel, grave and sudden provocation in the shape of severe blows. The blows are not to be allowed to cloak what he does, if it is evident (as it probably would be) that what he does is not done in consequence of the blows, but in consequence of his previous design to cause death. His mind may be agitated at the time; but this is not enough, if the act is not done in consequence of such agitation. Thought, contrivance and design, shewn by preparations made before any provocation, tend to shew that his subsequent act proceeds from his pre-determination, and that it is the result of judgment and reason. The fatal act cannot in such a case be supposed to be owing to want of self-control caused by the excitement.

"As to what acts amount to a provocation grave as well as sudden,—this is a question of fact to be determined on the evidence, and no restrictive or exclusive rule can be admitted. It would seem that the particular temperament of the person provoked, whether this be known or unknown to the provoker, is not wholly to be disregarded. But even if we assume that no allowance can be made for this, and that the provocation must be of that nature and degree which commonly produces in men of ordinary tempers an irritation of mind which renders them incapable of calculating the consequences of their acts, there are some provocations which cannot but be allowed by common consent to be grave enough to mitigate homicide, on the other hand there are many trival, and some considerable, provocations which will not probably be deemed sufficient to extenuate an act of homicide upon a view of the whole of the facts of the case in which they occur.

"If a person strikes another with a deadly weapon, or assaults him with blows causing great bodily pain or blood-shed—or if he in a serious personal conflict assails him, having a great superiority of personal strength or skill,—the provocation would seem sufficiently grave to extenuate. So a blow given to a man's wife or child may well be deemed to have the same provocative power as one given to himself. The discovery of the wife of the accused in the act of adultery with the person killed, is generally admitted to be an adequate cause of provocation.

"And any like grievous outrage, although wounding only the honour and the affections may be thought cause sufficient. On this subject, after referring to the case of the paramour caught in the act of adultery, the Indian Law Commissioners say—"we must own that we can see no reason for making a distinction between this provocation and many other provocations of the same kind. We cannot consent to lay it down as an universal rule that in all cases this provocation shall be considered as an adequate provocation, circumstances may easily be conceived which would satisfy a Court that a husband had in such a case acted from no feeling of wounded honour or affection, but from mere brutality of nature, or from disappointed cupidity. On the other hand, we conceive that there are many cases in which as much indulgence is due to the excited feelings of a father, or a brother, as to those of a husband. Thus a worthless, unfaithful, and tyrannical husband should be guilty only of man slaughter for killing the paramour of his wife, and that an affectionate and high spirited brother should be guilty of murder for killing in a paroxysm of rage the seducer of his sister, appears to us inconsistent and unreasonable.

"There is another class of provocations which some jurists do not allow to be adequate in law, but which have been, and, while human nature remains unaltered, will be adequate in fact to produce the most tremendous effects. Suppose a person to take indecent liberties with a modest female in the presence of her father, her brother, her husband, or her lover. Such an assault might have no tendency to cause bodily pain, or danger ; yet history tells us what effects have followed from such assaults. It is difficult to conceive any class of cases in which the intemperance of anger ought to be treated with great lenity. So far, indeed, should we be from ranking a man who causes death under such provocation with murderers, that we conceive that a Judge would exercise a sound discretion in sentencing such a man to the lowest punishment fixed by the law for man-slaughter.

"It seems that an assault which is in itself slight and does not cause great bodily pain, but which is accompanied by words of menance, threats or other circumstances indicating an intention to inflict such pain, would be deemed provocation sufficient. On the other hand, a mere trespass or injury to lands or goods, a breach of a man's word or promise, words of reproach (including the word of denial), mere words of menace of bodily harm, rant, expressions of contempt, indecent and provoking actions or gestures,—these supposing them to be uaaccompanied by any act showing a present intention to commit a grievous personal injury, have not ordinarily been regarded as sufficient provocation to extenuate the depriving a man of his life. And it must be admitted that violent acts of resentment which bear no proportions to the provocation or insult received, proceed rather from mental malignity than human frailty, and ought not to be extenuated.

"But, in as much as the principle of extenuation is founded on the want of self-control actually occasioned by the provocation, whatever it may be, it must not be forgotten that gross insults by words, gesture or even caricature, may have as petent a tendency as bodily injuries to move some persons on a sudden violent passion. Moreover the intensity of the provocation may depend less on words or blows than on the state of feelings or health of the person provoked. Severe bodily pain may

render a person so susceptible of passion that a small matter may excite him violently.

"When the plea of provocation caused by insulting words, signs or gestures is offered in mitigation of homicide, the administrators of the law may properly reject it in one case, and as properls admit it in another, according to the character and condition of the person who offers it. The framers of the Code lay down no rule that insults by words or gestures shall necessarily be considered an adequate cause of provocation, while for the reasons assigned by them they think it proper to recognize and allow the provocative force of such insults. The great mass of the people are accustomed to the use of insulting words and the display of contemptuous gestures. It is notorious that among them this is the most common mode of offering insult. Foul language and indecent gestures, in consequence, lose much of their offensiveness to them. On the other hand there are doubtless very many persons so sensitive in their feelings that such insults, or even an indignity offered by reflection upon their integrity, an imputation upon their courage, etc., might excite in them sudden and uncontrollable gusts of passion.

"Cases may occur of homicide committed in some manner or by some instrument not likely to cause death and upon provocation of a slighter kind than can be considered grave. In such cases, it is first to be considered and ascertained whether the homicide is a culpable homicide,—or, in other words, whether the act was done with that intention to cause death, or knowledge that death was a probable result, which is a necessary part of the offence of culpable homicide. If it was not, no question can arise under this or any of the subsequent Exceptions." *Morgan and Macpherson.*

Cases—A provocation, though insufficient to bring a charge of murder within the execption, to s. 300, may yet be sufficient for the reduction of the sentence. A statement of an accused pleading guilty, if probable and consistent, should be given weight to and acted on in preference to the prosecution evidence. 16 Cr. L. J. 611=30 Ind Cas. 435. Culpable homicide though committed under provocation, will amount to murder, unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it, all control over his actions, but that the feeling had an adequate cause. I B. L. R. A. Cr. 11=10 W. L. Cr. 26. A, the deceased, came out of his room in a challenging manner to meet M and was fighting with him. S, the father of M interfered. A gave a severe stab on left side of S's chest and also wounded M. M gave A a blow with his knife which tucked into his waist cloth and caused A's death. *Held*, that M was under provocation which was grave enough to deprive him of his self-control, and that he was guilty of the offence of clupable homicide not amounting to murder. 9 M. L. T. 489=12 Cr. L. J. 235=10 Ind. Cas. 262. The appellant a Brahmin and the deceased a chamar, were prisoners in the jail and employed in digging up radishes in the garden. The appellant pulled up a radish and began eating it, and the deceased abused him for doing so, calling him *bohin chod* or *bete chod*, whereupon the appellant struck him four blows with the spade which was in his hand and caused his death. *Held*, that, although the language used by the deceased, a *chamar*, to the appellant, a *Brahmin*, was of a very abusive and offensive character, it would not amount to grave and sudden provocation meant in exception 1 of s. 300 I. P. Code so as to reduce the offence to culpable homicide not amounting to murder. A. W. N. 1886, 297. Where the accused met his sister and a stranger not far from his house and took no immediate action but quietly brought them home, and sat down and talked with them, and, after satisfying himself that there were grounds for suspicions deliberately fell upon him and killed him. *Held*, that the facts of the case did not disclose either grave or sudden provocation within the meaning of exception 1 to section 300. 7 S. L. R. 118=15 Cr. L. J. 501=24 Ind. Cas. 589. In determining whether the provocation contemplated in s. 300, exception 1, was of a character to deprive the offender of the power of self-control, it is admissible in evidence to take into account the state of mind in which the offender was at the time of the provocation. L. B. R. (1893—1900), 249. A. B and C had been drinking together and were all more or less intoxicated. A pressed C to drink more and, on his refusing A, got angry and drew a clasp knife on C, B, the deceased, interfered and, after vainly remonstrating with A, hit him with a branch of a tree on the head. Getting incensed at this, A inflicted on B a fatal blow. *Held*, that as the deceased hit the appellant with the sole object of preventing him from stabbing C, in exercise of the right of private defence as laid down in s. 97, Penal Code, this provocation will not bring the appellant's act under the first exception

to s. 300, Penal Code. 12 Cr. L. J. 477=12 Ind. Cas 85. As regards what does not amount to sudden and grave provacation. *Vide.* 108 P. L. R. 1902. Where the accused saw his sister and her paramour coming out of the *Khurja* of a mosque and receiving an insulting answer from the latter there and then attacked and killed him, *held*, that the provocation received by the accused was both grave and sudden. 140 P. L, R, 1905=2 Cr. L. J. 705. Where an accused. finding his wife inside his house lying on a cot with a man with whom she had previously had an intrigue, murdered the wife. *Held*, that the provocation caused by the wife and the man being found laying together on the cot in view of the previous intrigue was sufficiently grave and sudden to disturb the equanimity of the accused, so that the case fell within the exception contained in this section. 16 Cr. L. J. 625=30 Ind. Cas. 449; see also 3 P. R. 1913 Cr.=11 Ind. Cas. 208=14 Cr. L. J, 208=209 P. L. R. 1913. Where on a quarrel betweee the accused and the deceased, the latter who was stronger thau the other came towards the accused with his shoes in a menacing attitude and the accused thereupon piked up an axe and struck some blows upon the deceased, one of them penterating to the heart and causing instant death, *held*, that the accused was guilty of murder. 29 P. R. 1889 Cr. Grave and sudden provocation is not a necessary consequence of anger or other motive that the power of self-control should be lost. Except where unsoundness of mind or real fear of instant death is proved, the pressure of temptation is no excuse for breaking the law. 20 B. 215. Deliberate intention negatives grave and sudden provocation. 8 A. 635=A. W. N. 1886, 252; see also 8 A. 622=A. W. N, 1886, 250; 1 L. B. R. 46.

Where the accused found a man entering his house at night at the invitation of his wife, with whom that man had criminal intimacy and being enraged, caught hold of him and took him outside the house to some distance and there assaulted him so severely, that he, subsequently, died of injuries received, *held*, that the circumstances under which the deceased was found in the house of the accused on the night of the crime was sufficient to cause grave and sudden provocation to the accused and his relations, and that the provocation was of a nature that would continue to influence the feeling of the accused for a considerable period after the deceased was caught in the house in the company of the wife of the accused. 28 C. 571=5 C. W. N. 708. Where the accused who had been ill for three or four months and who attributed his illness to witch-craft practised upon him by his brother caused the latter's death, *held*, that the provocations arising out of the belief that he was bewitched by his brother, even if it were a real provocation, was not so sudden as to reduce the offence from murder to culpable homicide, not amounting to murder. 1 Weir 305. Where the accused, who had been injured by the deceased in many ways extending over many years, killed the deceased, *held*, that the provocation was not so grave and sudden as to reduce the offence to culpable homicide not amounting to murder. 1 Weir, 306. The prisoner's concubine had left her for another connection which she refused to abandon notwithstanding remonstrances. When she left at the termination of their last interview, he went after her and killed her with a dagger, which he had purchased with the intention of killing her. *Held*, that although her conduct may have been a grave sorce of provocation it was not a provocation of a sudden character or such as the law could take into account in determining the legal aspect of the offence which was murder. 1 Weir 306. The refusal of wife to let the husband have connection with her does not amount to grave and sudden provocation, so as to reduce the offence of killing the wife to culpable homicide, not amountng to murder. 1 Weir, 308. Where there is no deprivation of self-control grave and sudden provocation is not sufficient to bring a case under exception 1 to s. 300 Penal Code. 33 P. R. 1884 Cr. On the occasion of the marriage ceremonies of a man the deceased came and took away the bride and when he remonstrated was soundly abused. He took a pen knife and inflicted a wound which however resulted in death. *Held*, exception 1 to s. 300 I. P. Code applied. 73 Ind. Cas. 695=24 Cr. L. J. 663. Where the accused sister-in-law was raped by the deceased and the accused on hearing of it lost self-control and attacked the deceased his case comes within exception 1. 139. Ind. Cas. 772=26 S. L. R. 266=1932 Cr. C. 741=33 Cr. L. J. 870= A. I. R. 1930 Ind. 168, The accused was asked by the deceased to go out to the fields with him. The accused interpreting this to be an offer for illicit intercourse, used his dagger on the deceased with fatal results. *Held* that the accused had not received grave and sudden provocation and as such his case was not covered by exception 1. A. I. R. 1935 Pesh. 59.

Accused had enticed away the sister of the deceased. The deceased and the accused with the brother who were armed with a spear met at first before the house of the deceased near a mosque where abuse was exchanged and demand was made by the deceased to the accused to return his sister. At the persuasion of a relation the accused retreated being followed by the deceased and between the two Mohallas where each lived at a spot at a considerable distance from the houses of each the accused struck a blow with the spear at the deceased who in no time succumbed to the fatal wound. *Held*, the accused did cause the death of the deceased intentionally and he is not entitled to the benefits of any exception to section 300. I. P. Code. 1923 Lah. 195; see also A. I. R. 1934 Lah. 103=1934 Cr. C. 197=35 Cr. L. J. 1378. Where the crime was not a premeditated one and it was quite clear that the accused must have acted on sudden impulse as death took place by strangulation effected by twisting deceased's hair round her throat. *Held* some sudden provocation must have arisen to impel the accused to do this deed. 1923 Lah. 691. The accused who was already aware that his wife had an intrigue with the deceased, followed them on one occasion, and, having found them in each other's arms, killed the deceased. *Held*, that the case was not covered by exception 1 to Section 300 I. P. Code. 7 P. R. 1890 Cr. Where a wound resulting in death was inflicted in which cruel aud unusual means were used and where there was grave, but not sudden provocation, *held* that the accused was guilty of the offence of murder. 1 Weir 303; see also 40 L.W. 777=1934 M.W.N.1358=1934 Cr.L J 1938=A.I.R.1934 Mad. 722=67 M.L.J. 674. A man who, by a single blow with a deadly weapon, kills another man who, at the dead of night, entered his room for the purpose of having criminal intercourse with his wife, is guilty only of causing grievous hurt on a grave and sudden provocation. 3 W. R. Cr. 55. Where an accused person, without necessity went out on the road armed with a knife, uttering a challenge to fight, and on the fight beginning, used his knife so as to cause the death of his opponent, *held*, he had committed murder. L. B. R (1893—1903), 459. The mere fact that a man, who, having found another sleeping with his wife, killed him on the spot, called aloud at the time for the assistance, did not necessarily indicate that he had acted under grave and sudden provocation. A. W. N. 1881, 112. The accused's wife carrying on intrigue with another and inspite of the advice of a *panchayat* refused to mend her ways. On the day of the offence, the husband advised her to give up her bad ways, to which she asked him to go his own way, whereupon he killed her. *Held*, these was a grave and sudden provocation within the meaning of the section. 9 O. & A. L. R. 556. Where a person finds his wife in *flagrante delicto* with another man he is deprived of the power of self-control by grave and sudden provocation and if he kills wife acting under that impulse he comes within exceptions, 300. 71 Ind. Cas. 992=24 Cr. L. J. 273.

The accused wife was in the habit of going away from her husband's house though she was not illtreated there. One day the accused heard that his wife was again running away and followed her to a grave. He happened to carry a chopper at the time but not with the intention of killing his wife, he having been working in his field with the chopper. He tried to persuade his wife to accompany him back home but she refused and gave him foul abuse whereupon the accused struck her with the chopper and caused her death. *Held*, having regard to the unfortunate habit of the woman of running away from home, the foul abuse given by her to her husband who tried to take her back home, and having regard to the circumstances of an Indian household where the wife is expected to obey and respect her husband, there was grave and sudden provocation. 74 Ind. Cas. 712=24 Cr. L. J. 808.

The rule contained in section 300, exception (1) does not contemplate that in order to entitle an accused to earn the mitigation provided for the act must immediately follow the provocation. 12 Lah. L. J. 406. Before a person can claim the benifit of s. 300 exception (1) I. P. Code, he must prove (i) that he was deprived of the power of self-control, and (ii) that the provocation was so grave and sudden as to reasonably justify such loss of self-control. In other words it ought to be distinctly shown not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action but that feeling had an adequate cause. In the absence of such proof, the atrocity of the offence will not be mitigated and the offender will not be able to escape the legal consequence of the act. A person who flies into passion without just cause and goes about slaughtering people may be insane but if he is sane he cannot defend his action on the ground of provocation. 63 Ind. Cas. 610=22 Cr. L. J. 674 .

The accused, discovering his daughter-in-law in his house with a Mahomedan fakir, got in to a rage, seized an axe and haked the girl to death. *Held*, that the pro-

vocation received by the accused was sufficient to remove his act from the category of murder. 61 Ind. Cas. 165=22 Cr. L. J. 341=3 U. P. L. R. (A.) 41.

Where the accused killed his wife who had long been known to him to be a woman of loose character and who had again and again desired access to him the act cannot be said to have been done under grave and sudden provocation. 65 Ind. Cas, 522=Cr. L. J. 140=4 U. P. L. R. Lah. 49. Provocation which is neither grave nor sudden enough to deprive even an ordinary hot-tempered person of self-control cannot operate to create an exception 1 to s. 300 Indian Penal Code, if the offender can show that, though not insane he has a temperament that is outside the normal course of human development. It is a question of fact as to whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. 76 Ind. Cas. 105=25 Cr. L. J. 105. The burden of proving that an accused who committed an offence acted under the influence of grave and sudden provocation which deprived him of power of self-control is upon him. 6 Lah. L. J. 323=1924 Lah. 654; 81 Ind. Cas. 717=25 Cr. L. J. 1005; 26 P. L. R. 304. A husband actually saw his wife having sexual intercourse with another and killed her then and there with an axe. *Held*, the fact brought him within exception 1 to s. 300 and even if the plea was not taken by the accused, it was the duty of the Court to give him the benefit of it and convict him only under s. 304 I. P. Code. 25 Cr. L. J. 1077=81 Ind. Cas. 901=1925 Nag. 37. To attract the operation of s. 300, exception 1 there must exist such an amount of provocation as would be excited by the circumstances in the mind of a reasonable man and so as to lead the jury to ascribe the act to the influence of that passion. The provocation must be such as will upset not merely a hasty and hot-tempered person, but one of ordinary sense and calmness. 5 Lah. 67=81 Ind. Cas. 826=25 Cr. L. J. 1050. Where the accused saw his wife actually committing adultery there cannot be the least doubt that grave and sudden provocation must have been caused. The rule contained in s. 300 exception (1) does not contemplate that in order to entitle an accused to earn the mitigation provided for, the act must immediately follow the provocation. 23 Cr. L. J. 563=68 Ind. Cas. 403. The accused saw the deceased in his house at midnight taking liberties with his sister whereupon he beat him to death. *Held*, that the accused had grave and sudden provocation and that he was guilty of culpable homicide not amounting to murder. 5 Lah. L. J. 40=1924 Lah. 92. It appeared from the evidence of some of the witnesses for the prosecution that the accused got enraged when the deceased abused him, but considering that after attacking the victim with a fork the offender fetched a *Shhari* in order to strike the deceased agian it is not possible to hold that the provocation that he received can be regarded as sudden within the meaning of the first exception to section 300 Indian Penal Code nor that the abuse uttered by the deceased can be received as a grave provocation in ordar to reduce the offence to one of culpable homicide. 1923 Lah. 408.

Where the deceased remonstrated with the accused's father for diverting the course of the old water channel which led to a quarrel and then the accused came to support his father and assaulted the deceased. *Held*, there was no grave and sudden provocation within the meaning of Exception I. A. I. R. 1924 Lah. 742. Finding wife and her paramour at dead of night together is grave and sudden provocation. 26 P. L. R. 260=85 Ind. Cas. 374=6 L. L. J. 437=A. I. R. 1925 Lah. 114. A wife who had been leading a grossly immoral life, was after one such act upbraided for her misconduct by her husband. She replied she would continue to do the same and when the husband chastised her, she struggled with him and bit his finger, whereupon he took a knife and stabbed her to death. *Held* the case fell within Exception 1 to s. 300 I. P. Code. 88 Ind. Cas. 844=26 Cr. L. J. 1928=A. I. R. 1925 All. 676; see also 83 Ind. Cas. 482=26 Cr. L. J. 3; 29 Cr. L. J. 347=A. I. R. 1928 Lah. 544; 30 Cr. L. J. 1044=119 Ind. Cas. 323 A. I. R. 1930 Lah. 1711. If a person lost temper and struck another on the head with a *lathi* his action is not distinguishable from illustration (c) to the first Exception to s. 300 and he is *prima facie* guilty of murder. 90 Ind. Cas. 159=26 Cr. L. J. 1503. Deceased was having an intrigue with wife of accused for a long time and used to sing provocative songs tantamount to declaration, his intrigue. *Held*, that the relations between the accused, the deceased and the accused's wife were such as to constitute a continuing grave provocation; the song mentioned in evidence was of a nature to give sudden and grave provocation every time it was sung by the deceased in the presence of the accused; the mere fact that he had managed to control himself on previous occasions when provoked, was no reason for refusing to give the benefit of Exception (1). A. I. R. 1935 Pesh. 78. The provocation contemplated by

s. 300, Exception 1, must be such as will upset not merely a hot-tempered or hypersensitive person, but one of ordinary sense and calmness. 96 Ind. Cas. 209=27 Cr. L. J. 897=A. I. R. 1926 Lah 598. Abuse of the accused by the deceased cannot be said to be grave and sudden provocation so as to reduce the offence of murder to culpable homicide. 27 P. L. R. 15. If a man comes home and finds a person actually misbehaving with his relation, his blood can hardly be expected to have cooled in the course of 15 or 20 seconds, and it is grave and sudden within the Exception 1 to s. 300. 27 Cr. L. J. 65=91 Ind. Cas. 241=A. I. R. 1926 Oudh. 272. The deceased ran out of his house calling out the accused and provoking a fight and the accused in return defied the accused and told him to come on. The deceased then caught hold of the accused by the tuft and gave him two blows with the fist. There was a struggle and the deceased held accused firm by the tuft. The accused then gave the deceased a blow on the left side with a *baker* which he had in his hand and this caused his death. *Held*, on these facts that there was grave and sudden provocation and that the offence was culpable homicide not amounting to murder. 1927 M. W. N. 796. Whether provocation is grave and sudden such as to deprive the the accused of the power of self-control is a question of fact to be determined upon the peculiar circumstances of each case. In determining that question the Court must take into account the condition of the mind in which the offender was at the time of the provocation. 29 Cr. L. J. 459=108 Ind. Cas. 902. Where a brawl is taking place in which the assailants on both sides are using sticks, a member of one side who intervenes with a hatchet and strikes over the head of a member of the other side who is empty-handed and taking no active part in the fight and kills him in consequence, he is guilty of murder and Exception 4 of section 300 has no application to such a case. 5 O. W. N. 29=107 Ind. Cas. 177=29 Cr. L. J. 230=A. I. R. 1928 Oudh. 221. Where the accused snatched a *lathi* from the hands of a person standing near and struck a blow over the head of the deceased and after felling him continued to belabour him and it appeared that though there was sudden fight between the two people the deceased had caused no injuries worth the name and that the accused had dealt violent blows so as to cause death in a brutal manner. *Held*, that the accused was guilty of murder and that Explanation IV to s. 300 I. P. Code did not apply to the case. A. I. R. 1928 Oudh. 282=5 O. W. N. 391. Abuse by deceased who is person of law caste to her husband does not constitute grave provocation though it may be sudden. A. I. R. 1930 Lah. 344. Improper overtures by step-mother to her step-son do not amount to grave and sudden provocation. A. I. R. 1930 Lah. 415.

Exception (2).—The right of private defence may arise when a person sees a man approaching him with a stick trailing in his hand, for he might expect the man to hit him with the stick. But when such a person claiming the right has another companion by his side who is himself properly armed, he should at least call on the person approaching him with the stick to drop down his stick before resorting to such a dangerous mode of exercising the right as firing a shot at such person. 35 Ind. Cas. 511. When there is a free fight between two persons no right of private defence accrues to either of them. 151 Ind. Cas. 469=35 Cr. L. J. 1319=1934 Cr. C. 559=A. I. R. 1934 Lah 332. Where a case falls under this exception the conviction should be under s. 304 and not under s. 302. A. I. R. 1933 Lah. 144=1933 Cr. C. 267=34 P. L. R. 886=145 Ind. Cas. 921. Plea of self-defence can be raised in appeal. 142 Ind. Cas. 901=33 P. L. R. 718=1932 Cr. C. 820=34 Cr. L. J. 462=A. I. R. 1932 Lah. 606.

"This exception applies where death is caused by an act which is done in the exercise of the right of private defence, but which is not a lawful act, because it exceeds the limits assigned by law to that right.

"The law in certain cases allows a man to cause the death of another man in self-defence. In these cases no offence is committed, and there can of course arise no question as to the culpability of the homicide. In other cases, the law limits the right of private defence to the causing of any harm other than death. It is with reference to such cases that this exception must be considered, for it applies only to homicides caused by an excessive and unjustifiable exercise of this limited right of private defence. The tendency of this provision is to favour persons who have been led in an energetic exercise of the right of defence to step beyond the prescribed line.

"This Exception is clearly connected with the law of private defence and must necessarily partake of the imperfections of that law. The Indian Law

Commissioners observe: "wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and culpable homicide in self-defence.

"The chief reason for making this separation is that the law itself invites men to to the very verge of the crime which we have desingated as culpable homicide in defence. It prohibits such humicide indeed. But it authorizes acts which lie very near to such homicide. And this circumstance we think greatly mitigates the guilt of such homicide. That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to punish such killing. But we cannot think that the law ought to punish such killing as murder. For the law itself has encouraged the slayer to inflct on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage, to give the assailant a cut with a knife across the fingers which may render his right-hand useless to him for life, or to hurl him down stairs with such force as to break his leg. And it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the same assailant, that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment, seems unreasonable. In a case in which the law itself empowers an individual to inflct any harm short of death, it ought hardly, we think to visit him with the highest punishment if he inflicts death.

"It is to be considered also that the line between those aggressions which it is lawful to repel by killing, and those which it is not lawful so to repel, is in our Code, and must be in every Code, to a great extent an arbitrary line, and that many individual cases will fall on one side of that line which, if we had framed the law with a view to those cases alone, we should place on the other. Thus we allow man to kill, if he has no other means of preventing an incendiary from burning a house; and we do not allow him to kill for the purpose of preventing the commission of a simple theft. But a house may be a wretched heap of mats and thatch, propped by a few bamboos, and not worth altogether twenty rupees. A simple theft may deprive a man of a pocket book which contains bills to a great amount, the savings of a long and labourious life, the sole dependence of a large family. That in these cases the man who kills the incendiary should be pronounced guiltess of any offence and that the man who kills the thief should be sentenced to the gallows, or if he is treated with the utmost lenity which the Courts can show, to perpetual transportation or imprisonment, would be generally condemned as a shocking injustice. We are therefore clearly of opinion that the offence which we have designated as culpable homicide in defence, ought to be distinguished from murder in such a manner that the Courts may have it in their power to inflict a slight or a merely nominal punishment or acts which to though not within the letter of the law which authorizes killing, in self-defence, are yet within the reason of that law.'

"There must be a fit occasion for the exercise of the right before any question can arise under this Exception. Suppose a man having no pretence for so acting, enters the house of another against his will and refuses to quit, whereupon the owner, using no force or violence beyond what the occasion calls for, proceeds to eject him. If the intruder resists and so causes the death of the owner of the house, the homicide is not extenuated by this Exception, for the intruder's acts were not done in the exercise of any right or lawful power but were wholly illegal, on the other hand, if under similar circumstances the owner of the house used unnecessary violence to the trespasser and thereby caused his death, this Exception would be applicable.

"The following cases will further illustrate the exception. A, finding B plucking stakes from his hedge or trampling on his crops, deliberately fires a gun at him, or uses a deadly weapon to punish him. This degree of violence is not justifiable (see section 103.) And B, notwithstanding his wrongful act, may protect himself and his life against it. The right of defence under such circumstances arises to him, and he may repel force by force. And should he cause A's death, the homicide will be mitigated under the present Exception.

"Suppose a parent, master, guardian, etc, chastises with great severity, in a cruel and unusual manner, his servant, pupil, etc, and the latter resents the act and causes

death. He may claim the benefit of the Exception. For a power lawful within certain limits may, if exercised oppressively be resisted by the sufferer; and if, in defence of himself against oppression, he causes death under circumstances which because of the excess of force, are not justifiable, his offence may still be entitled to mitigation.

"This Exception, like the preceding one is not to be made a cloak for premeditated crime. If A strikes B, intending and foreseeing that B will resent it in such a mode as to justify A in resorting to self-defence under cover of which he designs to take B's life, this exception does not apply. Nor does it where great violence is resorted to and death is thereby caused upon a trivial occasion.

"It is enacted by one of the General Exceptions (section 79) that nothing is an offence which is done by a person who by reason of a mistake of fact believes himself justified by law in what he does. There may, it seems, be cases of homicide in the exercise of the right of private defence to which the General Exception rather than the particular Exception now under consideration is applicable. A person who in good faith exceeds the strict limits of the right of self-defence, under a mistake of fact as to the degree of force which is opposed to him and what is requisite to repel such force, is probably excused under the 79th section." *Morgan and Macpherson.*

Cases.—Where the accused, who was concealing himself from the Police, was seized by the deceased and two others, and in order to rescue himself he struck the deceased two severe blows on head and shoulder, with an axe, which he had in his hand at the time, in consequence of which blows the deceased expired in a week. *Held*, that the accused exceeded his right of private defence in that he caused more harm than was necessary to resist the unauthorised attempt of the deceased to place him in confinement. 12 Cr. L. J. 81=9 Ind. Cas. 452. The accused can have no benefit under this section, where he fired at a person mistaking him for a thief as regards certain fruits. 13 Cr. L. J. 782=17 Ind. Cas. 414. Where the deceased and some of the prosecution witnesses had trespassed by night into the house of the accused and were dragging him outside the house, the accused was entitled to defend himself against them. But where the accused while so being dragged, stabbed the deceased, and the first accused inflicted a mortal wound on the former and caused grievous hurt to the latter, when his assailants were unarmed and when there was nothing to suggest that he had any reason to believe that he was in danger of death or grievous hurt at their hands. *Held*, that the accused exceeded his right of private defence, but was within the second exception of this section, and that he was not guilty of murder but of culpable homicide not amounting to murder. 8 M. L. T. 462=8 Ind. Cas. 1088=12 Cr. L. J. 18. The case of causing the death of a thief suddenly discovered and pursued, was held to amount to culpable homicide not amounting to murder. U. B. R. (1897—1901), Vol. I. 291.

Accused, a servant employed to watch the crops of a field, went round one night and saw a man cutting crop at midnight. The thief on seeing the accused tried to run but accused, who was armed with a *lathi* at once struck him a blow on the head felling him to the ground; the victim of the blow eventually died. *Held*, that under Exception 2 to section 300, Penal Code, the accused exceeded the right of private defence of property. 64 Ind. Cas. 133=22 Cr. L. J. 741. If a person in defending himself exceeds the right of private defence and intends to cause death of his assailant he must not be held to be guilty of murder. A person in order to defend himself, may kill his adversary provided he has a reasonable apprehension that otherwise he himself would be killed. But if he exceeds the right of self-defence where there is no reasonable apprehension of his being killed but only had reasonable apprehension of grievous hurt and in defending himself exceeds his right of private defence and kills the other, he is guilty of an offence less than murder. 26 Cr. L. J. 1142=88 Ind. Cas. 405=A. I. R. 1925 Mad. 1069; see also 26 Cr. L. J. 1320=89 Ind. Cas. 264=L. R. 6 A. 113 Cr.=A. I. R. 1925 All. 753; 14 P. L. T. 464=1933 Cr. C. 1079=A. I. R. 1933 Pat. 508.

Exception (3)—Shooting under an illegal order of superior officer, is no excuse. 21 M. 249; 83 Ind. Cas. 702 (2).

"This exception extenuates certain acts of public servants in excess of their lawful powers. Death caused by such acts,—done in good faith and without ill-will, for the advancement of public justice,—is excused because it would be unjust to hold that those persons upon whom the law imposes certain duties which

they are bound to discharge, are to be punished as murderers because they may have undesignedly or incautiously overstepped the limits of their authority." *Morgan and Macpherson.*

Public servant acting for the advancement of justice.—"The explanation of the words 'public servant' (see section 21) makes the expression to include a large class of persons, of whom those only are here included who act 'for the advancement of justice.' Without attempting to enumerate who may come within these terms it seems clear that officers of police, both civil and military—ministerial officers of Courts of Justice, jailors etc., acting in the execution of their respective duties are within its meaning. On the other hand, person invested with rights to collect and distribute the revenue of the state, customs officers, revenue and survey officers, the Municipal Commissioners in the Presidency Towns and their servants etc., are not while executing their principal and appropriate duties, included.

"This exception will be applicable to cases in which peace officers cause death in keeping the peace or in executing criminal process. In these and all other cases to which the exception applies, the public servant will be regarded as acting in advancement of justice, not only while actually engaged in his duty of keeping the peace, suppressing an affray, serving process, etc., but also while going to and returning from the place to which his duty calls him. Therefore if he comes to do his duty, and meeting with opposition on the way, uses a degree of violence to overcome it, beyond that which the law permits, and thereby causes death,—his offence will not amount to murder if he acts in good faith according to his view of what is lawful and necessary"—*Morgan and Macpherson.*

"Exceeds the powers given to him by law, etc."—No case arises for the operation of this exception, when the conduct of the public servant is wholly illegal and unauthorized. For although the law is not extreme to mark with severity what has been honestly done by a public servant in the discharge of his duties, yet if he takes on himself to act for the advancement of justice without any colour of authority, or grossly in excess of his lawful powers, he forfeits the protection of the exception. It must be ascertained carefully in each case what are the powers and privileges which the public servant possesses, and what is the nature of his conduct in the matter wherein he has exceeded those powers. The following sections of the Code should also be consulted. Sections 52, 76-79 and 99.

"A has a warrant for the arrest of B, who runs away to avoid the arrest. He is pursued by A, who trips him up or strikes him to prevent his escape, and kills him. If in respect of this excess, A should be deemed to have committed culpable homicide, this exception will extenuate his offence so far as to prevent it amounting to murder. But suppose a defect or irregularity in the process or a mistake in good faith by which B is taken for C the person really named in the warrant. In such a case, the offence of A is, it is conceived, not the less within the present exception. For although his lawful authority, so far as it derived from the warrant, fails him, yet he has the protection of certain provisions (see sections 76 and 78) which give to his act sufficient legal effect or validity to prevent this excess from being punished as if he had committed murder or from being punished otherwise than under the present section."—*Morgan and Macpherson.*

Without ill-will towards the person whose death is caused.—This expression seems intended, like others in former exceptions, to guard against the application of the exception to cases in which it might be sought to use it to cloak such acts of violence as make an offender really a murderer."—*Morgan and Macpherson.*

Those who give their aid to public servants acting for the advance of public justice, are entitled to the benefit of this exception.—*Morgan and Macpherson.*

Exception (4).—Where the deceased and the accused simultaneously made preparations and fought immediately, case comes under exception 4. 144 Ind. Cas. 420 =1933 Cr. C. 732=34 Cr. L. J. 783=A. I. R. 1933 Rang. 142 ; see also A. I. R 1933 Lah. 851 ; A. I. R. 1933 Lah. 434. In order to get benefit of this exception the accused must not have taken undue advantage or acted in cruel or unusual manner. 142 Ind. Cas. 901=34 Cr. L. J. 462=33 P. L. R. 718=1932 Cr. C. 820=A. I. R. 1932 Lah. 606 ; see also A. I. R. 1931 Lah. 280=32 Cr. L. J. 1254=1931 Cr. C. 536=134 Ind. Cas. 829 ; A. I. R. 1933 Oudh. 438=10 O. W. N. 986=1933 Cr. C. 1323 ; 14 P. L. T. 464=1933 Cr. C. 1079=A. I. R. 1933 Pat. 508 ; 1933 Cr. C. 396=A. I. R. 1933 Lah. 296 ; A. I. R. 1934 Lah. 818=1934 Cr. C. 1152=35 Cr. L.J. 1165=150 Ind. Cas. 640. A prisoner who taking advantage of an incident which occurred in what till then had

been a fair fight, struck his opponent, and knocked him over should not have been found guilty of murder. W. R. 1864 ; Cr. 36 ; L. B. R. (1872—1892) 271 ; 13 Cr. L. J. 272 ; 40 A. 686. Where the accused pleads that the deceased met with his death as the result of a sudden fight in which there was no premeditation and that the fight arose out of a sudden quarrel, but, it is clear that the accused took undue advantange of the deceased in as much as the deceased was lying on his *charpoy* and was not armed and in a position to defend himself, exception 4 does not apply. 101 Ind. Cas. 191=28 Cr. L. J. 415. If two men are fighting and one of them is unarmed, while the other uses a deadly weapon, the one who uses such a weapon must be held to take an undue advantage and not entitled to the benefit of Exception 4 to s. 300 Penal Code. 2 L. B. R. B. 320=1 Cr. L. J. 1128. The number of wounds is not the criterion, but the position of the combatants with regard to their arms and the use of those arms are the considerationst o be kept in mind when applying Exception 4 to s. 300. A. I. R. 1935 Pesh. 59.

Sudden quarrel and sudden fight.—The stress which is laid upon this is to be remarked. The degree or kind of provocation does not so much enter into consideration here as the suddenness of the dispute and of the fight which follows. The lapse of time between the quarrel and the fight is therefore a very important consideration.

"It may be material also to enquire what were the previous relations between the disputants. If the persons are strangers to each other, until the time of quarrel and have no previous cause of contention, the fight will probably be 'in the heat of passion upon a sudden quarrel' within this Exception. Still more so, if they have lived previously upon terms of intimacy or friendship, and no cause of contention has arisen. But where there has been an old quarrel between A and B, the Court should narrowly examine the circumstances of this seemingly new and sudden falling out, to ascertain that it is not really the continuance of the old fued. If there has since been a true reconciliation the old enmity should not be considered. But if the circumstances show that the reconciliation was pretended or counterfeit, the quarrel cannot be held 'sudden' within this exception.

"The following illustration shows the operations of the exception. A and B, having no previous enmity against one another meet and, some cause of dispute arising quarrel and fight upon the spot. If death ensues in fair fight, this homicide does not amount to murder, and it matters not who gave the first blow or provocation. But if they quarrel overnight and agree to fight next day, or quarrel in the morning and agree to fight in the afternoon, however sudden the quarrel, the fight is not sudden but a deliberate act previously appointed and arranged and the homicide will be mu der.

"Upon this ground the causing of death in a deliberate duel cannot fall within this mitigating exception. In duels there is usually deliberate fighting in cold blood, and after a certain lapse of time from the injury done or the cuase of quarrel. Such a duel cannot be called a sudden fight without premeditation. Even if the fighting follows immediately upon the quarrel, or so quickly after it that the heat of passion has not subsided, a duel and other contest with deadly weapons, although fought suddenly and without premeditation, would perhaps not be deemed within his exception."—*Morgan and Macpherson.*

Without the offender's having taken undue advantage etc.—"The fight must be a fair fight as well as a sudden one. And it cannot be so unless the parties stand upon some footing of equality as regards arms, bodily strength, and preparedness for the combat. Suppose a sudden quarrel between a powerful man, with arms in his possession, and a decrepit person or a defenceless woman. The man using his arms against such opponents would be guilty of murder if he caused their death.

'It must not, however, be supposed that the exception applies only to cases in which each party to the combat is equally matched in point of muscular strength, skill, and arms, etc. For where there is no manifestly gross inequality, minute differences in bodily strength or in other particulars should not be deemed sufficient to remove the case from the operation of this Exception."—*Morgan and Macpherson.*

"**Undue advantage.**"—May consist in this that at the outset there is some conduct which puts the combatants upon an unequal footing. A attacks B suddenly and when B's back is turned : or he draws his sword and rushes upon B without giving him time or opportunity to prepare. In such cases, the combat does

not begin upon an equal footing, and undue advantage is taken ; and this, more particularly in the last case, where the attack is made with a dangerous weapon. Suppose the contest to be with fists, and one of the combatants has concealed in his possession an open knife and causes death by wounds from this knife. He gains an undue advantage and also acts in a cruel manner. If the combatants begin the fight fairly, but one of them being worsted seizes some deadly weapon which is at hand and uses it and causes death, it seems such conduct excludes him from the benefit of this exception. In such a case, however, it may be that the excitement of passion or fear under which he labours may be deemed to mitigate his offence.

"Suppose two persons fight, and one overpowers the other and knocks him down, and then strangles him with a rope. This is a deliberate act, no part of the fight, but a cruel and unusual proceeding, which cannot be extenuated.

"All struggles in anger, whether by fighting with or without weapons, by wrestling, or by any other mode, may be offences. But they are offences of very different degrees. In many cases homicide thus caused is so culpable, as to deserve a very severe punishment ; but in other cases, a slight or merely nominal punishment may suffice. It will be found that the Courts have it in their power to punish culpable homicide not amounting to murder, with sentences ranging from transportation for life to the infliction of only a small fine." *Morgan and Macpherson.* Where the accused takes undue advantage in the course of a quarrel ; the case does not fall within the exception 4 of s. 300, I. P. Code, although the fatal wound is inflicted without premeditation, in a sudden fight, in the heat of passion and upon a sudden quarrel, and the accused would in such a case would rightly be convicted of murder. U. B. R. (1872-1892), 271. If two men fight with their hands, or with weapons of a similar kind, and one of them uses also a weapon of a distinctly advantageous kind, such as a pistol, a dagger, or a heavy club, he takes an undue advantage over his opponnent and is not protected by the fourth Exception of s. 300. U. B. R. (1897-1901) Vol, I. 288.

Explanation to Exception (4)—"This explanation directs the attention to the distinction between the present and some of the preceding Exceptions. In many cases of mutual contest, homicide caused by the person who received the first blow or the provocation, would, under those Exceptions, have been extenuated ; but if that person's death had been caused by his opponent, the offence would not have been within reach of any mitigating provisions. The present Exception is meant to apply to cases in which, notwithstanding that a blow may have been struck or some provocation given in the origin of the dispute,—or in whatsoever way the quarrel may have originated,—yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. For there is a mutual combat, and blows on each side ; and however slight the first blow or provocation, every fresh blow becomes a fresh provocation. The blood already heated warms at every subsequent stroke, and the voice of reason is heard on neither side in the heat of passion. Under such circumstances there cannot be much room for descriminating between the respective degrees of blame with reference to the state of things at the commencement of the fray.

"In such cases, words or gestures of reproach, of contempt, etc., or some act of provocation of no serious kind, lead to blows and then mutual combat which is sudden and without preconceived intention. The resentment generally is of such a kind as to bear some proportion in the degree of it, and in the weapons which are used, to the provocation. A sudden quarrel excites the anger of the persons engaged in it. In the heat of passion blows are interchanged (being given and taken), and in this sudden and unpremeditated fight, death is caused."—*Morgan and Macpherson.*

Cases.—When the accused's party persued the complainants in three boats for a long distance and then when they had them in their power, landed and attacked them with spears and killed three of them their action does not come within exception 4 to section 300, and certainly amounts to murder. 8 C. L. J. 561=9 Cr. L. J. 32. If on a sudden quarrel blows pass without any intention to kill or seriously injury one another, and if one of those fighting, while in hot blood in the course of the struggle kills the other with a deadly weapon, this is not murder, but culpable homicide. L. B. R. (1872—1892), 371. Where the accused received a kick from the woman with whom he used to have criminal intercourse on his declining to continue it, and he therefore, struck a blow on her heart and throttled her till she ceased breathing, *held*, that the accused was guilty of murder, as there was no grave and sudden

provocation and as the case did not come within Exception 4. 4 P. R. 1872 Cr. Exception 4 to section 300, cannot apply where the accused used a knife where there was no appreciable risk of even serious hurt to his person. 31 Ind. Cas. 347=16 Cr. L. J. 747. When the fatal attack was not a premeditated one and the victims were injured in the heat of passion upon a sudden quarrel and the offenders did neither take undue advantage nor acted in a cruel or unusual manner the requirements of Exception 4 to section 302 are not satisfied. A person who deals a violent blow on the head must be deemed to have intended to cause such bodily injury as he knows was likely to cause death. 26 P. L. R. 363. Where it appeared that the accused had no motive for the deliberate murder he was charged with and bore no grudge him, that there was a sudden and unpremeditated fight between the accused and the deceased whereby the accused himself got several injuries. *Held*, that the accused was entitled to the benefit of exception 4 to s. 300. 7 Lah. L. J. 533=A. I. R. 1925 Lah. 633. Exception 4 is meant to apply to cases wherein, in whatever way the quarrel originated, the subsequent conduct of both the parties put them upon an equal footing. 8 Lah. L. J. 93=27 P. L. R. 132=93 Ind. Cas. 251=27 Cr. L. J. 459=A. I. R. 1926 Lah. 219 ; A. I. R. 1935 All. 438. Where in a sudden and unpremeditated fight under grave and sudden provocation injuries by a knife are caused resulting in death of the injured who was the aggressor, the offence committed is culpable homicide not amounting to murder and not murder. A. I. R. 1929 Pat. 518. Where the accused was shown to have struck only one blow on the head and one blow on the leg and thereby caused death, *held*, that the blow with the *lathi* did not amount to acting "in a cruel or unusal manner" and the appellant is entitled to the benefit of the fourth exception to s. 300 I. P. Code. 30 P. L. R. 487=A. I. R. 1929 Lah. 719. Where the murder was the result of a sudden quarrel and there was some provocation. *Held*, that a sentence of transportation for life should be substituted for the sentence of death. 1929 M. W. N. 789 ; see also A. I. R. 1930 Lah. 154.

Exception (5)—This exception extends to all cases of death occasioned by or resulting from premeditated acts, where the party killed takes the risk of death with his own consent. 7 C. L. R. 158. This exception applies to cases where a man commit the doing of some particular act either knowing that it will certainly cause death or that death will likely be the result ; but is does not refer to the running of a risk of death from some thing which a man intends to avert, if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. 5 C. 31=4 C. L. R. 285 ; 45 P. R. Cr. 1917 ; 6 W. R. Cr. 57. "The case supposed in the illustration to this section, viz. the abetment of suicide committed by a person under eighteen years of age, is one of the offences expressly made punishable by section 305. "The following case illustrates this Exception. Z a Hindoo widow, consents to be burned with the corpse of her husband. A kindles the pile. Here if Z is above the age of eighteen years. A has committed culpable homicide, not amounting to murder.

"We have seen that a person above the age of eighteen may lawfully consent to suffer any harm short of death or grievous hurt (section 87). According to this present Exception, if such a person consents to his own death, the homicide, though culpable is mitigated. The Indian Law Comissioners in support of distinction drawn between murder and culpable homicide by consent, observe : 'It appears to us that this description of homicide ought to be punished, but that it ought not to be punished so severely as murder. Our reasons for not punishing it so severely as murder are these. In the first place the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes a strong sense of honour, not frequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies a laudanum to a person suffering the torment of a lingering disease, the freed man who, in ancient times, held out the sword that his master might fall on it, the high born native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian Societies scarecly be thought culpable and even in Christian Societies, would not be regarded by the public, and ought not to be treated by the law as assassins. Again, this crime is by no means productive of so much evil to the community as murder. One evil ingredient of the utmost importance is altogether wanting to the offence of culpable homicide by consent. It does not produce general insecurity. It does not spread terror through society. When

we punish murder with such signal severity we have two ends in view. One end is that people may not be murdered. Another end is that people may not live in constant dread of being murdered. This second end is perhaps the more important of the two. For if assassins were left unpunished the number of persons assassinated would probably bear a small proportion of the whole population. But the life of every human being would be passed in constant anxiety and alarm. This property of the offence of murder is not found in the offence of voluntary culpable homicide by consent. Every man who has not given his consent to be put to death is perfectly certain that this latter offence cannot at present be committed on him, and that it never will be committed, unless he shall first be convinced that it is his interest to consent to it. The law in these two places has been framed on the principle of regarding the causing of harm as warranted by the sufferer's intelligent consent, and the causing of death as mitigated by the like consent or choice, if the sufferer is a person of ripe age, and the age of eighteen years has been fixed on, as what might reasonably be considered to be a ripe age. The consent must be a free and intelligent consent (see section 90). But such consent cannot, for the purpose of bringing a case within this Exception, be given by any person who is not above eighteen years of age. Indeed the mere fact of a person even above that age consenting to be killed, would, except under very unusual circumstances, indicate a morbid state of mind, sufficient to raise a doubt of his sanity.

"Suppose the consent of the person whose death is caused, is obtained by deception or concealment, the person practising such deception, cannot avail himself of the consent obtained by such means.

"A person labouring under some disease may consent 'to take the risk of death' by undergoing a certain treatment of the disease which he knows to be attended by considerable danger to his life. If he consents to such treatment at the hands of one who professes to have the requiste skill and knowledge, but who is in reality grossly ignorant, and who, by his incompetency, causes the death of the sufferer, such consent will not bring the case under this Exception.

"And the Exception will perhaps apply to others, as coachmen, pilots, boatmen, engine-drivers, etc, under certain circumstances. Thus a boat man over-crowding his boat, a pilot rashly navigating a vessel, etc, and thereby causing death, will come within the exception,—if the person whose death was caused by his own will entered the crowded boat, or consented to the pilot's proceeding to sea with the ship in a dangerous state of wind, tide or weather. In these and similar cases of misconduct and want of skill, consent to the probable risk is not to be implied, unless there is proof of the knowledge of the incapacity or want of skill. The mere employment of such a person is not a consent to suffer whatever his gross ignorance may inflict.

"Cases of *Suttee* must be considered with reference to the terms of his Exception. The burning of a Hindu widow by her own consent with corpse of her husband is by existing laws, which were enacted upon the most careful and solemn deliberation, an offence.....Under this Code, those who directly cause the death, are guilty of this mitigated kind of culpable homicide, if the widow being above eighteen years of age, chooses or consents to die ; and those who instigate or aid in the commission of this offence, are in like manner guilty as abettors. But if the widow is under that age, all those concerned in the offence are guilty of murder whether the victim is a young child, or is of more mature age and intelligence, the consent of such a person, however freely given, does not mitigate the offence if the person is not eighteen years old.

"Killing in a duel, according to the circumstances of the particular case, may be culpable homicide amounting to murder, or may be only a mitigated kind of culpable homicide. The Code makes no special provision respecting the way in which fatal duels are to be dealt with. Offences committed in that way are left to be punished under the general law. It will be for the judical administrators of the law to apply it to the facts of such cases as shall be brought before them, having regard to the classification of cases which the law has adopted, and not to such a consideration as whether a particular case is or is not one of that description of cases called duels, a class unknown to the law."—*Morgan and Macpherson.*

Cases.—When a person claims the benefit of Exception 5, he must show that the person whose death he caused consented to have the act, which caused death, done upon him knowing that it would cause his death or knowing that his life would be endangered thereby. But it is not sufficient merely to satisfy the Court that the person whose life he took voluntarily took the risk of death. 5. L. B. R.

160=11 Cr. L. J. 345=5 Ind. Cas. 988. An appellant was found to have killed his step-father, who was an infirm old man and an invalid, and who consented to being killed, the appellant's motive being to see three innocent men hanged. *Held*, that the 5th Exception to s. 300 applied to the case and that he could not be convicted under s. 302, but only under s. 304 Part I. Penal Code. 45 P. R. 1917 Cr. The accused strangled his beloved aged 16 years to death upon their decision to die together in despair of the future separation and feeling that they would not live apart. *Held*, that this was essentially the case where the spirit, if not the letter, of Exception 5, may be applied and, though convicted of murder, sentence should be transportation for life. 117 Ind. Cas. 890=30 Cr. L. J. 855.=A I. R. 1929 Lah. 50. The mere fact that it is impossible to say which of the accused actually inflicted the fatal wound is no reason at all for refraining from passing the death sentence, where the Court is satisfied that there was at a common intention to murder, brutally carried out, and that all took part in the beating the result of which was death. A. I. R. 1935 Lah. 337 ; see also A. I. R. 1935 Oudh. 110.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide, by causing the death of any person, whose death he neither intends, nor knows himself to be likely to cause the culpable homicide committed by the offender is of the description of which it would have been, if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Culpable homicide by causing the death of a person whose death was intended.

Principle.—The definition of culpable homicide makes the offence to consist in death caused by an act done with a certain intention or knowledge. If homicide is the result it is sufficient, for it is not a part of the definition that the death caused should be the death of the person whose life is aimed at. Whether the offender has succeeded or been thwarted as to the particular victim, he has occasioned a loss of human life, and the state is as much interested in punishing his offence as if he had caused the death of the person he meant to kill. Where a blow aimed at one person lights upon another and kills him, this is a loose way of speaking, may be called accidental with regard to the person who is killed by a blow not intended for him ;—but according to law, if it appears that the injury intended to A be it by poison, blow, or any other means of death would have amounted to murder, supposing him to have been killed by it, it will amount to the same offence if B happens to fall by the same means. On the other hand, if the blow intended against A and lighting on B arose from a sudden transport of passion which in case A had died by it, would have reduced the offence to culpable homicide not amounting to murder, the fact will admit of the same alleviation if B should happen to fall by it. The culpable homicide actually committed "is of the description of which it would have been" if the blow had caused A's death. So where two persons meet to fight a deliberate duel, and a stranger comes to part them and is killed accidentally, so to say, by one of them, this will be a homicide of the same description as if the person killing had caused the death of this adversary in the duel."—*Morgan and Macpherson* ; see also 1912 M. W. N. 136=13 Ind. Cas. 833 ; 1912 M. W. N. 193 ; 36 A. 161 ; 21 Bom. L. R. 1101.

Case.—Where a person commits the offence of house breaking into a dwelling house at night and in order to evade arrest strikes out wildly with a dangerous weapon, utterly regardless of whether his blows will or will not clause death or injury to any one of the inmates, and causes the death of a person, *held*, that he committed the offence of culpable homicide as defined in section 299 for, even if it is assumed that he did not intend to cause death or to cause such injury as was likely to cause death, he knew or must be taken to have known that by his act he was likely to cause death. 12 P. R. 1911 Cr.

Mussammat *Jeoli* had been carrying on an intrigue with a *Lodh* who gave her some poison to administer to her husband. She prepared *halwa* mixed with poison which was eaten by one *Madania*, who died as a result thereof. The husband and three others also partook of the *halwa* and suffered considerably but did not die. She, however, intended to murder her husband and not *Madania*. *Held* that the accused was guilty of murder, notwithstanding that there was no intention actually to murder *Madania*. 36 Ind. Cas. 473=15 A. L. J. 13=17 Cr. L. J. 505. Accused sent some sweetmeats containing arsenic to A with the intention of causing her

death. B and C also shared the sweetmeats with A and although all three of them become ill one of them died : *Held*, the accused was guilty of an attempt to murder not only A but also B and C. The mere fact that amount of arsenic was not sufficient to cause the death of A made no difference. 3 Lah. L. J. 191=22 Cr. L. J. 194=60 Ind. Cas. 50. Where there is much to be said for the view that the Sessions Judge on his own finding should have held that the offence committed was one of murder and not a culpable homicide, and it is far from certain that the reasons given by him for holding otherwise are in accordance with the law as laid down in ss. 303 and 301 I. P. Code, but the Crown does not apply for enhancement of sentence, it cannot be said that the case is one which must inevitebaly fall under section 302 and in which there has been a miscarriage of justice in bringing the offence under s. 304. A. I. R. 1927 Oudh. 345=28 Cr. L. J. 788=104 Ind. Cas. 228. A person striking another with a highly lethal weapon like a sharp *dao*, and inflicting such dangerous injuries as the medical report shows there to have been must be considered to have known that such injuries were likely to cause death. So where a prisoner had probably no intention of striking his child, his killing the child by a blow intended for the mother, would be culpable homicide amounting to murder and punishable under s. 301 Penal Code. 8 W. R. Cr. 78.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder.

Transportation for life.—This punishment should be awarded in cases of tender age. 11 C. W. N. 904.

Punishment principle of awarding.—The framers of the Code have made it discretionary with Judges, to consider mitigating circumstances in awarding punishment. 12 Cr. L. J. 448. The Code does not, by its definition, distinguish between different degrees of murder. But the Courts in awarding the punishment of this offence, may discriminate between a wilful, deliberate, and premediated killing, as where the murder is committed by poison or by lying in wait, etc., and murder which is commited with less deliberation or premeditaion.—*Morgan and Macpherson.*

Commits murder.—A man who strikes another with a knife in the throat must know that the blow is so imminently dangerous that it must in all probability cause death and the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. 8 Pat. 911. Where the husband killed his wife's lover while the latter was asleep and it appeared that he had himself placed his wife in a position of temptation by absenting himself for several months. *Held*, that the murder being premeditated and deliberate, capital sentence should be inflicted. 109 Ind. Cas. 113=29 Cr. L. J. 465=A. I. R. 1928 Oudh. 241. Where a person is attacked and killed, it must be decided whether the assailant is guilty of culpable homicide and, if so, whether the culpable homicide amounts to murder or not. A. I. R. 1928 Lah. 868. Where a blow aimed by a person at his wife did not strike the wife but struck another and killed that other. *Held*, that the accused was guilty of an offence under s. 302 I. P. Code. 107 Ind. Cas. 764=29 Cr. L. J. 280=A. I. R. 1928 Lah. 344. The mere fact that more prompt or better treatment would have saved the deceased cannot exonerate the accused from liability for the murder of the accused. 108 Ind. Cas. 164=29 Cr. L. J. 345=10 A. I. Cr. R. 39. If one person causes the death of another, then if his intention was to cause death or to cause bodily injury sufficient in the ordinary course of nature to cause death, the offence would be murder, even though death resulted in a way different from that expected by the assailant. 5 Rang. 817=109 Ind. Cas. 215=29 Cr. L. J. 487=A. I. R. 1928 Rang. 64. If a man stabs another over the heart deliberately with a knife capable of penetrating into the heart, the offence would be murder. 138 Ind. Cas. 217=33 Cr. L. J 570=33 P. L. R. 287. Where stab-wound punctures liver and diaphragm, person inflicting such wound is guilty of murder. A. I. R. 1933 Rang. 423. Where accused placed deceased while unconscious on railway line and death was caused, he was guilty of murder. 145 Ind. Cas. 953=1933 Cr. C. 1400=65 M. L. J. 597=1933 M. W. N. 745=A. I. R. 1933 Mad. 798. Where son suddenly and in heat of passion strikes his father and causes his death, offence under s. 304 (2) and not under s. 302 was committed. A. I. R. 1933 Lah. 664=34 P. L. R. 330=1933 Cr. C. 886. In case of alleged poisoning the two material questions requiring determination are, firstly did the deceased die of poison and secondly had the poison been

administered to the deceased by the accused. 148 Ind. Cas. 600=35 Cr. L. J. 700=11 O. W. N. 312=A. I. R. 1934 Oudh. 180. Where the medical evidence does not support that the deceased met with a violent death, no charge of murder can be brought home to any one. 149 Ind. Cas. 473=35 Cr. L. J. 992=11 O. W. N. 722=A. I. R. 1934 Oudh. 286 ; see also 151 Ind. Cas. 238=35 Cr. L. J. 1283=A. I. R. 1934 Lah. 368. Where the case is on the border line between murder and calpable homicide not amounting to murder, accused is entitled to benefit of reasonable doubt and he can be convicted only under s. 304. 150 Ind. Cas. 599=35 Cr. L. J. 1112=A. I. R. 1934 Rang. 110 ; see also 151 Ind. Cas. 469=35 Cr. L. J. 1319=1934=Cr. C. 554=A. I. R. 1934 Lah. 332. The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict an accused person of murder. 152 Ind. Cas. 376=A. I. R. 1934 Sind. 139. For conviction under s. 302, there must be good and sufficient evidence to support it. That the Sessions Judge is morally convinced of guilt is not sufficient. A. I. R. 1935 Pat. 19. Where severe blow on head with deadly weapon causes extensive fracture of skull, the accused is guilty of murder even if victim dies only a month after attack. A. I. R. 1935 Lah. 94. The fact that the accused was starving is no justification for committing the brutal and wicked crime under this section. A. I. R. 1935 Rang. 49.

In any case where the body has disappeared it must necessarily be very difficult to prove first of all that the supposedly murdered person has actually died and secondly he died a violent death at the hands of the accused. This is specially so where the disappearance has taken place in circumstances where it is not humanly impossible for him to survive. In such a case the probabilities being very wide the evidence will not be sufficient to convict the accused. 9 Pat. L. T. 449=111 Ind. Cas. 721=29 Cr. L. J. 913=A. I. R. 1928 Pat. 473.

Two girls were quarrelling about a small quantity of gram. During the quarrel the elder girl gave a blow to the younger with a thin *lathi*. The uncle of the younger girl, who then came to the place, gave a blow with a *lathi* on the head of the elder girl and the elder girl at once fell down. After she fell down, he gave two more blows on her thigh. The girl died. *Held*, that the accused was guilty of an offence under s. 304, para 2, and not under s. 302. 9 Pat L. T. 286=7 Pat. 638=106 Ind. Cas. 433=29 Cr L. J. 17=1 P. L. T. 40 P. 28=A. I. R. 1928 Pat. 169. The mere discovery of a blood stained hatchet in the field belonging to the accused and the unsatisfactory evidence of an expert tracker were insufficient to support a conviction of murder. 29 P. L. R. 388=6 Lah. L J. 311=110 Ind. Cas. 329=29 Cr. L. J. 1097=A. I. R. 1928 Lah. 724. The mere presence of the accused at the house where the deceased was staying would not by itself be convincing evidence of conspiracy to murder unless it be shown that they were in some way connected with murder. 32 C. W. N. 783. Where the only evidence against the accused was proof of motive and the production of the corpse of the murdered person. *Held*, that the evidence was not sufficient to sustain a conviction under s. 302 I. P. Code, but that a conviction under s. 201 I. P. Code could not be maintained. 29 P. L. R. 33=107 Ind. Cas 982=29 Cr. L. J. 252. During the progress of an inquiry into the offence of murder the accused was alleged to have pointed out a heap of *Turi* belonging to some Zamindar and from it were recovered a *hatchet* and a dang which were blood-stained and it appeared from the evidence of a witness that a *hatchet* and dang were used in the murder. *Held*, that the *Turi* heap being available to everybody, it might be that the accused saw some other person placing the articles there and that the mere fact that he gave the information as to discovery did not conclusively establish his guilt. 10 Lah. L. J. 58= A. I. R. 1928 Lah. 335. B and S were charged under s. 302, for the murder of R, who according to the village rumour, was intrigue with G's wife, M, sister to B. S, was the brother of G. A tracker followed the tracks with directions from villagers to the *Ahata* of S and G. Shoes of R were recovered at the instance of B. The tracker found tracks of B and S, leading to the place where the body was later found buried. Dead body of R was found at the instance of the confession made by S. *Held*, that the evidence was not sufficient to establish charge under s. 302 but was ample to establish an offence under s. 201, Penal Code. 112 Ind. Cas. 347=A. I. R, 1928 Lah. 476.

Where, accused, a young woman of fifteen years of age being roused to frenzy by the ill-treatment of her husband who was 40 years of age and whom she did not like, seized a stick lying by and made a murderous attack on her step-son in order

to avenge herself against her husband and caused the death of the infant son. *Held*, thet her intention was to cause death and she was therefore guilty of murder. A. I. R. 1926 Lah. 144. When an accused commits an unprovoked and cowardly assult upon the deceased rushing out at him by surprise and striking him one blow only upon the head with a *lathi* ; and the blow fractures the skull of the deceased from temple to temple the offence committed by the accused is one of murder. 95 Ind. Cas. 266 =27 Cr. L. J. 766=3 O. W. N. 451.

Sentence.—A Court may recommend for reduction of sentence. 145 P. L. R. 1902. Under this section the sentence of transportation is minimum. 10 O. W. N. 835 =A. I. R. 1933 oudh. 399=1933 Cr. C. 1245. In awarding sentence intention of accused should be considered. 134 Ind. Cas. 793=1931 Cr. C. 1054=32 Cr. L. J. 1219=32 P. L. R. 925=12 Lah. 442=A. I. R. 1931 Lah. 749. Where there is no intention to kill proper sentence is transportation. 134 Ind. Cas. 670=33 Cr. L. J. 184= 32 P. L. R. 810=1932 Cr. C. 15=A. I. R. 1932 Lah. 5 ; A. I. R. 1931 Mad. 420=34 M. L. W 631=1931 Cr. C. 468=32 Cr. L. J. 623=1931 M. W. N. 266. In cases of murder extreme sentence is normal sentence. Mitigated sentence is an exception. Reason for not awarding extreme sentence must be given. A. I. R. 1935 Oudh. 265 ; see also A. I. R. 1935 Oudh. 110. Where the accused acts under the impulse of moment and makes unpremeditated attack, sentence of death should not be passed. A. I. R. 1935 Lah. 94. Custom of killing for unchastity cannot mitigate sentence. A. I. R. 1935 sind 44. The fact that the sentence for offence under s. 307 is still in force, is no bar to trial and conviction under s. 302. A. I. R. 1935 Pesh, 18. Where the offences are under ss. 149 and 302 and the accused who is not the ring-leader is liable only constructive by lesser punishment under s. 302 is sufficient. A. I. R. 1935 Oudh. 190. Where the offence of murder was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel while the accused was in a state of intoxication *held* that the accused need not be sentenced to extreme penalty of the law and that a sentence of transportation for life was sufficient. 8 Pat. 911. Where in a case of deliberate murder it appeared that the accused had good cause to be angry with the deceased by reason of his conduct relating to an abduction ; *held* that it would be sufficient to sentence the accused to transportation for life. 11 Lah. L. J. 299=30 Cr. L. J. 1126= A. I. R. 1929 Lah. 799. In a case of murder the Court cannot refrain from passing the sentence of death merely because the conviction rests on circumstancial evidence. 1929 M. W. N. 270=118 Ind. Cas. 817=30 Cr. L. J. 971=A. I. R. 1929 Mad. 667. The accused who was guilty of the offence of the murder of his wife was a young man of twenty and it appeared that he was labouring under a serious grievance against his wife's relations and it also appeared that he committed murder in a fit of desparate resentment. *Held*, on a difference of opinion as to sentence between two Judges of the High Court that a sentence of transportation for life would meet the ends of justice. 33 C. W. N. 1226. Where two students aged 17 and 12 respectively killed a fellow student by inflicting multiple incised wounds with *patri* and *tookwa*, *held*, that they were rightly convicted of murder and that the sentence of transportation for life was the proper one in both cases. 10 Lah. L. J. 463=113 Ind. Cas. 177=30 Cr. L. J. 65=A. I. R. 1929 Lah. 64. There is no rule of law or practice preventing the Court from sentencing an accused person to death merely on circumstancial evidence for an offence under s. 302 I. P. Code ; and where the circumstancial evidence was incompatible with the innocence of the accused and incapable of any reasonable hypothesis except of his guilt, the accused could be sentenced to death. A. I. R. 1929 Sind. 179 ; see also 109 Ind. Cas. 912=29 Cr. L. J. 640. Youth alone does not constitute such an extenuating circumstance as would justify the imposition of the lesser penalty prescribed by the law in s. 302 I. P. Code. 101 Ind. Cas. 234=29 Cr. L. J. 682=A. I. R. Lah. 855 ; see also 107 Ind. Cas. 99=29 Cr. L. J. 211 ; 112 Ind. Cas. 345=A. I. R. 1928 Lah. 531 ; A. I. R. 1931 Oudh. 89 ; A. I. R. 1930 Lah. 50. 132 Ind. Cas. 716=1933 Cr. C. 726=34 Cr. L. J. 835=A. I. R. 1931 Rang. 134 ; A. I. R. 1933 Oudh. 52=34 Cr. L.J. 250=9 O. W.N. 1161=1933 Cr. C. 92=141 Ind. Cas. 747 ; but see 1934 A. L. J. 143=147 Ind. Cas. 630=35 Cr. L. J. 448=A. I. R. 1934 All. 134 =1934 Cr. C. 190 ; 36 P. L. R. 40=1934 Cr. C. 1121=A. I. R. 1934 Lah. 786 ; 131 Ind. Cas. 276=1931 Cr. C. 297=32 Cr. L. J. 682=A. I. R. 1931 Lah. 177 ; A. I. R. 1931 Lah. 536=1931 Cr. C. 776=32 P. L. R. 414=32 Cr. L. J. 645=131 Ind. Cas. 122 ; A. I. R. 1933 Lah. 229=34 Cr. L. J. 375=1933 Cr. C. 349=142 Ind. Cas. 654. The rule is that primarily the capital sentence is the normal punishment for the offence of murder and the Judge must give reasons for imposing the lesser penalty in a case

which comes under section 302 of the I. P. Code. 109 Ind. Cas. 364=29 Cr. L. J. 540. In the case of ordinary murder delay in confirming sentence of death may be taken into consideration but not so when the murder is not ordinary. A. I. R. 1930 Sind. 225. The extreme youth of the accused who was only 16 years old was a sufficient ground for inflicting the lesser sentence under s. 302 I. P. Code. 11 N. L. J. 7=108 Ind. Cas. 442=29 Cr. L. J. 400=A. I. R. 1928 Nag. 108 ; 7 N. L. J. 144 ; 6 Lah. L. J. 323 ; 11 C. W. N. 904 ; 11 Ind. Cas. 792=12 Cr. L. J. 448 ; U. B. R. (1892-1896) Vol. I. 209 ; A. I. R. 1931 Lah. 177 ; 144 Ind. Cas. 829=1933 Cr. C. 720=34 Cr. L J. 835=A. I. R. 1933 Rang. 134. Where the murder was not a deliberate one but occurred suddenly after mutual abuse, and the accused who did not belong to a turbulent class took up on the spur of the moment the weapon and killed the deceased with it, a sentence of transportation for life was substituted for the death sentence. A. I. R. 1928 Lah. 913. Where it appeared that the deceased who was trusted and treated with hospitality by the accused, seduced his wife and persisted in remaining in the accused's house, after he had been requested to leave, and the accused killed the deaceased. *Held*, that the murder was committed on provocation and consequently the proper sentence to be passed was not death but transportation for life. 106 Ind. Cas. 457=29 Cr. L. J. 41=9 A. I. R. Cr. 311. Where in a murder case the Court finds that it is not a case where the accused can be said to have only intended to cause hurt or to have acted with reckless violence and that the accused persisted in striking blow after blow and had also selected vital parts, *held*, that the accused must in the interests of justice be sentenced to maximum sentence known to the law, namely, death. 105 Ind. Cas. 804=4 O. W. N. 977.

Where Judge finds the accused went with the deliberate purpose of striking down the deceased he should not refrain from inflicting the death penalty on the sole ground that the accused were, at the time of the assult, under the influence of drink. 7 Lah. 50=27 P. L. R. 294=94 Ind. Cas. 406=27 Cr. L. J. 630=A. I. R. 1926 Lah. 232. Where it appears in a prosecution for murder under s. 302 I. P. Code, that there was provocation and that the accused did the act without premeditation and in the heat of passion, it is not necessary to inflict death penalty. In such a case transportation for life would be an adequate sentence. 7 L. R. 186 Cr. Where the primary intention of the accused in administering poison was only to stupify his victims with the object of robbing them and not to bring about their death but the act resulted in death of the person poisoned. *Held*, that under these circumstances capital sentence need not be imposed but that transportation for life would be sufficient. 7 L. R. 188 Cr.=6 Cr. R. 468. Organized fights with each side armed with *lathis* are grave infractions of the law and frequently result in the death of one or more combatants. The introduction of the pistol is an added aggravation and such cases transportation for life is the only appropriate sentence that would be passed against the combatant who uses the fire arm and brings down a man to the ground though not dead at least wounded. 26 Cr. L. J. 997=87 Ind. Cas. 597=A. I. R. 1925 All. 664. Where the two accused were convicted of murder under s. 302 I. P. Code by the Sessions Judge, and sentenced to death, though one of them inflicted the fatal blow, and the other merely accompained his co-accused without inflicting any injury on the deceased. *Held*, that in the case of the latter, transportation for life was an adequate sentence. 26 P. L. R. 405=88 Ind. Cas. 365=26 Cr. L. J. 1133. Where a number of persons set out to abduct a woman, and two of them armed with pistol, the obvious inference to be drawn is that the pistols were intended to be used to overcome any resistance that might be offered. The members of the gang would therefore know that murder was likely to be committed and in any case having regard to the evidence in the case that the deceased was shot in prosecution of the common object of all ; but as the appellant is only constructively guilty of murder having regard to s. 149 I. P. Code, the sentence of death must be set aside, and instead sentenced to transportation for life. 7 Lah. L. J. 51=86 Ind. Cas. 347=26 Cr. L. J. 763=A. I. R. 1925 Lah. 371. Where the accused a habitual *ganja* smoker while under the influence of that drug dashed a child to the ground and killed it and there was no motive for the offence, the accused must be held to have committed the act while he was under some mental derangement and that his case comes within s. 86 I. P. Code. 39 C. L. J. 34. Where illiterate woman caused death of child urged by wicked superstition, lesser penalty should be imposed. A. I. R. 1933 Lah. 718=1933 Cr. C. 904=146 Ind. Cas. 228. The fact that the accused was encouraged in his crime by mischievous literature cannot justify less punishment than death. 144 Ind. Cas. 294=1933 Cr. C. 540=34 P. L. R. 691=34 Cr. L. J. 720=A. I. R. 1933 Lah. 305. Where the evidence of approver is well corroborated and no doubt is left as to

the guilt and the murder is a planned, one, sentence of death is proper. 138 Ind. Cas. 223=33 Cr. L. J. 567=33 P. L. R. 269. Where accused was found guilty of murder, immunity from capital punishment cannot be granted merely because he belongs to particular community. 137 Ind. Cas. 691=33 Cr. L. J. 497=33 P. L. R. 580=1932 Cr. C. 664=A. I. R. 1932 Lah. 500. Capital sentence is not improper even in cases of constructive guilt of murder. 142 Ind. Cas. 841=13 P. L. T. 702=11 Pat. 807=1933 Cr. C. 253=34 Cr. L. J. 427=A. I. R. 1933 Pat. 100. Reason must be adequate in passing lesser sentence. *Ibid.* Death is the penalty for deliberate fratricide. 142 Ind. Cas. 613=14 P. L. T. 96=1933 Cr. C. 511=34 Cr. L. J. 395=A. I. R. 1933 Pat. 180. Where accused is only 17 years of age and commits crime under influence of father and elder brother, the case is fit one for exercise of power under s. 401. 137 Ind. Cas. 293=33 Cr. L. J. 484=33 P. L. R. 191=1932 Cr. C. 324=A. I. R. 1932 Lah 259. Where deceased carried on illicit intrigue with wife of accused and accused grave milk containing arsenic whereby death occured, a sentence of the transportation of life is sufficient. 10 O. W. N. 771=1933 Cr. C. 1099=A. I. R. 1932 Oudh. 382. Where the accused being of unsound mind murdered his children but his case does not fall under s. 84 and he was an affectionate father, his sentence is reduced from death to transportation. 145 Ind. Cas. 119=1933 Cr. C. 228=34 Cr. L. J. 909=A. I. R. 1933 Lah. 123 ; see also 135 Ind. Cas. 384=8 O. W. N. 1221=33 Cr. L. J. 163=7 Luck. 311=A. I. R. 1932 Oudh. 18. Where the deceased father-in-law refused to send wife of the accused who was aged 25 years, transportation for life was held sufficient for murdering the father-in-law. 9 O. W. N. 285=138 Ind. Cas. 123=33 Cr. L. J. 561=7 Luck. 634=A. I. R. 1932. Oudh. 186. Where accused had illicit connection with deceased for 11 years with husband's consent sentence was reduced from death to transportation. 1933 Cr. C. 868=A. I. R. 1933 All. 533. that the accused is a woman is not a conclusive reason for not passing the sentence of death especially where she was armed with a dangerous weapon and did not hesitate to use it for a very slight cause. 1 Rang. 751. It has invariably been held in all the Courts in India that in the murder of her newly born illegitimate child by a woman there are mitigating circumstances sufficient to redeem the appropriate penalty very much below a sentence of transportation. Most of such circumstances apply, though in a lesser degree to the case of the father of such a child. 75 Ind. Cas. 767=25 Cr. L. J. 63=1924 Nag. 119. Where the Court held the offence of murder was committed but sentenced the accused to transportation solely on the ground that their confessions alone made the convictions possible, the reason was not sufficient for not awarding the extreme penalty of law. 25 Cr. L. J. 116=76 Ind. Cas. 180=1924 Lah. 624. Mere absence of premeditation or deliberate intention to kill is no reason for not passing the sentence of death. Nor is the fact that only one blow was struck a-ground. So also the fact that the accused is a woman is not a conclusive reason for not passing the sentence of death. 2 Bur. L. J. 277. When a Judge does not pass the normal sentence viz., the sentence of death in a case of murder, he is bound to record his reasons and he must find there are really extenuating circumstances and not merely absence of aggravating circumstances. 1 Bur. L. J. 96=1922 L. B. 32. Youth alone in every case is not such an extenuating circumstances as would justify the imposition of lesser penalty in case of murder, but it should be taken into consideration with the other facts of the case. Where no extenuation is shown and the offence is deliberately committed mere youth alone would not entitle the accused to the lesser penalty. 1 Bur. L. J. 70 ; 11 Bur. L. T. 100=9 L. B. R. 165=45 Ind. Cas. 840=19 Cr. L. J. 648. Generally the age or sex of a murderer cannot of itself be sufficeint ground for a lenient sentence. If there are other reasons which very nearly justify the passing of the lesser sentence but do not quite do so, or when it is doubtful whether they do so or not, then the youth or the sex of the criminal may certainly dip the scale to the side of mercy. 18 N. L. R. 101=64 Ind. Cas. 277 (N)=1922 Nag. 65. The mere absence of premeditation is not in itself in every case of murder a sufficient ground for imposing the lesser penalty. The sentence should depend on the circumstace of the particular case. 13 L. W. 612=63 Ind. Cas. 149=22 Cr. L. J. 613.

Where the prisoner killed a woman under the conviction that she was a witch and that she was responsible for the illness of his wife and child, *held* that the proper sentence that ought to be passed on the prisoner is transportation for life. 1921 Pat. 76. The mere fact that the conviction of the accused for murder is based on circumstantial evidence is no ground for passing the lesser sentence of transporation for life instead of the higher penalty, viz. death. 44 M. 443=40 M. L. J. 464=13 L. W. N. 376=61 Ind. Cas. 525=22 Cr.

L. J. 396. When the offence of kidnapping was in fact part of the transaction which led to the murder, a separate conviction and sentence could not be maintained. 2 Lah. L. J. 653. Where the accused murdered his wife's paramour and when it was proved that the provocation was grave but not sudden, the proper sentence is one of transportation for life and not death. 18 A. L. J. 851=57 Ind. Cas. 176=21 Cr. L. J. 607 ; 17 Cr. L. J. 190=33 Ind. Cas. 830 ; 35 P. R. 1916 Cr. A person convicted of murder should ordinarily be sentenced to death. To justify the passing of a sentence of transportation for life there should be really extenuating circumstances, and not merely absence of aggravating circumstances. The fact that the crime was committed without premeditation in the heat of passion upon a sudden quarrel is not an extenuating circumstance. 18 Cr. L. J. 113=37 Ind. Cas. 465. When a Session Judge finds the accused guilty of a cruel murder under s. 302 there being no extenuating circumstances, he should not refrain from passing a sentence of death, because there was no eye witness to the murder. L. B. R. (1872-1892) 436. If for a trivial offence committed by a child, viz., the mere throwing of a clod of earth, a man violently causes its death it is a clear case of murder, for which the proper sentence is death. S. C. 216 Oudh. Comparative lenity to woman is a commonly accepted rule of practice though needles to say not of law, but in dealing with an atrocious crime like this the mere sex of the criminal should not bar the imposition of a sentence which would be considered appropriate in the case of a man. 16 Cr. L. J. 20=26 Ind. Cas 324. The lowest sentence for an offence under s. 302 I. P. Code. being transportation for life, a sentence for various terms of imprisonment for offences under ss. 302 and 149 is not according to law. 9 M. L. T. 510=12 Cr. L. J. 145=9 Ind. Cas. 885 ; see also, 11 P. R. 1871 Cr. In a case of murder the facts clearly established were that the accused was last seen with the child alleged to have been murdered, and that he stripped her of most of her ornaments and sold them and that her body was next found in a well, and the accused disclaimed all knowledge of the matter, though he himself indicated the well. *Held*, that the accused was guilty of a foul murder, which inspite of his youth called for the extreme penalty. 16 Cr. L. J. 167=27 Ind. Cas. 551.

When the deceased was returning from the bazar to his house, two of the four accused struck him with a lathi causing him to fall to the ground, and then the other two accused struck him with their lathis, *held* that, in as much as it was doubtful whether the deceased was dead when they began to strike him, and as they did not commence the attack, the two latter would be adequately punished by the sentence of transportation for life and the former two deserved the sentence of death. 2 A. 33. Murder should be punished with death or transporation for life. There is no other alternative. 5 N. W. P. 130. In case of murder by two persons, the one taking minor part and acting under influence of the other, should be punished with lesser sentence. A. I. R. 1930 Sind. 305. There may be extenuating circumstances which may have to be laid before a jury for deciding whether the crime is culpable homicide or murder. But where the conviction is for murder, the sentence should be one of death, and any extenuating circumstances justifying a lenient view of the case can only be represented to the crown with a recommendation for mercy. Rat. Un, Cr. C. 852. In the awarding of capital sentences, the Chief Court does not make any distinction between cases of murder as proved by direct or indirect evidence. 12 P. R. 1888 Cr ; see also 13 P. R. 1869 Cr ; see also A. I. R. 1930 Sind. p. 225. The fact that the accused was not arrested when actually committing the crime, or in the act of escaping from the spot, is no reason for not passing the sentence of death. 13 P. R. 1873 Cr. In addition to a sentence of death, the Sessions Judge sentenced the accused to a fine, and directed that, if the fine is realised it should be paid to the deceased's heir. *Held* that this subsidiary order was not sustainable. 18 P. R. 1913 Cr.=14 Cr. L. J. 522=20 Ind. Cas. 1002=41 P. W. R. 1913 Cr. Wife-murder is so common an offence in Sind that it is necessary that deterrent sentences should be passed in all such cases, even where the provocation is that the wife was found in adultery. 5 S. L. R. 256=15 Ind. Cas. 807=13 Cr. L. J. 535. Where the three accused murdered their cousin who had supplanted one of them in an intrigue with woman, *held*, that having regard to the state of society at the place where the act was committed, the sentence of death should be commuted. 2 P. R. 1867 Cr. Where there was no sudden provocation, but where the act of murder was not premeditated, the sentence of death should be commuted. 107 P. R. 1866 Cr. A custom among the Baluchis of killing for unchastity cannot be taken into consideration in mitigation of sentence. 28 S. L. R. 279. The fact that the accused committed the murder prompted by zealousy is no ground for reducing the sentence.

A. I. R. 1934 Oudh. 222=35 Cr. L. J. 894=11 O. W. N. 636=149 Ind. Cas. 69=1934 Cr. C. 273.

The intoxication of the accused, while he was committing murder may be properly taken into consideration on the question whether the act was premeditated or done only from a sudden impulse. But voluntary drunkeness cannot be pleaded as an excuse for a crime. 41 P. R. 1866 Cr. ; see also L. B. R. (1893-1900) 550. Voluntary drunkenness can be considered by Court in an awarding lesser penalty for murder. 12 Rang. 445=A. I. R. 1934 Rang. 361=1934 Cr. C. 1326 ; see also A. I. R. 1934 Rang. 10=35 Cr. L. J. 1065=149 Ind. Cas. 1176. Judges should not shrink from doing their duty, however painful it may be, of passing capital sentences in cases where they are convinced, beyond reasonable doubt, that a deliberate murder has been so committed as to necessitate the award of capital sentence. 3 L. B. R. 163. On a conviction for murder, a sentence of death should ordinarily be passed unless there are extenuating circumstances. In considering whether there are extenuating circumstances, not only the circumstances of the particular case, but the conditions of the country and the habits of the people may fitly be taken into account. 1 L. B. R. 216. Where a quiet, peaceable man, suddenly and without the least motive or provocation, runs a-mock against all around him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty. 8 W. R. Cr. 53. The common object of an assembly was to commit a dacoity, and there was a general purpose to resist all opposers even, if necessary, to the point of death. This assembly, did actually commit dacoity, and when retreating on the advent of villagers in superior force, one of its members shot and killed one of the villagers. *Held*, that, as the murder has been committed in effecting a safe retreat and as the retreat was not separated by time ot space from the offence which formed the common object of the assembly, it was a continuation of the dacoity, and the murder must be taken to have been committed in prosecution of the common object of the assembly. 2 Bom. L. R. 325. If murder is committed in committing dacoity every one of the persons concerned in the dacoity is liable to be punished with death. 6 Bom L. R. 248=1 Cr. L. J. 258 ; U. B. R. 1900 Cr. If an act, by which death is caused, does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity. 1 Ind. Jur. O. S. 108. Where an accused person was found to have murdered his wife under a mistaken impression that she was unchaste to him, the High Court set aside the sentence of death passed on him, and sentenced him to transporation for life. 8 C. W. N. 218=1 Cr. L. J. 62. In case of brutal and premaditated assassination sentence of death is proper. 138 Ind. Cas. 27=11 Pat. 280=33 Cr. L. J. 574=13 P. L. T. 530=A. I. R. 1932 Pat. 209 ; A. I. R. 1933 Lah. 998 ; A. I. R. 1933 Lah. 956=1933 Cr. C. 1411 ; A. I. R. 1933 Lah. 623=1933 Cr. C. 879=34 Cr. L. J. 372=34 P. L. R. 427 ; A. I. R. 1932 Lah. 245=33 P. L. R 158=33 Cr. L. J. 576=138 Ind. Cas. 327=1932 Cr. C. 257. 148 Ind. Cas. 475=35 Cr. L. J. 664=11 O. W. N. 119=1934 Cr. C. 99=A. I. R. 1934 Oudh. 19. Sentence must be determined upon gravity of offence irrespective of discovery or non-discovery of dead body. A. I. R. 1931 Lah. 25.

Accused striking deceased with a hatchet with knowledge of what he was doing and the dangerous nature of his act, is guilty under s. 302. But where attack by him is result of foul language used by deceased, death sentence should not be imposed, transportation for life is sufficient. A. I. R. 1930 Lah. 545. Improper overtures by step-mother to her stepson do not amount to grave and sudden provocation. Maximum sentence however should not be levied. A. I. R. 1930 Lah. 415. The fact that accused sets up false defence that he never knew deceased even when evidence shows that deceased was last seen alive in his company and his disappearance immediately after murder is sufficient to bring home offence to him. A. I. R. 1930 Lah. 265. Lesser sentence than death should be awarded in case of murder of wife who continues intimacy with paramour in spite of repeated reprimands. A. I. R. 1930 Lah. 171. Where murder by juvenile is not wholly deliberate and cold-blooded, and there is certain amount of legitimate provocation capital sentence may not be appropriate. A. I. R. 1930 Mad. 972. The High Court has power to enhance sentence. A. I. R. 1930 Mad. 446. Unless extenuating circumstances can be found murder must be sentenced to death. A. I. R. 1930 Pat. 252. Reason for passing lesser sentence ought to be express and adequate. A. I. R. 1930 Pat. 247 ; see also A. I. R. 1930 Pat. 168.

Evidence of murder.—The fact of murder admitted of no doubt. The main evidence for the prosecution and the sole evidence connecting the accused with the

murder was that of two brothers whose evidence was uncorroborated in material particulars and unreliable. The villagers were well aware of the identity of the murderers, but whether it was because the real murderers were public favourites or the deceased was unpopular no evidence was forthcoming. A. I. R. 1929 Pat. 527=1929 Cr. 287. Even in the absence of medical evidence a conclusion that a person was poisoned could be a good conclusion. When the other evidence read with the medical evidence points to such a conclusion it is unnecessary to consider the question of motive. 6 O. W. N. 681=119 Ind. Cas. 870=30 Cr. L. J. 1118=A. I. R. 1928 Oudh. 516. Where the accused were proved to have removed the corpse partly with the intention of shielding themselves and partly with the intention of screening the offenders and there was no definite evidence to the effect that they were present at or had taken part in the murder, *held*, that they could only be convicted under s. 201 I. P. Code. 6 O. W. N. 1017. Where that accused were seen in number and the assessors were of opinion that some of them were not guilty while others were *held* to be guilty although the evidence against them was nearly the same and it appeared that the evidence was most unsatisfactory and the truth had been kept back. *Held*, that under those circumstances it was not proper to convict some of the accused under s. 302 I. P. Code. 30 P. L. R. 536.

It is not incumbent upon the prosecution to produce all the persons who happened to have gathered at the scene of murder on hearing the out cries. The production of two or three of the respectable and leading members of the place would be sufficient. But the mere fact that there were some litigation between the witnesses and the accused does not reduce the credibility of the witnesses. Enmity is a double-edged weapon and what would be a reason for the murder might well be a reason for fabrication of a false case. 10 Lah. L. J. 229=112 Ind. Cas. 215=29 Cr. L. J. 999. Where the accused was proved to have had knowledge of the murder and he also produced certain ornaments belonging to the deceased and a confession of guilt made by the accused to the lambardar on his being guaranteed immunity was also relied on. *Held*, that the evidence was sufficient to support a conviction under s. 201 and not under s. 302 I. P. Code. 111 Ind. Cas. 449=29 Cr. L. J. 865=29 P. L. R. 486. The trial of an accused person does not necessarily end, if he pleads guilty but may and should be taken in cases of murder as if the plea had been one of not guilty and case decided upon the whole of the evidence including the accused's plea. It is not in accordance with the usual practice to accept a plea of guilty in a case when the natural sequence would be a sentence of death. A. I. R. 1928 Cal. 775. In the absence of any motive an accused cannot be convicted merely on his own uncorroborated confession, which he retracted at the first opportunity alleging that the confession was put into his mouth by the Police who tortured him in order to induce him to turn an approver. 104 Ind. Cas. 247=28 Cr. L. J. 807=A. I. R. 1927 Lah. 682. The fact that the accused was one of the two persons with whom the deceased was last seen alive, and the fact that he pointed out the spot where the dead body was ultimately found, are not sufficient to draw the inference that the accused was none of the actual murderers. No doubt grave suspicion attaches to him in this connection, but grave suspicion is not sufficient. 103 Ind. Cas. 97=28 Cr. L. J. 641=A. I. R. 1927 Lah. 541. In a case of murder by person, mere motive of accused to cause death of deceased will not dispense with proof. 144 Ind. Cas. 357=1933 Cr. C. 664=34 Cr. L. J. 754=A. I. R. 1934 All. 394. Death must be proved to be due to arsenic poisoning administered by accused. Evidence of *post mortem* doctor that from appearance of stomach and intestines he was of opinion that death was due to arsenic poison is insufficient. A. I. R. 1933 All. 837 ; see also 142 Ind. Cas. 714=16 N. L. J. 35=1933 Cr. C. 1261=34 Cr. L. J. 398. A. I. R. 1933 Nag. 303. Withholding available evidence by prosecution, though likely to be treated as flow in evidence, still each case depends upon its facts. 137 Ind. Cas. 691=33 Cr. L. J. 497=33 P. L. R. 580=1932 Cr. C. 664=A. I. R. 1932 Lah. 500.

Where the accused was charged of murder and convicted on evidence consisting mainly of statements made by witnesses suggesting that his demeanour was some. what too calm when attention was drawn to the fact that his hut of grass, the scene of the occurrence was burning. *Held*, in appeal that the trial Judge had attached disproportionate weight to the circumstantial evidence and that the conviction must be set aside as the offence had not been adequately proved. 28 P. L. R. 27=99 Ind. Cas. 324=8 Lah. L. J. 559=28 Cr. L. J. 116=A. I. R. 1927 Lah. 51. It is unsafe to convict a man for murder merely because a bloody axe is found in his house, when the evidence is that other people have ac-

cess to the house. 91 Ind. Cas. 1002=27 Cr. L. J. 186=9 N. L. J. 80=A. I. R. 1926 Nag. 229. The fundamental rule by which the effect of circumstantial evidence is to be estimated is well established. In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hyhothesis than that of his guilt. 96 Ind. Cas. 849=27 Cr. L. J. 993. When a Court is not convinced that a man is dead it is impossible to convict any one of his murder. Where, however, the Court is convinced that the man was dead, death sentence may be upheld even if the body has not been found. To sustain a conviction for murder the Court must first be satisfied that the murder had been committed and then that the accused had committed it. 93 Ind. Cas. 252=27 Cr. L. J. 460=A. I. R. 1926 Oudh. 234. Where a charge is for murder or theft or both it is not legitimate to presume the accused guilty of the more serious offence of murder, merely because the accused is unable or unwilling to explain the possession of stolen property. 93 Ind. Cas. 42=27 Cr. L. J. 394=A. I. R. 1926 Mad. 638. If one is satisfied that murder was committed the appropriate punishment should follew. The discovery of the body is not a material circumstance. It is murder which is the thing to be regarded, that is to say, the killing of a human being by one or more human beings without just cause or excuse. The absence of the body is a circumstance which makes it necessary to proceed with the greatest care and caution, and one must never confirm a sentence of death, unless one feels completely satisfied about it. If there is such an element of doubt as to render a Judge in the least degree uneasy, the proper course is not to change the nature of sentence from death to transportation of life, but to acquit the man altogether. 23 A. L. J. 821=89 Ind. Cas. 903=26 Cr. L J. 1431=A. I. R. 1925 All. 627 (F. B). Where the Civil Surgeon and the Sub-Assistant Surgeon were unable to say what poison was actually administered and there was no evidence on the record to show that poison had been administered. *Held*, the evidence on the record was quite insufficient to establish the charge. 85 Ind. Cas. 817=26 Cr. L. J. 593=A. I. R. 1923 Lah. 325. The mere fact that an accused person appears to have known where the corpse was buried does not prove that he was the murderer. 89 Ind. Cas. 901=26 Cr. L. J. 1429. Casual witness deposing that accused informed his intention of murder should not be believed. 122 Ind. Cas. 587=31 Cr. L. J. 438=1931 Cr. C. 457=A. I. R. 1931 Pat. 169. Weak evidence does not justify transportation for life but acquittal. 142 Ind. Cas. 841=13 P. L. T. 702=11 Pat. 807=1933 Cr. C. 253=34 Cr. L. J. 427=A. I. R. 1933 Pat. 100; see also A. I. R, 1933 Pat. 180=34 Cr. L. J. 395=1933 Cr. C. 511=142 Ind. Cas. 613=14 P. L. T. 96; A. I. R. 1931 Pat. 169=31 Cr. L. J. 438=122 Ind. Cas. 587. Retracted confession alone of accused is not sufficient to justify conviction of co-accused. A. I. R. 1932 Oudh. 321=33 Cr. L. J. 502=9 O. W. N. 327=137 Ind. Cas. 665. To justify conviction on approver's evidence it is sufficient if corroboration is merely circumstantial evidence of accused's connection with crime. A. I. R. 1932 Lah. 621=33 Cr. L. J. 916.

In a case of murder it is unsafe to rely upon the evidence of witnesses, who have resiled from their previous statement. If a Judge wants to rely upon s. 288 Cr. Pro. Code, the whole of the statement should be filed and not merely certain portions. The Court must be able to come to a conclusion after writing the evidence. 22 L. W. 405=A. I. R. 1925 Mad. 879. Where a person pleads guilty to a charge of murder, but adds he did it out of jealously, a conviction should take place only after hearing all the evidence, as some ground may be seen for applying s. 304 I. P. Code. 23 A. L. J. 587=89 Ind. Cas. 260=26 Cr. L. J. 1316=A. I. R. 1925 All. 647. Where the medical evidence showed that the body of the deceased bore two wounds of a penetrating nature, one of which completely perforated the heart, and the other penetrating the abdomen on the left side had divided the intestines. *Held*, it must be deemed that the intention of the accused was, if not to cause death, at least to cause such bodily injury as was likely to cause death. 7 Lah. L. J. 582=26 P. L. R. 829. A conviction based on purely circumstantial evidence must be treated with the greatest caution and subjected to the closest scrutiny. The existence of a motive, an opportunity and the exclusion of any alternative motive could not be sufficient to support a conviction without at least some other evidence. In such cases a sentence which is irrevocable should not be passed. 76 Ind. Cas. 97=25 Cr. L. J. 97. The mere fact that the appellant left his house with a weapon in his hand after the deceased had left it on the night of the murder is not a very material point in connecting him with the murder. A. I. R. 1923 Lah. 539. Where the prosecution theory in a murder case was presumably built on the opinion first expressed by an expert witness (civil surgeon) when the accused had no proper opportunity to cross-examine but who subsequently modified his opinion, the benefit of doubt was given to the accused. A. I. R. 1923

Lah. 189. Where the body though decomposed was identified by the help of clothes, height and age of the deceased and the accused made confessions before witnesses and Tahsildar before whom she was produced for remand and who thoguh had not recorded the confession under s. 164 Cr. P. Code. deposed to it, *held*, that the appellant was guilty of the offence under s. 302, that there was no reason to doubt the testimony of the disinterested witnesses and the unanimous verdict of the assessors. A. I. R. 1923 Lah. 40.

Even if it be held satisfactorily proved that accused did give information which led to the recovery of the dead body, that fact alone would not be sufficient to convict him with the murder, because a person may very well know where the body of murdered man has been buried without himself having joined in committing the murder. 75 Ind. Cas. 693=A. I. R. 1923 Lah. 315. Where the civil surgeon and the sub-assistant surgeon were unable to say what poison was actually administered and there was no evidence on the record to show what poison had been administered. *Held*, the evidence on the record was quite insufficient to establish the charge. 1923 Lah. 325. Where the body of a dead person is not clearly identified to be that of the particular deceased a conviction cannot be based on the remaining evidence. 5 Lah. L. J. 417. Where a person sees a murder committed and gives no information thereof, his evidence is little better than that of an accomplice. 5 Lah. L. J. 322=1923 Lah. 391. Accompanying the murderess with the deceased and returning the next day without the deceased and subsequent disappearance of accused were held to be not sufficient to prove accused's complicity in the crime of murder. 1922 Lah. 171. Where there is no sufficient corroboration of the approver's story, the accused cannot be convicted. A. I. R. 1922 Lah. 311. Where the accused was convicted on the uncorroborated evidence of an interested witness who was a collateral though not a relative of the deceased, whose family had enmity with the accused : *Held*, it would not be safe to sustain the conviction upon the evidence of such a solitary witness. A. I. R. 1922 Lah. 76. It is safer to follow the established rule that "the fouler the crime was, the clearer and the plainer the proof ought to be." 1 Pat. L. T. 684. In a case in which murder and robbery form part of one transaction, the recent and unexplained possession of the stolen property by the accused is not only presumptive evidence against him on the charge of robbery but is also evidence against him on the charge of murder. 53 Ind. Cas. 481=20 Cr. L. J. 753. Before a plea of guilty is accepted in a case in which the accused is charged with murder the record should clearly show that the accused understood and admitted such facts as would bring the offence within the definition of murder and that he does not plead any of the exceptions set in the Penal Code. 20 Cr. L. J. 540=51 Ind. Cas. 780=(1919) U. B. R. 137. The mere fact that an accused person is able successfully to point out the *corpus delicti* or the plunder or so forth is no proof that he was the murderer, But when an accused person is able sucessfully to point out not one spot but several there is a presumption that he had something to do with murder. 18 P. R. 1917 Cr.

In a case of murder in which there is no direct evidence against the prisoner but only the kind of evidence that is called circumstantial, the jury have a two-fold task. The jury must first make up their minds what portions of the circumstantial evidence have been established and then when they have got that clear, they must ask themselves. "Is this sufficient proof? Do the facts proved exclude the possbility that the deed was done by some other persons?" The jury ought not to convict if they merely think that the accused's guilt is probable. If the jury have doubts as to his guilt, he should have the benefit of the same. 7. P. R. 1917 Cr, A person professing to be an eye-witness is not to be believed when he has denied having recognized the culprit at the time of committing the crime. 22 P. W. R. 1916 Cr.=17 Cr. L. J. 279=34 Ind. Cas. 999. A tribunal in a case of murder has to be satisfied not of the probability but of certainty beyond all reasonable doubt, that is to say, doubt which would operate on the mind of a reasonable man, that that accused is guilty. 17 Cr. L. J. 102=32 Ind. Cas. 838. It is not an invariable rule that in all cases the High Court should be convinced that there is very satisfactory proof for motive before upholding a coviction for murder passed by a Sessions Judge. 17 Cr. L. J. 386=35 Ind. Cas. 81. When an accused person charged with murder in able successfully to point out not one but several spots concerned in the commission of the offence there is a presumption that he had something to do with the murder. 36 Ind. Cas. 838. The case against a prisoner, accused of murder of his wife, rested entirely upon the fact that

that he slept with his wife alone on the night of the occurrence, and in the morning she was found dead, her body showing that death was caused by strangulation. One of the witnesses deposed that the witness was, for some months, on terms of great intimacy with the deceased, and on the previous afternoon he was seen by the other wife of the accused, who told her husband of it. This was alleged to be the cause of the murder. But the Evidence was not corroborated. *Held*, that although the case was one of grave suspicion, yet it was not one upon which the Court would be justified in convicting the accused 29 C. 483=6 C. W. N. 596. Where the only evidence, against the accused person is a bundle of cloth, which he produced and which is identified as having been stolen from a person proved to have been murdered, and there is no admissible evidence, against him, upon the record to connect him more directly with the murder it is impossible to do more than convict him under section 411 Penal Code. 220 P. L. R. 1913=19 Ind. Cas 707=23 P. W. R. 1913 Cr.=14 Cr. L. J. 275.

The fact that an accused person has been found with a gun in his hand immediately after a gun was fired and a man was killed in the spot from which the gun was fired may be a strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circustances. If there are two persons who answer the above descriptions. the circumstantial evidence loses its weight very substantially. Where there is no evidence which of them fired the fatal shot, and when there is no finding that they had a common intention and acted in concert and that the gun was fired in furtherance of their common intention, the legal inference from these findings must be, neither of them is guilty of murder. 11 C. W. N. 1085=6 Cr. L. J. 304. Where the evidence against an accused person convicted of murder of a woman was that of a girl of fifteen. and of a boy of thirteen years, who deposed to have seen the accused throw the deceased down more than once, and who did not, for a long time after the event, say a word about it to any body to whom they would have naturally reported it, had it been true, *held* acquitting the accused, that the evidence was most improbable and was not free from reasonable suspicion. 2 M. L. T. 496= 7 Cr. L. J, 216. To establish a charge of aiding and abetting another in murdering a third party, it must be proved that the alleged abettor knew of the principal's intention to murder the deceased, not merely that such abettor helped the principal in what he did. 1 U. B. R. (1902-1903) Penal Code. 5. Retracted confession, can be sufficiently corroborated by presumptive evidence of murder. 43 P. W. R. 1910 Cr.=8 Ind. Cas. 815=17 P. L. R. 1911=11 Cr. L. J. 717. A conviction on circumstantial evidence cannot be based unless and until all the inferences to be drawn from the whole history of the case point so strongly to the commission of the crime by the accused that the defence theory appears, on the face of it, impossible or highly improbable. The general rule is that, in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. 16 P. W. R, 1911 Cr.=12 Cr. L. J. 412=11 Ind. Cas. 596. In cases in which murder and robbery have been shown to form part of one transaction, it has been held that recent and unexplained possession of the stolen property, while it could be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder. (1911) 2 M. W. N. 478=21 M. L. J. 1071=12 Cr. L. J. 564.

In a case of murder, it is very important that the body of the person murdered should be produced and fully identified. L. B. R. (1872-1892), 325 In a case of murder by opium poisoning, the prosecution evidence that the accused put some sugar into the vessel in which milk was given to the deceased and stirred the milk with his finger after putting the sugar into it, and the deceased died a few hours afterwards, is not sufficient for convicting, the accused, particularly when the motive for murder is not strong and the habit of eating opium is common among the people to which the deceased belonged. 25 P. W. R. 1911 Cr.=12 Cr. L. J. 484=12 Ind. Cas. 92=241 P. L. R. 1911. Indentification, unless conclusive, cannot be made the basis of a conviction. specially when the identifiers are nervously upset and do not mention the striking features of the accused in their first information. The greatest suspicion against the accused will not suffice to convict them of a crime unless evidence establishes it beyond all doubt. 16 Cr. L. J. 25=26 Ind. Cas. 329. Where an accused was charged with murder and the only evidence against her was her admission that she threw the child under the impression that it was dead

at the time. *Held*, that the admission should be taken in its entirety, unless there is good reason for the contrary. 9 M. L. T. 316=9 Ind. Cas. 790=12 Cr. L. J. 142=1911 M. W. N. 199. Where the accused admitting that the deceased was at his house immediately before his death, declared that his respiration stopped owing to a fall from the roof and that he took the body and threw it into a tank, where it was afterwards found and he also produced the ornaments worn by the child on the morning on which he was missed, *held*, that this was not sufficient to find accused guilty of murder, especially when the medical evidence showed that the deceased might have been either intentionally or accidentally strangled, and that the accused could only be found guilty of an offence under s. 411—8 C. W. N. 22=1 Cr. L. J. 10. Where one is charged with the murder of another, three facts have to be established :—First of all, that the person alleged to be murdered is dead ; secondly, that he did by the means alleged on the part of the prosecution and thirdly that the accused intentionally took that part in causing the death which is attributed to him by the prosecution. 7 Bom. L. R. 985=3 Cr. L. J. 85. In a trial for murder the Judge who convicts must do so on a degree of moral certainty as to the guilt of the accused, which, in his opinion, will justify him in passing the extreme sentence of the law. If he is not morally certain of the guilt of the accused so as to pass such a sentence, he is bound to acquit. 6 C. P. L. R. Cr. 3.

To prove by circumstantial evidence, four things are essential ; (1) That the circumstances from which the conclusion is to be drawn should be fully established ; (2) that all the facts should be consistent with the hypothesis ; (3) that the circumstances should be of a conclusive nature and tendency and (4) that the circumstances should, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved. A. W. N. 1881, 139 ; see also 1914 M. W. N. 718=16 Cr. L. J. 195 ; 16 Cr. L. J. 89=26 Ind. Cas. 1001. The Court declined to confirm a capital sentence, but passed the minor sentence, in a case when the conviction rested merely on circumstantial evidence. 3 P. R. 1867 Cr. Where a person was convicted on a charge of murder, on the evidence of a single witness, which was once before discredited, and which now remained uncorroborated, the guilt of the accused is not proved beyond reasonable doubt and he is entitled to an acquittal. 1911. 2 M. W. N. 6=12 Cr. L. J. 488=12 Ind. Cas. 96. Where the complaint to the Police and the evidence of the accused are contradictory, the accused are entitled to benefit of doubt. 1911, 2 M. W. N. 14=12 Cr. L. J. 497=12 Ind. Cas 217. It is very unsafe to rely upon a witness who materially improves its former statement. 43 P. W. R. 1914 Cr.=16 Cr. L. J. 75=26 Ind. Cas. 667. In certain cases of injuries, such as wounds caused by blunt instruments, resulting in death, to suport a conviction for murder, it must be proved that bodily injury was intended to be inflicted and that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. 1 Weir 300. In a case of murder where the evidence was most improbable and was not free from reasonable suspicion. an accused should be aquitted. 2 M. L. T. 496=7 Cr. L. J. 216. Unexplained possession of the jewellery of the murdered child, shortly after murder, taken with the direct evidence of another child of 10 years of age is good evidence of murder. 6 M. L. T. 123=4 Ind. Cas. 1051=11 Cr. L. J. 157 ; see also 1913 M. W. N. 145=18 Ind. Cas. 337=14 Cr. L. J. 49. Where the evidence against a person convicted of murder consists only of a statement made by a brother of the deceased that he saw him run away after the commission of the offence and where against that evidence there is a strong array of circumstantial evidence in favour of the accused, e. g. omission of his name in the first report, the missing jewells not being tracted out, the accused not absconding after the alleged offence, a reasonable doubt arises, the benefit of which must be given to the accused. 1911, 2 M. W. N. 373=12 Ind. Cas. 577=12 Cr. L. J. 551.

When an accused exculpates himself in his confession, it cannot be used as against his co-accused in an offence of murder. 1911, 2 M. W. N. 375=12 Cr. L. J. 562. Where there is a clear *prima facie* case of murder, the Sessions Judge cannot, on a plea of guilty by the accused, convict him of culpable homicide not amounting to murder, while there is no proof adduced of grave and sudden provocation. Rat. Un. Cr. C. 410. In grave cases such as murder, the record of a confession, among other records should be in plain and legible writing. Rat. Un. Cr. C. 837=Cr. Rg. 50 of 1896. A confession nominally made to a third party, for instance, to a *Zaildar*, in the presence of the police and after the arrival of the *Thanadar* who at the time of the confession was sitting a few yards off, is also inadmissible in evidence under s. 25 Evidence Act. 14 P. R. 1911 Cr.

=12 Ind. Cas. 973=12 Cr. L. J. 597. In this case, the accused, who were convicted of murder, were acquitted by the Chief Court on the ground that the evidence did not exclude every reasonable hypothesis but that of the guilt of the accused. 5 P. R. 1872 Cr. It is most unsafe to rely on circumstantial evidence where separate pieces are apparently connected and not fitting in with rational conduct of men. A. I. R. 1931 Pat. 169. Causal witness deposing that accused informed his intention of murder should not be believed. A. I. R. 1931 Pat. 169. Evidence as to motive should not be considered at first. Proper course is to examine evidence as to commission of crime first. Time of *post mortem* should be recorded to determine time of death. A. I. R. 1931 Oudh. 119. Mere pressing of mouth of deceased does not amount to murder when death is due to blows dealt beforehand by another person. A. I. R. 1930 All. 45. Possession of stolen goods recently after murder is material evidence to suport conviction. A. I. R. 1930 Cal. 379. Conviction should not be based on probabilities and suspicions. A. I. R. 1930 Oudh. 460. Where prosecution witness was found untruthful as to greater part of evidence, accused should not be convicted on residue without corroboration. A. I. R. 1930 Oudh. 460. Where the only evidence of identification is a dying deposition and the incident took place in a moonless night, an accused should not be convicted under s. 302. A. I. R. 1930 Oudh. 60.

When men who expected a *lathi* fight use their *lathis* with the result that a man is killed, it must be taken, in the absence of special circumstances, that they know that they were doing an act so imminently dangerous that it must in all probability cause such bodily injury as is likely to cause death. 27 A. L. J. 244=116 Ind. Cas. 19=30 Cr. L. J. 559=A. I. R. 1929 All. 160. If a person receives grievous injuries and is detained in hospital and as a result of these injuries *pneumonia* supervenes and the victim dies, the perpetrators of the attack upon him are guilty of murder. 110 Ind. Cas. 230=29 Cr. L. J. 678=A. I. R. 1928 Lah. 851. Where a person ordered his men to beat the other party and in conseqnence of which order the people of that party were beaten and as a result some men were killed, that person is undoubtedly guilty of abetment of murder. A. I. R. 1928 Cal. 752 ; A. I. R. 1928 Pat. 100. If some persons assist an accused to murder a certain man, whether by themselves assaulting him or by preventing his friends from assisting him they are guilty of the same offence as is committed by the accused, whereas, if they merely go to the spot with some innocent Intention, and the accused suddenly commits a murder without their assistance and possibly contrary to their wishes, they can only be guilty of the offence, if any, which they themselves commit, and they should be sentenced without regard to the fact that their companion committed murder. 104 Ind. Cas. 242=28 Cr. L. J. 802=A. I. R. 1927 Oudh. 321. Where the appellant and his son attacked the deceased who succumbed to the injuries, and it was put forward in defence of the appellant that the sole common intention of the appellant that his son was to cause grievous hurt to the deceased by the use of a spear and long bamboo, and that thereafter when the appellant's actions ceased, the son proceeded to stab deceased to death whilst appellant stood aside and took no further part in the matter ; *Held*, confirmng the conviction under s. 302 I. P. Code, that the intention and actions of appellant and his son could not be divided into two parts and the appellant was rightly convicted under s. 302 read with s. 34=27 Cr. L. J. 827=95 Ind. Cas. 603=5 Bur. L. J. 12. A person charged with offence of murder can be convicted under s. 201, Penal Code without a further charge being made against him under that section, and such a conviction is warranted by s. 237 of the Criminal Procedure Code. 7 Lah. 84=94 Ind. Cas. 901=27 Cr. L. J. 709=27 P. L. R. 583= A. I. R. 1926 Lah. 88. The conviction for murder was set aside and the accused was sentenced for culpable homicide not amounting to murder by the High Court. 27 P. L. R. 6=8 Lah. L. J. 51. Where offences under ss. 149 and 302 I. P. Code are committed against three different persons there should be separte heads of charge and not a single head of charge against the accused. 44 C. L. J. 253=A I. R. 1927 Cal. 17.

By-standers encouraging acts of murder are guilty. 85 Ind. Cas. 130=47 A. 276= 26 Cr. L. J. 450. Swinging sideways blows of a *lathi* causing rupture of the lever resulting in death is an offence under s. 325 and not under s. 302. A. I. R. 1925 Oudh. 135. Even though there is no evidence to suggest that the accused physically assisted the actual murderer in killing the deceased, but there is evidence that the accused went all the way from their house to the scene of murder and were present at the time when and the place where the murder was committed and gave moral support to the crime which was committed in their interests, the accused are guilty under

s. 302 I. P. Code. 22 A. L. J. 1075. In the course of a fight between two parties one of the men in the first party was shot by a gun from the second party and died. It was not found whether the shot had been fired by any person of the second party or whether the death was due to the gun going off itself during the struggle for its possession. *Held* that the accused must be given the benefit of the doubt and they were not guilty of murder. 6 Lah. L. J. 271 1924 Lah 720. An accused is guilty under this section, where he caused the death of his 14 years old wife, who was physically weak and epileptic, by such beating which may not be sufficient to cause the death of a person of sound health but which he knew would cause the death of a person of such a weak state of health. A. I. R. 1923 All. 545. Where the accused joined in beating the deceased when he was on the ground with *lathis* and inflicted such serious injury to him that he died two days afterwards. *Held*, that the accused must be deemed to have known that they were causing injury likely to cause death and death having resulted they were guilty of murder. 45 A. 727=21 A. L. J. 623=74 Ind. Cas. 858=24 Cr. L, J. 826 ; see also 69 Ind. Cas 439=23 Cr. L. J. 711=1923 Lah. 68 ; 73 Ind. Cas. 961=24 Cr. L. J. 721=1924 Mad. 41. Where a number of persons armed with deadly weapons set upon a man and killed him, their common intention can be presumed to be to cause death or such bodily injury as would make them guilty of murder. 69 Ind. Cas. 449=23 Cr. L. J. 721. The deceased died of septic poisonig in respect of wounds inflicted by the accused some two months previously. The wounds were not inflicted on any vital part. *Held*, the case was on the border line and though the accused must be held to have intended to cause bodily injury which was likely to cause death, degree of probability was not high enough to justify a conviction under s. 302 I. P. Code but it was an offence under the first part of s. 304. 2 Bur. L. J. 239. Where the accused expected to find the deceased to come to a particular place to prosecute his intrigue with a girl who was betrothed with one of them and were lying in wait armed with spears and intended to murder him, if he did, the provocation is not sudden and the accused were not deprived of their power of self-control, so that the accused in such a case are guilty of murder. 35 Cr. L. J. 1476=1934 Cr. C. 459=A. I. R. 1934 Lah. 239.

Where it was doubtful whether appellant poisoned her husband and from the circumstances it was equally possible that some body else had done the foul deed, the benefit of doubt was given to the accused. A. I. R. 1923 Lah. 537. In a case where as a result merely of a boyish quarrel just a short time before the accused stabbed the deceased with a pen knife four inches in length there can be no convicton for murder or culpable homicide not amounting to murder. when the *corpus delicts* is not established. The offence of which the accused is guilty is voluntarily causing grievous hurt by an instrument used for cutting. 1922 Lah. 26. Where one man sets up touching another with a heavy *lathi*, and still more when two or more do so, it is more than likely that one blow at least will land on the head of the man attacked, however careful his assailants may be to avoid the head and that he will die of a fractured skull in consequence. 64 Ind. Cas. 838=23 Cr. L. J. 54 ; see also 20 A. L. J. 900=L. R. 3 A. 161 Cr. Where a wife who was carrying on a laison with a stranger wanted to marry the stranger and acting on his advice put some sugar containing arsenic in the food prepared by her for her husband under the impression that the sugar would make her husband submissible to her will and the husband died of the effects of the arsenic. *Held*, that the wife not having been aware that she was administering a poison to her husband, was not guilty of murder. 4 Lah. L J. 445. Where it is impossible from the nature of the injuries inflicted, to come to any other conclusion than that the persons who committed the crime, if they were more than one, had a clear and determined intention of doing the victum to death, it is immaterial which of the participants in the crime struck the fatal blow. 6 Pat. L. J. 241=2 Pat. L. T. 565=61 Ind. Cas. 785=22 Cr. L. J. 443. In a case of murder by *Dhatura* poisoning, it is to be determined with what object it is administered. Its use may be merely in order to facilitate the commission of robbery. It does not *per se* and necessarily import contemplation of the victim's death as a means towards or as incidental to the main end of that offence, The point is to be decided with regard to the circumstances of each particular case and the best indication of the intention of the offender can be gathered from the amount of *Dhatura* which he administered if a very large quantity of *Dhatura* is administered the offender shall be presumed to intend to cause death of the victim for the successful termination of his crime. 4 P. L. R. 1920 ; 19 P. R. Cr. 1919=51 Ind. Cas. 670=20 Cr. L. J. 510. Whene no adequate motive for murder was proved a perusal of medical evidence showed that although there were two confused wounds on the head, a bruise on the fore-head and a burise on the neck there was no tracture of any bones of

the skull, nor apparently any injury caused to the brain. Nor was there any fracture of any bone of the body. From the medical evidence it appeared that it was merely intended to give deceased a severe beating. The medical witness was of opinion that death probably resulted from direct violence. *Held*, that the accused cannot be held to have intended to cause the death. 1 Lah. L. J. 247.

An appellant was found to have killed his step-father, who was an infirm old man and an invalid, and who consented to being killed, the appellant's motive being to get three innocent men hanged. *Held* that the 5th Exception to s. 300 applied to the case and that he could not be convicted under s. 302, but only under s. 34 Part 1, Penal Code. 45 P. R. 1917 Cr. Where it was found that the accused caused the death of the deceased by stabbing him with the intention of causing such injury as was likely to cause death, the most that the accused could be convicted of on such finding was culpable homicide not amounting to murder and the conviction of murder was wrong. 17 Cr. L. J. 544=36 Ind. Cas. 592. Where a man gives *Dhutura* to another in such a large quantity as to result in his death within three or four hours, although he may not have had any intention to kill, he must be held to have known that his act in giving a dangerous substance in such a quantity was likely to cause death. 6 A. L. J. 129=31 A. 148=9 Cr. L. J. 383=1 Ind. Cas. 765. When Their Lordships are of opinion that by some disregard of the form of legal process, or by some violation of the principles of natural justice or otherwise, some substantial and grave injustice has been done, then, whatever doubts they may have of the appellant's innocence, or whatever suspicion they may entertain of his guilt, or however great may be their reluctance to interfere with, or overrule the decisions of the Indian Courts in criminal matters, Their Lordships think they are bound to advise His Majesty that the conviction should not be allowed to stand. 17 C. W. N. 1110 P. C.=14. M. L. T. 263=1913 M. W. N. 806=15 Bom. L. R. 910=25 M. L. J. 518=14 Cr. L. J. 577. The applicant's cattle were doing considerable damage to the crops belonging to complainants who drove them to the cattle-pound. While they were in the way to the pound the accused came armed with *lathis*, to rescue the cattle. At the command given by one of them the others assaulted the deceased and beat him with the result that he died. *Held*, that the offence was committed in pursuance of the common object and each one of the accused was guilty of an offence under s. 302 I. P. Code. 13 A. L. J. 410=29 Ind. Cas. 91.

A gang of persons, making preparations to commit dacoity was discoverd in the limits of a certain village and was pursued by villagers who seized and arrested two accused who were members of the gang. Shortly afterwards a dacoit at large fired a gun and killed one of the villagers. The accused were thereupon tried for the offence of murder under s. 302 read with ss. 149 and 34 Penal Code. *Held*, that the accused were not guilty of murder, for the separation of the two accused from the gang having been prior to the murder, there could be no common object, and neither s. 149 nor s. 34 applied. 17 Bom. L. R. 906=8 Bom. Cr. C 118. Charges under ss. 302 and 201 Penal Code, cannot be combined. 2 Weir, 301. If men will use such a formidable and dangerous weapon as a *lathi* with such violence and on such part of the body as causes death immediately or soon afterwards, they should be convicted of murder and not merely culpable homicide not amounting to murder. A. W. N. 1890. 74. Although it is true that it is for the person who has taken the life of another to show that the homicide was accidental, or that it did not amount to murder, yet it is necessary in order to throw the burden of exculpating himself on the accused in a case of murder, that the witnesses for the prosecution should have told a story which can be believed in itself and that, the Judge is satisfied that they are not concealing circumstances which would go to reduce the offence if disclosed. A. W. N. 1897. 21. Where four persons attacked one man, who, in consequence of the attack, died subsequently, *held*, that the assailants are guilty under s. 302 I. P. Code, if the common intention of the assailants was to cause death or bodily injury likely to cause death or sufficient in the ordinary course of nature to cause death. 13 Cr. L. J. 159=13 Ind. Cas. 847. A person who inflicts injury on the person of another, which ends fatally and which the former should have known was likely to cause death, is guilty of culpable homicide amounting to murder, though he had no wish to cause death or any motive to do so. 14 Cr. L. J. 115=18 Ind. Cas. 675=1913 M. W. N. 556 ; see also 5 W. R. Cr. 32 ; 2 L. B. R. 125 =1 Cr. L. J. 184 ; 4 W. R. Cr. 33. The causing of death by an act done with the intention of causing death cannot alternately be offence of murder or the offence of culpable homicide not amounting to murder, neither s. 236 Cr. Pro. Code, nor section 73, I. P. Code being applicable to the case. 11 P. R. 1887 Cr. Where the accused, a

menial, servant being ordered to attend his masters, when they had announced their intention of committing murder, accompained them with the intention of rendering such assistance as might be required of him, and his masters entered the house and killed the deceased, the servant standing at the door of the house, *held*, that the accused was guilty of murder. 1 Weir, 296.

Where the prisoner killed his sister and hurt himself with the intention of throwing the blame on a faction opposed to that to which he belonged, *held*, that he was guilty of murder. 8 B. H. C. R. Cr. 109. Where a child did not die on account of the exposure except in a remote degree, the mother that exposed the child would not be guilty of murder, but only of an offence under s. 317 Penal Code. 10 W. R. Cr. 52. Murder is excluded from the exception in s. 94 I. P. Code, as to acts done under compulsion of threats causing apprehension of instant death. U. B. R. (1892-1896) Vol. I, 201. Where action resulting in death is continuous and is impossible to be resolved into different actions inspired by different motives, the accused is guilty of murder. A. I. R. 1931 Lah. 27. If husband discovers wife in act of adultery and kills her he is guilty of manslaughter only and not murder. This rule cannot be extended when the relationship is not of husband and wife. A. I. R. 1930 Cal. 37. Blow with spear on fleshy part of body is not necessarily fatal and offence does not fall under s. 302 but under section 326. A. I. R. 1930 Lah. 950. Where the accused had grudge against deceased and assaulted him with a stabbing weapon, he is guilty of murder. A. I. R. 1930 Lah. 534. Failure of prosecution to establish additional motives is not fatal defect in prosecution case. A. I. R 1930 Lah. 490. Person striking with weapon like *lathi* on vulnerable part of the body as head must be deemed to have intended to cause such injury as he knew was likely to cause death. A. I. R. 1930 Lah. 490. *Panchayat* was convened to consider act of stealing by accused. One of the *panchayats* insisted that the matter should be reported to the police. Accused struck heavy blow at him and thereby caused death. The accused was held guilty of murder. A. I. R. 1930 Lah. 60. In the absence of extenuating circumstances, a person who inflicts injury with knife intends nothing short of inflicting death and as such commits the offence of murder. A. I. R. 1930 Mad. 972. Woman of middle age administering arsenic must accept full responsibility of her action A. I. R. 1930 Oudh. 502. Where it is not known who delivered the fatal blow, the accused should be held guilty of abetment of murder. A. I. R. 1930 Pat. 164.

Causing death by the administration of *Dhutura* poison in toddy for the purpose of detecting thieves will amount to murder. U. B. R. (1897-1901) Vol. I, 296.

Murder—extenuating circumstances.—The mere suspicion of a wife's conduct is not an extenuation of a deliberate wife murder. Men cannot butcher their wives and escape hanging on the plea that they suspected them of misconduct. 30 L. W. 229=1929 M. W. N. 269=116 Ind. Cas. 142=30 Cr. L. J. 630=A. I. R. 1929 Mad. 495. The murderer is 19 or 20 years of age and murder prompted by veneration for founder of religion is not extenuating circumstances. A. I. R. 1930 Lah. 157. The accused was brought to bay during his escape is not extenuating circumstance. 139 Ind. Cas 213=33 Cr. L. J. 722=1932 Cr. C 857=A. I. R. 1932 Cal. 818 (F. B.); see also A. I. R. 1932 Lah. 500=33 P. L. R. 580=33 Cr. L. J. 497.

Motive, adequacy of—If the Court is satisfied as to the fact of murder the adequacy or inadequacy of the motive is not of importance. 1929 M. W. N. 592. In a charge of murder it is wholly immaterial that the motive is inadequate. 100 Ind. Cas. 226=28 Cr. L. J. 258; 35 Cr. L. J 1283=A. I. R. 1934 Lah. 368=1934 Cr. C. 617. The accused, a student aged 17 was alleged to have distributed certain sweets containing arsenic among his fellow students. All who had received it ate it then and there except one person who took it home and gave it to his young niece and father. All the persons showed signs of arsenic poisoning and all of them recovered except the niece who died. It appeared that the accused himself had eaten a portion of the sweets and there was no motive for the crime. There was no evidence that the accused prepared the sweets. *Held*, that the case was doubtful and that the accused could not be convicted of murder. 30 P. L. R. 424=10 Lah. L. J. 555=115 Ind. Cas. 469=30 Cr. L. J. 478.

Joint offence—Where two assailants, bearing dangerous instruments, assaulted the deceased, and the blows were aimed at the head, with the result that two fatal injuries were caused, and these injuries were such as could not be caused with one and the same instrument. *Held*, that each of the two assailants was responsible for one of the fatal injuries and, therefore, both were guilty under s. 302. 118 Ind. Cas.

50=30 Cr. L. J. 870=A. I. R. 1929 Nag. 125 ; see also 1 L. B. R. 233 ; A. I. R. 1932 Mad. 748=64 M. L. J 153=33 Cr. L. J. 814 ; 33 Cr. L. J. 537 ; A. I. R. 1932 Cal. 815 (F. B.)=33 Cr. L. J. 663 ; A. I. R. 1933 All. 535.

Where an accused did not actually inflict any injury upon the deceased but accompanied the co-accused on his murderous errand and was his confederate throughout, being himself armed like his co-accused with a weapon to meet all eventualities. *Held*, that the accused was as much responsible for the murder as his co-accused who had actually struck the fatal blow. 116 Ind. Cas. 613=30 Cr. L. J. 637=A. I. R. 1929 Lah. 791. There is no practice to the effect that when a large number of persons participated in a murder only those persons should be selected for death sentence who are shown to have taken an actual part in causing the death. *Prima facie* all the person convicted should be sentenced to the extreme penalty unless special circumstances are shown in favour of the alternative punishment of transportation for life. 8 Pat. 181=117 Ind. Cas. 176=30 Cr. L. J. 737=A. I. R. 1929 Pat. 161 ; A I. R. 1933 Lah. 661 ; A. I. R. 1931 Lah. 536. Where two persons are acting in concert in the sense that their attack on the the deceased (with a heavy stick by the one, and with a heavy stone by the other) was a single indivisible thing, both of them are liable for the resultant murder, under the provisions of s. 37, Penal Code. 15 Bom. L. R. 303=19 Ind. Cas. 331=14 Cr. L. J. 235. In the absence of proof that all the prisoners had a common intention to inflict injury likely to cause death, only the person who had struck the fatal blow could be convicted of murder and that the other accused would be guilty of grevious hurt only. 19 M. 483= 1 Weir, 298 ; see also 1 Weir, 296 ; 10 P. R. 1868 Cr ; 3 Ind. Cas. 622=8 P. W. R. 1909 Cr.=10 Cr. L. J. 321 ; A. W. N. 1892, 233 ; A. I. R. 1933 Lah. 977=A. I. R. 1933 Lah. 930 ; A. I. R. 1933 Oudh. 53=9 O. W. N. 977.

Where a blow is struck by one prisoner in the presence of, and by the order of the other both are principals in the transaction ; and where the two persons join in beating a man, and he dies, it is not necessary to ascertain exactly what the effect of the blow was. 23 W. R. Cr. 11. In case of joint commission of murder, none can be convicted in the absence of finding of common intention. A. I. R. 1930 Sind. 99.

Abettor.—Person instigating others to beat deceased and in whose presence injuries are inflicted by such others causing death is guilty under s. 302. 1933 Cr. C. 1387=A. I. R. 1933 Lah. 928 ; see also A. I. R. 1933 Lah. 660=1933 Cr. C. 882 ; A. I. R. 1933 Rang. 236=11 Rang. 354=1933 Cr. C. 907.

Procedure.—Cognizable—Warrant—Not-bailable— Not-compounable — Triable by Court of Session.

Charge.—I (*name and Office of Magistrate, etc*) hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of , at did commit murder by intentionally or (knowingly) causing the death of (name of the deceased), and thereby committed an offence punishable under s. 302 of the Indian Penal Code, and within the cognizance of Court of Session or (High Court).

And I hereby direct that you be tried by the said Court on the obove charge.

Punishment for murder by a life-convict.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable— Triable by Court of Session.

Punishment for culpable homicide not amounting to murder.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with intention of causing death or of causing such bodily injury as is likely to cause death ;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Scope.—"A greater latitude of discretion is given to the Judge in apportioning the punishment of culpable homicide when it does not amount to murder; for he is empowered to pass any sentence ranging from transportation for life to a small fine. In general, the Code makes no distinction, either in its definitions and penal provisions, between cases in which a man causes an effect designedly, and cases in which he causes it with knowlege that he is likely to cause it. But this section awards a mere severe punishment to culpable homicides in which the act causing death, is done intentionally for the purpose of causing death, than it does to these homicides in which the act is done with the knowledge that it is likely to cause death but without intention to cause it."—*Morgan and Macpherson.*

The first part of s. 304, is intended to include only those cases in which the act of the accused person would be culpable homicide amounting to murder, but for the fact that it was committed in circumstances which render one or other of the exceptions in s. 300 applicable. 3 P. R. 1911 Cr.=9 P. W. R. 1911=87 P. L. R. 1911=10 Ind. Cas. 852=12 Cr. L. J. 274. Section 304 must be interpreted as providing punishment for offence of culpable homicide in all cases where the accused cannot be convicted of murder. 140 Ind. Cas. 49=39 Cr. L. J. 849=28 N. L. R. 233=A. I. R. 1932 Nag. 121 (F. B.) Part I applies where there is guilty intention and Part II applies where there is no such intention but there is guilty knowledge. 130 Ind. Cas 884=35 C. W. N. 456=32 Cr. L. J. 598=58 C. 1138=A. I. R. 1931 Cal. 545; A. I. R. 1932 Lah. 372= 1932 Cr. C. 490=33 P. L. R. 474=33 Cr. L. J. 445. Where the offence is under s. 304, the accused must be given clear notice of part under which he is charged. A. I. R. 1934 Sind. 23. When an intention to cause death or bodily injury was not proved and was not even likely a conviction under the first clause of s. 304 I. P. Code is untenable. S. C. 123, Oudh. A person who beats another brutally and continuously, so that death results, is guilty of murder or culpable homicide not amounting to murder, according as there may or may not have been grave provocation. 5 W. R. Cr. 78. A person who causes death by acts done with the knowledge that they are likely to cause such bodily injury as was dangerous to life, is guilty of only culpable homicide (s. 304) and not of murder (s. 302). The provocation contemplated by s. 300 should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. 2 M. 122=1 Weir, 302; see also 19 W. R. Cr. 35; 7 W. R. Cr. 77; 18 A. 497; 1 W. R. Cr. 33. The burden of proving, grave and sudden provocation is on the accused. A. I. R. 1932 Lah. 11=33 Cr. L. J. 186. In case of sudden quarrel and provocation the accused is guilty under s. 304. A. I. R. 1932 Lah. 302=33 Cr. L. J. 577; see also A. I. R. 1933 Lah 869=1933 Cr. C. 1114; A. I. R. 1931 Lah. 189=32 Cr. L. J. 1205=134 Ind. Cas. 583; 33 P. L. R. 546=33 Cr. L. J. 446=137 Ind. Cas. 267; A. I. R. 1932 Lah. 3; A. I. R. 1933 Oudh. 41. 144 Ind. Cas. 160=1933 Cr. C, 589=34 Cr. L. J. 804=A. I. R. 1934 Pesh. 38. Where knowledge and intent are absent, and the deceased is the aggressor conviction should be under s. 326. A. I. R. 1933 Lah. 733; see also A. I. R. 1931 Lah. 103= 33 Cr. L. J. 183=1931 Cr. C. 167; A. I. R. 1932 Oudh. 279=9 O. W. N. 655; but see A. I. R. 1933 Oudh. 269=1933 Cr. C. 596=10 O. W. N. 482. In case of merciless and determined beating with hands and feet conviction should be under s. 304. A. I. R. 1933 Lah. 883=1933 Cr. C. 1177; see also A. I. R. 1933 Rang. 270=1933 Cr. C. 1014.

The distinction between the intention to cause injury sufficient in the ordinary course of nature to cause death, and the intention to cause injury likely to cause death depends upon the degree of probability of death resulting from the act committed. Apart from cases falling within the second clause of s. 300, if, from the intentional act of injury committed, the probability of death resulting is high the finding should be that the accused intended to cause death or injury sufficient in the ordinary course of nature to cause death, and the conviction should be of murder unless one of the exceptions applies; if there was probability in a less degree of death ensuing from the act committed the finding should be that the accused intended to cause injury likely to cause death, and the conviction should be of culpable homicide not amounting to murder. 5 L. B. R. 80=10 Cr. L. J. 359=3 Ind. Cas. 710. The accused who professed to be a specialist in witch-craft beat a woman who was believed to be possessed by an evil spirit with the object of exorcising the spirit. The woman died of the beating protesting that she was not possessed and refusing to be beaten. *Held*, that the accused was guilty of an offence under the second part of s. 304 I. P. Code. 44

Ind. Cas. 679=19 Cr. L. J. 375. The difference between the two parts of s. 304 I. P. Code is that under the first part the crime of murder is first established and the accused is then given benefit of one of the exceptions, while under the second part of the same section, the crime of murder is never established at all. 69 Ind. Cas. 454=23 Cr. L. J, 726. If the act of the accused falls within either of the clauses 1, 2 and 3 of s. 300 but is covered by any of five exceptions it will be punishable under the first part of s. 304 ; and if the act falls within clause 4 of s. 300 but is covered by any of the exceptions it will be punishable under the second part of s. 304. 103 Ind. Cas. 841=28 Cr. L. J. 761=A. I. R. 1927 Sind. 232 ; 32 P. R. 1887. Cr. Where the cause of death was single *lathi* blow a sentence of 7 years' rigorous imprisonment and fine of Rs 400 is unduly severe. In such a case the sentence of fine is unnecessary. 5 L. L. J. 180 ; 1928 Lah. 416 ; 5 Lah. L. J. 414=1923 Lah. 170. The first part of s. 304 applies where there no guilty intention and the second part applies where there is no such intention but there is guilty knowledge. A. I. R. 1931 Cal. 345=35 C. W. N. 456=130 Ind. Cas. 884.

Cases.—If in a case it is difficult to determine whether the offence proved to have been committed by the accused is culpable homicide or murder, the proper course is to convict the accused of the lesser offence. L. B. R. (1872-1892) 459. Where a sweeper had been appointed as a *Rakha* by a *Jat* to watch his crops of gram and on account of the former stealing the staff quarrel ensued and he was strangled to death by the latter. *Held*, that the culprit was guilty of no offence punishable by the second part of s. 304 I. P. Code and a sentence of 4 years' rigorous imprisonment was quite sufficient. 6 P. W. R. 1912 Cr.=66 P. L. R. 1912=15 Ind. Cas. 318=13 Cr. L. J 478. In a case of culpable homicide, when a man is killed by a blow, the intention of the accused is a presumption of law. He is presumed to have intended the natural and necessary consequence of his act, even if he is drunk. 12 Cr. L. J. 524=12 Ind. Cas. 292=4 Bur. L. J. 253 ; 1923 Lah. 516. Where the accused threw his stick at the deceased with such force that it hit him in the head with the point and made a punctured wound which caused his death, *held* that the accused was not liable to be punished under s. 304 A, because injury was intentionally caused to the deceased. Rat. Un. Cr. C. 673. A person cannot be conviced under this section on mere probablity. Rat. Un. Cr. C. 686=Cr. Rag. 4 of 1894. The prisoner, a fully devoloped adult man, was charged with causing the death of his wife a girl aged about eleven years and three months. The death was caused by hæmorrhage from a laceration in the upper part of the vagina caused by the prisoner having sexual intercourse with her. *Held*, that the prisoner was guilty of an offence, under s. 338 and not under s. 304 or 304 A. or 325 of the Penal Code. 18 C. 49. Where the accused found his sister having illict connection with another man and in a sudden passion killed them both on the spot, *held*, that the accused received very grave and sudden provocation, sufficient to reduce the case to a culpable homicide not amounting to murder. 18A. 497=A. W. N. 1896, 161. Where there there was a fight between the deceased and the accused, but the deceased struck the first blow, and no motive sufficient to induce the accused to deliberately murder the deceased was proved, *held* that the accused were guilty of culpable homicide only though the deceased died as a result of the injuries inflicted by the accused. 5 M. L. T. 207=4 Ind. Cas. 1116. Conviction in alternative under s. 325 and 304, Part 2 is not proper. A. I. R. 1933 Lah. 865=1933 Cr. C. 1112=146 Ind. Cas. 221. Where the accused, the Jail Superintendent on being attacked with shoe by prisoner thrusted wooden substance in his rectum which caused his death, he is guilty of offence under s. 304 (2) and not under s. 325. A. I. R. 1932 Lah. 199=1932 Cr. C. 220=33 P. L. R. 49=33 Cr. L. J. 365=136 Ind. Cas' 729. Where the accused kills a woman above 18 years with her consent, he is guilty of culpable homicide not amounting to murder. A. I. R. 1931 Mad. 436=60 M. L. J. 616=32 Cr. L. J. 659=54 M. 504.

The punishment to be inflicted for one offence under s. 304, for murder of the adulterer caused by sudden provocation by the husband of the woman is discretionary. The principal object in view by which the Courts should be guided is a sufficient deterrent punishment. U. B. R. (1892-1896) Vol. I, 1213.

Where death results from a violent attack the accused should be committed to the Court of Sessions a charge of culpable homicide not amounting to murder. 1 C. L. R. 141. When a Judge convicts on a charge of culpable homicide not amounting to murder, he should state under which of the exceptions of s. 300, Penal Code the case falls. 1 Agra. Cr. 3. The Judge in this case did not find that the accused intended to cause death nor was it found that the act was done with the intention of causing any particular bodily injury such as the offender knew to be likely

to cause death, nor that the offender knew that it must in all probability cause death or such bodily injury as was likely to cause death. In view of the facts above stated the offence was held to fall under s. 304 I. P. Code. U. B. R. (1892—1896) Vol. I, 215 ; see also U. B. R. (1892—1896) Vol. I, 211 : 6 P. L. R. 1903=30 P. R. 1932 Cr. ; A. W. N. 1898, 163 ; 27 P. R. 1883 Cr. ; I Weir. 299 The accused rushed wildly into a house and without considering the consequences attacked his mother-in-law, a woman of fifty-five with a *dao* and by mistake cut another woman of sixty-one on the arm, who died of the shock by the cut. The wound was not such as would ordinarily cause the death of a woman of that age. *Held*, that he committed only culpable homicide not amounting to murder. 4 L. B. R. 367=9 Cr. L. J. 364. The deceased having enticed away a married woman, the father and the husband of the woman, armed with sticks waited for him on the road by which he was expected to pass, and gave him blows on the chest and back, but refrained from hitting him above the head ; *held*, that the accused were liable to be convicted under s. 304 (2). 10 P. R. 1890 Cr. Where a person snatches up a log of heavy wood, and strikes another with it on a vital part with so much force and vindictiveness as to cause that person's death almost on the spot, that act must be held to have been done with the knowldge that it was likely to cause death ; but if the act is done without forethought, in the heat of passion and on a sudden quarrel, offence committed is culpable homicide not amounting to murder. 7 W. R. Cr. 70. The question for solution in cases where death is caused by a single blow given in anger, on the impulse of the moment, with a weapon not deadly in its nature, is always one of fact, not of law, as to the intention or knowledge with which the striker acted. 5 P. R. 1893. Cr. ; 1624 Lah. 493. Where the right of private defence has been exceeded the accused is guilty of culpable homicide not amounting to murder. A. I. R. 1932 Lah. 344=138 Ind. Cas. 418=33 Cr. L. J. 587=33 P. L. R. 282=1932 Cr. C. 425 ; see also A. I. R. 1933 Lah 227=1933 Cr. C. 347=146 Ind Cas. 34 ; A. I. R. 1934 Lah. 1048 : A. I. R. 1933 Rang. 340=1933 Cr. L. 1150. Where the common intention of the assailant was only to cause griveous hurt and there was only one serious blow on the head and the other blows on the head and the other parts of the body were of a comparatively slight nature : *Held*, that it cannot be held that the assailants intended to cause the death of their victim or to cause such bodily injury or was likely to cause death. The case therefore fell within the purview of the second part of s. 304 and not under the first part. A. I. R. 1935 Lah. 80.

Where the accused, a police constable, caused the deceased's death by violently beating him in the course of a police enquiry into a theft case, *held*, that the accused was not liable to be convicted for culpable homicide, but was guilty of an offence under s. 300 Penal Code. 86 P. R. 1886. Where in arresting the deceased who with others, was attempting to commit theft, the accused struck a blow on the deceased with a stick, *held*, that the accused had not used excessive violence and were not therefore, guilty of culpable homicide. 26 P. R. 1872 Cr. In a quarrel between himself and the deceased the accused, gave her a blow on the side of the head with a heavy hammer, which he picked up on the spur of the moment, and caused thereby her death ; *held* that the accused were merely guilty of culpable homicide not amounting to murder. 30 P. R 1902 Cr.=6 P. L. R. 1903 ; see also 24 W. R. Cr. 48 ; A. W. N. 1881, 156 ; Rat. Un. Cr. C. 6. The Chief Court reduced the sentence to one of two or three years' imprisonment, in a case where death was caused on provocation in a sudden fight, the accused not taking any unfair advantage over the deceased. 12 P. R. 1886 Cr. ; 13 P. R. 1866 Cr. ; see also 9 Cr. L. J. 245=1 S. L. R. 1 Cr. A prisoner, who struck the deceased a hasty but a fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder. 1 W. R. Cr. 23. The finding by a man of his wife in actual intercourse with another is a provocation grave and sudden enough to reduce the offence of murder, to culpable homicide not amounting to murder and such an offence must be visited with a light sentence Rat. Un. Cr. C. 932=Cr. Reg. 42 of 1897 ; see also A. I. R. 1930 Lah. 172 ; 10 Lah. L. J. 508=115 Ind. Cas. 476=30 Cr. L. J. 481. Two persons stated that having caught the deceased in the act of having sexual intercourse with the wife of one of them, they killed him on the spot. *Held*, that the grave provocation given reduced the crime from murder to culpable homicide not amounting to murder. 1 W. R. Cr. 17 ; see also A. W. N. 1885, 197 ; 3 B. L. R. A. Cr. 33 ; 27 P. R. 1900 Cr. ; 89 P. R. 1899 Cr. ; 87 P. R. 1866 Cr. ; 1 Weir. 307 ; 8 P. R. 1890 Cr. ; 8 W. R. Cr. 38 ; 4 W. R. Cr. 38 ; 6 W. R. Cr. 42 ; 4 P. R 1904 Cr. Where the accused when in a state of intoxication, produced by his own act,

struck the deceased with a bamboo, thereby causing fracture of the skull, which resulted in death, *held* that the accused should be charged with culpable homicide not amounting to murder. 1 Weir. 301 ; see also 2 L. B. R. 204. Accused were hill-men and three of them were devil dancers who attempted at C's request or at any rate with his consent, to dispossess C's wife of devil by applying a hot ladle to her mouth and throat and to various parts of her body, with the result that she died. *Held*, that the accused were guilty under s. 326 and not under s. 304A. A. I. R. 1935 All. 282. Where the crime is unpremeditated this section applies. A. I R 1935 Lah. 149. Where two accused had the common intention of beating the party of which the deceased was a member and the deceased died as consequences of a blow struck in the beating, *held* that both the accused were responsible under s. 304 and 34 I. P. Code. A. I. R. 1935 All. 504.

Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause his death, or such bodily injury as was likely to cause death, is culpable homicide not amounting to murder under s. 304. 7 W. R. Cr. 54. When a man of full age (i. e. above 18 years) submits himself to an emasculation, performed neither by skilful hand, nor in the least dangerous way, and death ensues in consequence, the persons concerned in the act are guilty of culpable homicide not amounting to murder. 5 W. R. Cr. 7. Where the accused on being attacked by the deceased armed with a large club, fired at him, without any particular aim, but lowering the muzzle of his gun, so as to hit a vital part, and death ultimately resulted from the wound inflicted, *held* that the accused had not exercised a legal right of private defence, as he could have escaped by standing back, and that he was therefore, guilty of culpable homicide not amounting to murder. 13 P. R. 1868 Cr ; but see A. W. N. 1882. 172. It is a doubtful question whether a person, constructively guilty of murder under s. 304 of the Penal Code, can be said to have committed the offence of murder within the meaning of s. 149 of the Code, so as to make others by a double construction, guilty of murder. 8 C. 739=12 C. L. R. 233. Section 304 coupled with s. 149 applies only to such persons who, though not taking an active part in unlawful assembly, are liable to be punished by reason of their being members of the unlawful assembly, and a person being killed in prosecution of the common object. 6 C W. N. 98. Where a person, on the spur of the moment, in the heat of passion, and without any premeditation and motive for causing death, seizes a *chhavi* the first weapon which came to his hands, and inflicts with it a blow on the head of another which results in the death of the latter, the former's act falls within the 2nd part of s. 304 Penal Code. But in such a case the culprit deserves the maximum sentence of imprisonment provided for that offence. 4 P. W. R. 1934 Cr=3 P. L. R. 1914=15 Cr. L. J. 178=22 Ind. Cas. 754. When the only inmates of the house were the husband and his two wives, and the deceased's elder wife was habitually ill-treated and half-straved by her husband, and at last she was found suffering from a serious injury to head, from the effect of which she died three days after she was admitted to hospital where she was too ill to make any statement and there was no indication, that the injury was accidental or self-inflicted, and the explanation given by the husband as to the injury was unsatisfactory and highly improbable, the presumption is that the injury was caused by her husband. *Held*, also that, to inflict such an injury on the head of a woman already reduced by ill-treatment to such a poor condition, was an act which warrants the finding that the culprit must have known that it was likely that death would be the result, and was sufficient to bring him under s. 304, part 2 I. P. Code. 3 P. W. R. 1913 Cr.=150 P. L. R. 1913=19 Ind. Cas. 715=14 Cr. L. J. 283.

Where grave discrepancies between the statement of the deceased contained in the first report and the evidence of his witnesses as to the persons attacking him and giving him fatal injuries, throw a great doubt on the whole case, the benefit of which must be given to the accused. 23 P. W. R. 1914 Cr.=172 P. L. R. 1914= 15 Cr. L. J. 530=24 Ind. Cas. 842. B went to a police station and made report of an assault against F and others. The police declined to take action and he referred to a Magistrate. The accused F with his companions went to the house of B, evidently with the intention of taunting her with her failure to obtain any satisfaction from the police. A tenant of B, who was in B's house at the time, picked up a stick and came out abusing and threatening the intruders. F struck the tenant one severe blow with a *chhavi* at his head from which he died. F was convicted of an offence under s. 304, Penal Code and his companions of the offence under s. 149

read with s. 334 I. Penal Code. *Held*, that F was rightly convicted of the offence, under the first part of s. 304, but his companions must be acquitted, for, none of them took any part in any assault at B's house. 55 P. L. R. 1911=10 P. W. R. 1911=12 Cr. L. J. 187=10 Ind. Cass. 643. Where a prisoner admits having thrown a girl into a canal, but the body cannot be found, it is inexpedient to convict him of murder ; his act would properly be met by a conviction of attempt to murder. Rat. Un. Cr. C. 687=Cr. Reg. 7 of 1894. Where the common intention of a number of assailants is to cause grievous hurt, and death is caused by one of the assailants all the assailants cannot be convicted under s. 304=29 A. 282=A. W. N. 1907, 51=4 A. L. J. 207=5 Cr. L. J. 130 ; see also 109 P. L. R. 1916=17 Cr. L. J. 451=36 Ind. Cas. 1311 ; 40 A. 133=6 A. L. J. 11=43 Ind. Cas. 438=19 Cr. L. J. 150 ; 5 Lah. L. J. 121 ; 1924 Lah. 61 ; 7 Lah. L. J. 46=86 Ind. Cas. 341=26 Cr. L. J. 757=A. I. R. 1925 Lah. 318 ; 30 Cr. L. J. 903=A. I. R. 1929 All. 5751=18 Ind. Cas. 369. 34 C. W. N. 1127=30 Cr. L. J. 187 ; 1933 Cr. C. 1389= A. I. R. 1933 Lah. 930.

Where in commiting dacoity, the accused stuffed a cloth into the deceased's mouth in order to silence him and not with any idea of killing him, *held*, they must be convicted under ss. 304 and 395 I. P. Code, and not under s. 302 and 396 I. P. Code, 18 M. L. T. 103=1915 M. W. N. 621=16 Cr. L. J. 614=30 Ind. Cas. 438. An offence under this section has been committed when severe beating is given to a woman to cast out evil spirit with party's consent resulting in death. 1 U. B. R. 1902=1903, Penal Code 1.

If the immediate cause of death be the improper administration of dangerous drugs, then the persons who administered such drugs without any excuse are the persons "who caused the death". L. B. R. (1872—1892). 179. Where death was caused by a blow with a stick, but it appeared that death would not have been caused by the violence apparently used, had the deceased's spleen been in a healthy condition and that the accused did not prove that the deceased's spleen was diseased, *held* that the ascused was merely guilty of voluntarily causng hurt by a dangerous weapon, but not of culpable homicide not amounting to murder. A. W. N. 1881, 112. Where the husband, a fully developed adult man had several intercourse with his child wife who was an immature girl and he did it with such a violence as to rupture the vagina and destroy the partition between the vagina and the rectum and the wife died in consequence he commits an offence under s. 304 of the Penal Code as he did a dangerous act with a wanton disregard as to the consequence with his wife and so caused her death. 11 S. L. R. 76. Where the accused were convicted under s. 304. part 2, Penal Code, for causing the death of the deceased by violence, and the medical evidence showed that the cause of death was either concussion of brain due to head injuries or possibly opium poisoning, and the body bore no signs of injuries except four slight superficial lacerations but no fracture of any bone, while on the other hand opium was found in the stomach and the first report did make mention of the fact that the deceased had admitted having taken opium : *Held.*, that the prosecution had failed to prove that the death was caused by any act of the accused, and they were therefore, entitled to an acquittal. 16 P. W. R. 1916 Cr.=17 Cr. L. J. 147=33 Ind. Cas. 627. Where the accused proved to have driven his motor car in a rash manner during night while he was in a drunken condition and he run his car against four persons carrying a bier and injured two of them so severely that they died subsequently. *Held*, that the accused should be convicted under ss. 337 and 394 I. P. Code and sentenced to 18 months' rigorous imprisonment. 1929 M. W. N. 395. Where a person was attacked by five men all armed with *lathis* and where therefore in defending himself he hit them back inflictng injuries which in the case of two of the assailants resultes in their death and where the person was charged with having exceeded the limits of private defence, *held*, that in such situation it was not possible for one to restrict himself to exactly the necessary number and force of blows and that therefore the accuse should be acquitted. 117 Ind. Cas. 937=1929Cr. C. 38=30 Cr. L. J. 863=A. I. R. 1929 Lah. 494.

The accused inflicted the injury by which death was caused with his dang in a fit of provocation. Two blows were struck on the head causing fracture and the third blow fell on the chest of the deceased. *Held*, that the conviction should be under s. 304, part 2, and not under s. 304 part 1, I. P. Code. 11 Lah. L. J. 52=A. I. R. 1929 Lah. 180. Where in a scuffle the accused struck three *lathi* blows which fractured his bones and caused gangrene resulting in death but it was found that the accused did not intend to cause death. *Held* that the accused was not guilty of

murder but was guilty of manslaughter. 42 A. 302=18 A. L. J. 224=58 Ind. Cas. 463=21 Cr. L. J. 783. Two parties armed with *lathis* indulged in a fight, and one of the contesting parties received injuries from the effects of which he died. It was uncertain which of the several persons composing the opposite side struck the fatal blow. *Held*, that these persons are guilty of an offence under s. 304 I. P. Code. 58 Ind. Cas. 242; see also 60 Ind. Cas. 676=22 Cr. L. J. 276=3 U. P. L. R. Lah. 34. Where the accused possessed by a superstitious belief made an offering of his child to a crocodile in a certain tank, with a pure heart believing that though the crocodile would doubtless take the child away, it would return the child unimpaired and the child would thereafter have a charmed life and attain to a good old age. *Held*, that as the accused had no intention of causing death to the child, he was guilty of an offence under the last clause of s. 304 I. P. Code as what he did was with knowledge that his act would result in the death of the child. 33 C. L. J. 179=25 C. W. N. 676=62 Ind. Cas. 414=22 Cr. L. J. 526. If two or more people are found to have had a common intention of causing such bodily injury as is likely to cause death and that result ensue, all are guilty of the offence of culpable homicide not amounting to murder, quite irrespective of who accused the particular injury leading to death. 9 O. & A. L. R. 1024; 1923 Lah. 336; 72 Ind. Cas. 532=24 Cr. L. J. 421; 83 Ind. Cas. 636=26 Cr. L. J. 76=A. I. R. 1925 Oudh 284. When the accused killed another whom he saw occupying the same bed with the wife of his cousin and there was no motive for the crime, he must have acted under sudden and grave provocation and the conviction can only be under s. 304 I. P. Code. 1923 Lah. 312. Even when there is no evidence as to previous existence of any serious enmity and the affairs arose out of a petty quarrel of the moment, this is hardly an extenuating circumstance in favour of accused using a weapon like a *chhavi* on slight provocation which shows a callous disregard of human life for which he must suffer the consequence. 73 Ind. Cas. 932=24 Cr. L. J. 708=1928 Lah. 326.

Where the Court finds that the accused must have known he was likely to cause death and concluded from that an offence under s. 300 (4) I. P. Code, the conviction must be changed into one under s. 304 I. P. Code. 2 Bur. L. J. 99. Where the charge is one of murder under s. 302 and there is no question of the first exception to section 300 being admitted by the prosecution and a Magistrate specially empowered under s. 30 Cr. Pro. Code heard the case and convicted under s. 304 I. P. Code, the proceedings were quashed and the accused committed to the sessions. 69 Ind. Cas. 459=23 Cr. L. J. 731. During a sudden and unpremeditated affray a person was killed. The evidence showed that even after he fell down incapacitated, the accused continued striking him. *Held*, a plea of self-defence was not sustainable and they were guilty under s. 304. 6 Lah. L. J. 483. Where the accused, a youth of about 18 years forcibly committed rape on a girl of 12 and the girl's vagina was ruptured and as a result of shock the girl died. *Held*, that the accused was not guilty under s. 304 I. P. Code of culpable homicide not amountiug to murder, as death was not the natural consequenee of the simple sexual offence but he was guilty of rape only. 3 Pat. 410=83 Ind. Cas. 651=1924 Pat. 553. In the midst of a quarrel, a man was abused by his sister-in-law and he struck her with a stone. Her skull was fractured and she died. *Held* he acted on the impulse of the moment and could be convicted only under s. 304 I. P. Code. L. R. 5 A. 175=25 Cr. L. J. 809=81 Ind. Cas. 320=1925 All. 4. In the course of a dispute about drawing water from a tap. the accused drew a knife and stabbed the deceased piercing the chest wall and cutting the heart. *Held*, though the blow was struck in a sudden fight without pre-meditation, the accused must have known that striking in the chest with a dangerous weapon might prove fatal and was therefore guilty under s. 304 (2). 25 Cr. L. J. 1289=82 Ind. Cas. 361=1925 Lah. 148; see also A. I. R. 1931 Lah. 189. Where three men armed with dangs attacked another and caused two grievous hurts, it can be presumed that they all intended to cause or knew that they were likely to cause grievous hurt. Where only one blow was struck on the head which resulted in death and there was no evidence to show which of the three accused struck that blow, none of them can be convicted of culpable homicide 6. Lah. L. J. 268=1924 Lah. 555. Where the skull of the deceased was fractured as the result of a blow on the head in an attack upon one man by four persons who beat him with lathis but there was no other grevious hurt and it was not known which of the accused struck the blow which fractured the skull and resulted in his death. *Held*, the accused did not know that death was likely to be caused but they must havs known that grievous hurt was likely to be caused, and that they committed therefore the offence of causing grievous hurt. 6 Lah. L. J. 317=1924 Lah. 654.

Where a person hits another on the temple with a lathi he must be taken to have intended to cause such hurt as would in the ordinary course of nature cause death. Where death ensuses, he is guilty under s. 304 I. P. Code. 26 Cr. L. J. 1160=A. I. R. 1925 Oudh. 482=88 Ind. Cas. 520. A person can be convicted under s. 304 (1), I. P. Code in a murder trial, only if one of exceptions to s. 300, is proved. 86 Ind. Cas. 826=26 Cr. L J. 890=A. I. R. 1925 Lah. 549. Where death was due to a single blow by only one out of five people but the assailant could not be spoted out, all cannot be convicted under s. 309 read with s. 34, but only under s. 325. 86 Ind. Cas. 337=26 Cr. L. J. 753=A. I. R. 1924 Pat. 553. The accused struck the deceased, who was sitting with certain enemies of the accused watching an entertainment, on the head with a lathi which resulted in his death. *Held*, that the accused must have known that he was likely to cause death and was guilty under s 304 (2) and five years' rigorous imprisonment was appropriate sentence. A. I. R. 1925 Lah. 111. Where the wounds inflicted on the deceased were not serious but such as would not individually amount to more than simple hurt and no motive for murder was established. *Held*, that the offence was only culpable homicide not amounting to murder. 26 P. L. R. 702=7 Lah. L. J. 524=A. I. R. 1925 Lah. 621. In order to remove a culpable homicide from the category of murder the provocation must not only be grave but also sudden, and must have by its gravity and suddenness deprived the accused of the power of self-control. 83 Ind. Cas. 712=26 Cr. L. J. 152=A. I. R. 1923 Lah. 493. Section 34 which is based on common intention cannot possibly be used with the second part of s. 304 which expressly excludes intention. 26 Cr. L. J. 827=85 Ind. Cas. 475=A. I. R. 1925 Cal. 913. Where the death is caused by knifestabb in sudden fight, the offence falls under this section. A. I. R. 1925 Lah. 148. Mere apprehension of hurt will not entitle a person to plead "private defence" to a conviction under s. 304 of the Indian Penal Code. 27 P. L. R. 430=95 Ind. Cas. 276=27 Cr. L. J. 756=8 Lah. L. J. 455. The High Court set aside the conviction for an offence under section 304 (2) on the ground that the prosecution witnesses were partial and their testimony palpably false. 27 P. L. R. 22=95 Ind. Cas. 597=27 Cr. L. J. 821=8 L. L. J. 183.

Presumably every body knows that the abdomen is a most delicate and vulnerable part of the human body, and if a man with that knowledge kicks the abdomen with such violence as to cause fracture of two ribs and rupture of the spleen which was normal he should be presumed to have done so with the knowledge that he, by so kicking, was likely to cause death. 96 Cas. 641=27 Cr. L. J. 977=A. I. R. 1926 Lah. 313. A *lathi* is a *lethal* weapon and, if a person chooses to lay about with a *lethal* weapon with all the force at his command, it must be presumed that he knew he was likely to cause death. 94 Ind. Cas. 137=27 Cr. L. J. 569=A. I. R. 1926 Lah. 426. Where the injuries inflicted by the accused result in death, the question in such cases is not concluded by the amount of reasoning from the mere fact that the injury caused did in fact result in death. What has to be seen is first, what degree of injury did the man intend ; and secondly, what did he know as to the consequences of such injury. A. I. R. 1931 Cal. 261 (S. B.)=34 C. W. N. 1127=32 Cr. L. J. 187. The mere fact that a member of one unlawful assembly which assailed its victim was a Sikh wearing Kirpan unsheathing with which he dealt the fatal blow to the victim is not sufficient to hold the other members of the assembly constructively liable for causing of death simply because he was wearing a Kirpan. *Gian* v. *Emperor*, A. I. R. 1930 Lah. 532 =122 Ind. Cas. 721=31 Cr. L. J. 448. Seizure of the person and dragging a debtor to his creditor by the peons of the creditor aginst his will, constitutes an offence of abduction within the meaning of s. 362 thereby giving the person so dragged the right of private defence of his body even to the causing of death subject to restrictions mentioned in section 99. If while defending himself such person strikes the person against whom he was defending on a sudden irrational impulse thereby exceeding the power given to him under the statute and causes death of the other person, the offence comes not under s. 302 but under s. 304. *Daroga* v. *Emperor*, A. I. R. 1930 Pat. 347. It is not improper to inflict lesser sentence, where there are circumstances demanding exercise of discretion, *e. g.* absence to strong motive coupled with possibility of murder having been committed without premeditation and under temporary derangement of mind due to fear of being prosecuted and convicted of criminal offence. A. I. R. 1930 Sind. 225. Person inflicting wounds in defending himself is not guilty. A. I. R. 1930 Lah. 93.

Where there was a sudden quarrel and a fight in the course of which the deceased was stabbed by the accused and the accused himself received an injury from some

weapon such as a knife, *held*, that the accused cannot be said to have taken undue advantage of the deceased since he himself was attacked and wounded also by a knife, and more appropriate section under which the accused should have been convicted is s. 304. 97 Ind. Cas. 952=27 Cr. L. J. 1192; see also 106 Ind. Cas. 449=29 Cr. L. J. 33; 27 A. L. J. 508=A. I. R. 1929 A. 535. Where the accused went along with two other persons who were armed and at the scene of occurrence he gave the order to beat but the others assaulted the deceased so severely that he subsequently died, *held*, that the reasonable inference is that the accused intended all the results that followed and that he was rightly convicted under ss. 304 and 109. 6 Pat. 627. Where a man receives 3 injuries on his head, it is most improbable that he was attacked by more than 2 persons. 103 Ind. Cas. 58=28 Cr. L. J. 634=1 Luck. C. 197=8 A. I. R. 314. Where it is found that the aggressor was not the accused but the deceased, the Court should not pass a severe sentence. 99 Ind. Cas. 56=28 Cr. L. J, 24. Six persons one of whom was armed with an iron *lathi* went to take possession of a *taur*. The deceased person resisted them and the man who was armed with *lathi* inflicted a fatal injury on the head of the deceased which fractured his skull and killed him. *Held*, that under the circumstances, the armed person was guilty of offence under s. 304 (2) I. P. Code, and the others of an offence under s. 325. 9 Lah. L. J. 529. Where the wife of the accused and the deceased woman were quarrelling and the accused being provoked by the abuses given to his wife, in sudden anger, struck the deceased a heavy blow on the head with a heavy *lathi* and fractured her skull and caused her death. *Held* that the circumstances of the case do not lead to the inference of an intention to kill and it cannot be inferred on the evidence that the accused had the knowledge that the act was so imminently dangerous that it must in all probability cause death. 8 Pat. L. T. 594=102 Ind. Cas. 349=28 Cr. L. J. 541=8 A. I. C. R. 189. Where the accused inflicted many blows on the body of the deceased, and also used kicks in order to drive away an evil spirit, and thereby caused the death, the accused is guilty under section 304 (2), Penal Code. A. I. R. 1928 Lah. 917.

Where the husband and wife were not on very good terms and on one occasion the husband asked for *pan* and the wife refused *pan* and threw dirty rice water in his face whereupon the husband beat herewith stone and killed her. *Held* that the refusal of his wife to give him *pan* was liable to make him angry but the throwing of dirty water in the face was an act which would cause a husband to lose control of himself and would be a grave and sudden provocation and therefore the offence was not one of murder but culpable homicide not amounting to murder. 117 Ind. Cas. 164 =30 Cr. L. J. 720=A. I. R. 1920 Pat. 201. If a man joins with another to assault a third even though the original intention may be merely to inflict relatively harmless injuries, and he sees his companion in a course of action which may reasonably be expected to bring about the death of the deceased and takes no steps to interfere with that action or to assist the deceased such an act is an act or omission which renders him liable to be convicted under s. 304 read with section ss. 32 and 34 I. P. Code. It must be apparent to every person that to hold an elderly man's head under water for any longer than is required to inflict a mere ducking is liable to bring about the death of the person. 9 Pat. L. T. 826=114 Ind. Cas. 222=36 Cr. L. J. 276=A. I. R. 1929 Pat. 65.

Jury.—As this section deals with two kinds of culpable homicide, the jury ought to be asked to say under which part they find the accused guilty. 19B. 741.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

304 A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Causing death by negligence.

Scope.—This section applies to rash and negligent acts and does not apply to cases where hurt is voluntarily caused. 2 Bom. L. R. 613. The provisions of this section seems to apply to cases where there is no intention to cause death and no knowledge that the act done, in all probability, would cause death. 14 C. 566. Acts, probably or possibly involving danger to others, but which, in themselves, are not offences, may be offences under s. 336, 337, 338 or 304A, if done without due care to guard against the dangerous consequences. 4 C. 764. Where the act causing death of the accused is in its nature criminal, this section has no application. 12 M, 56.

This section does not apply where there is neither culpable rashness nor culpable negligence in the sense in which those terms are usually accepted. 14 C. P. L. R. Cr. 126 ; L. B. R. (1872-1892) 89 ; U. B. R. (1897-1901) Vol. I. 314 ; L. B. R. (1872-1892), 89 ; L. B. R. (1872-1892), 308 ; 1 Weir. 324 ; 1 Weir. 326 ; 14 Bom. L. R. 887 ; 7 P. W. R. 1913 ; Rat. Un. Cr. C. 964 ; 15 A. L. J. 615. This section is not intended to cover cases where there is no intention to cause hurt. 3 A. L. J. 394 ; see also 3 A. L.J. 678 ; 25 Cr. L.J. 449 ; 36 C. 302 ; 38 C. 855 ; 4 C. 815 ; 30 C. W. N. 66 ; 14 Bom. L. R. 887. This section has no application where the offence is committed voluntarily. 4 C. 764. If a man intentionally commits any offence and consequences beyond his immediate purpose, the result is not to be attributed to mere rashness ; if knowledge could not be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate, but acts probably or possibly involving danger to others which in themselves are not offences may be offences within the meaning of section 304 A, Penal Code, and kindred actions, if done without due care to guard against dangerous consequences. 15 Cr. L. J. 512 ; 18 Cr. L. J. 195 ; 14 Ind. Cas. 195=16 C. W. N. 1055=39 C. 585 : 17 Bom. L. R. 217 =16 Cr. L. J. 305=28 Ind. Cas. 641. To find a person, who had caused the death of another with an enlarged spleen by blows inflicted on the body and who was charged with culpable homicide, guilty under s. 304 A, it would not do for the juries to infer rashness from the mere fact of the prevalence of the disease of the spleen in the district : but they must be satisfied of the accused's knowledge of such prevalence and of the danger to life involved in the striking on the trunk of the body of a person who might be affected with the disease. 4 C. 815. Where a person is beaten and death ensued on account of the ruptutre of a diseased spleen, the offence is one under s. 321 and not under s. 304 A, Penal Code. Rat. Un. Cr. C. 63 ; see also Rat. Un. Cr. C. 67 ; 11 P. R. 1880 Cr. ; 5 P. W. R. 1912=157 P. L. R. 1913. In India, looking at the passive submission, and submissiveness of the native servant, it would be a dangerous doctrine to hold that the master inside a carriage is entirely guiltless, if his directions brought about the rash and negligent driving. 1 Weir. 322=6 M. H. C. App. 31. A conviction under s. 304 A is not sustainable where death has resulted from violence intentionally directed against the deceased by the accused. The conviction should be under s. 323 I. P. Code. 11 P. R. 1880 Cr. Where, being insulted in a drunken brawl, the accused threw down the deceased and stamped his feet on his body and death ensued within twenty days, the offence was one under s. 323 of the Penal Code, and not under s. 304 A. Rat. Un. Cr. C. 67.

If the surgical operation by an unskilled practitioner causes death of the patient, an offence under this section is committed. 14 C. 566. Where the act causing the death of the accused is in its nature criminal section 304 A of the Penal Code has no application 12 M. 56=1 Weir. 326.

Culpable rashness etc.—Culpable rashness is acting with the consciousness that mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent this happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without, the consciousness that illegal and mischievous effects will follow, but in circumstances, which show that the actor has not exercised the caution incumbent upon him, and that if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. 7 M. H. C. 119. To come under this section the death should be the direct result of a rash and negligent act of the accused, and that act must have been the proximate and efficient, cause without the intervention of another negligence. 4 Bom. L. R. 679 ; 3 Bom. L. R. 494 ; 32 C. 645. Criminal rashness is hazarding a dangerous or wanton act, with the knowledge that it is so and that it may cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to consequence. 30 C. W. N. 66=33 C. 333=1926 Cal. 300=91 Ind. Cas. 889=27 Cr. L. J. 153 ; see 30 C. 302=13 C. W. N. 362=9 C. L. J. 204 ; see also A. I. R. 1933. Rang. 326=1933 Cr. C. 1284. A. I. R. 1934 Mad. 209=66 M. L. J. 318=35 Cr. L. J. 691. Where the act is voluntarily caused this section has no application. 2 Bom. L. R. 613 ; 38 C. 855=15 C. L. J. 512.

The prisoner had been in charge of a police station, the vicinity of which had been troubled by thieves. On one occasion a thief had fired at the prisoner. It having been reported to the prisoner that three thieves were prowling about, he, with other men, went out to patrol. They saw a man crouching under a tree, and thinking he must be a thief, the prisoner fired at him and killed him. The man

proved to be a *haleara*. The prisoner wrote a false report to the effect that the deceased had been killed by thieves. *Held* that, under the circumstances, the accused was guilty of an offence under s. 304 A. W. N. 1881. 156. The owner of a ferry having the exculsive right to carry passengers across a certain river at a particular spot, and being found to maintain for the purpose a certain number of boats in efficient condition, is liable to be punished under s. 304 A, if he causes the death of any passenger by drowning owing to the unsoundness of one of the boats. 16 A. 472=A. W. N. 1894, 182 ; see also 6 A. 248=A. W. N. 1884, 71. Rash act means extra-hasty act. A. I. R. 1933 Rang. 326=1933 Cr. C. 1284. Overloading a lorry is not rash and negligent act within s. 304 A. 137 Ind. Cas. 262=33 P. I. R. 492=33 Cr. L. J. 436=I. R. 1932 Lah. 319=A. I. R. 1932 Lah. 366.

Where the evidence of a Civil Surgeon showed that milk was administered in such quantity as to kill the child, but there was no evidence to show that the mother was aware of it, *held* that she was not guilty of an offence under s. 304 A. 5 N. W. P. 38. The accused, who was watching his field one dark night, hearing a noise in the field shouted whereupon a thief ran out of it, whom he followed and struck with a stick. The thief fell down, and the accused caught him and took him to the zemindar's house. The thief became insensible and subsequently died from the effects of the blow which the accused had given him. *Held*, with reference to the terms of s. 304 A that the conviction under that section was bad. A. W. N. 1881, 103.

Where, in the deceased's omission to immediately drive pigs, that were grazing upon the accused's land, the latter took up a piece of a brick and threw it at the deceased from a distance of five paces, and it struck him over the spleen, which being in diseased state, was ruptured, and death ensued ; *held*, that the accused was guilty only of hurt, and not of causing death by a rash and negligent act. 3A. 597= A. W. N. 18181, 37. Intentional violence is not a rash or negligent act. 11 P. R. 1880 Cr. Where the accused struck his servant, who was suffering from an enlarged spleen, and thereby caused his death by its rupture, *held* that he was not guilty of an offence under s. 304 A. 7 P. R. 1877. Where death is caused by an act, which is in itself an offence, s. 304 A. is not applicable. 15 P. R. 1882 Cr ; see also 134 Ind. Cas. 772=32 Cr. L. J. 1248=A. I. R.=1931 Lah. 275. Where the accused seeing a stooping child in the early morning, in a place considered by the villagers to be haunted, and considering the child to be a spirit or demon, caused his death by inflicting blows, before he discovered his mistake, *held* that he was properly convicted under s. 304 A, as he did not act in good faith, i. e. with due care and attention. 11 P. R. 1888 Cr, Section 304. A does not apply to cases of death caused by direct violence intended to cause bodily injury, but without the knowledge that thit is likely to cause death. 34 P. R. 1887, Cr. Where death was caused by the wife administering poison received from her paramour to her husband, the wife all the while thinking the substance to be only a charm and having no knowledge of the poisonous nature of the substance administered till she did see the effects, *held*, that she was guilty only of an offence under s. 304 A. 60 P. R. 1897 Cr. Where the accused struck the deceased on the head while he was standing on the edge of a well, by which the deceassd lost his balances and was drowned, *held*, that he was guilty of an offence under s. 304 A, as he did not cause death by doing an act with the knowledge that he was likely by such act to cause death. 33 P. R. 1889 Cr. When during a quarrel between the complainant and the accused's father the accused struck a blow with a stick on the complainant, but fell upon a chiid of two years, which the complainant had on his hip during the quarrel, thereby causing the child's death, *held* that although the blow, if it had hit the complainant, could not have been likely to cause more than simple hurt, the accused was guilty of an offence under s. 304 A, under the circumstances of the case. 28 P. R. 1888 Cr. Section 304 A. I. P. Code must be read along with ss. 336, 337 and 338 and all these sections are confined in ther operation to acts done without any criminal intent, apart, from the rashness or negligence which is their essential ingredient. 16 A. L. J. 615. Where on a charge of murder the Sessions Judge disagrees with the verdict of the jury in favour of the accused, it is open to him to convict the accused under s. 304 A. 25 Bom. L. R. 610. On a certain night the two appellants fought with each other, each using a knife. There were no other witnesses to the occurrence. Each appellant was convicted under s. 307 I. P. Code, on the evidence of his opponent and the corroborative evidence of the wounds caused to the opponent and the admissions of the appellant that he was himself wounded in the occurrence. Each appellant received five or six serious wounds and would have died if he had not received early medical attendance.

In each case the condition of the wounded man was so serious that his dying deposition was taken. *Held* that neither of the appellants could be legally convicted under s. 307 I. P. Code, but that they were both guilty under s. 326 I. P. Code. 2 Rang. 558. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence. 30 C. W. N. 66. Where the accused hit one of his companions in shooting a boar he cannot be said to have acted either negligently or rashly. 9 Lah. L. J. 482.

Criminal Negligence.—Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge arises, was the imperative duty of the accused person to have adopted. 30 C. W. N. 66. Where owing to strong wind and rough water, a ferry-boat overturns and sinks resulting in loss of life, the lessees of the ferry cannot be convicted of an offence under s. 304 A, Penal Code, unless it is shown that the boat, although overcrowded was in an unseaworthy condition at the time of the occurrence. 16 Cr. L. J. 72=26 Ind. Cas. 664. Where death is caused by a negligent act, an offence under this section has not been committed in asmuch as there was no likelihood of the result following. 1 M. 224=1 Weir 325. Where a snake-charmer, exhibiting a cobra with unextracted fangs in public, placed it on the head or one in the crowd to display his own skill and with no intention of causing harm, whereupon the cobra, in being pushed off the spectator, bit him and caused his death, *held* that the snake-charmer was guilty of an offence under s. 304 and not merely under s. 304 A. of the Penal Code. 5 C. 351=1 C. L. R. 580. Where a girl of 17 years of age being tired by her husband's ill treatment attempted to commit suicide by jumping into a well and she had no consciousness that her child was on her neck and she jumped with the child and the child died of the jump though the girl survived. *Held* that she was guilty under s. 304 A. 27 Bom. L. R. 604=87 Ind. Cas. 840=26 Cr. L. J. 1016=A. I. R. 1925 Bom. 310. The accused who is arraigned with negligence cannot claim the benefit of an error of judgement when he exercised none. 18 S. L. R. 199=A. I. R. 1925 Sind. 233. The accused's liability is determined by what is the proximate cause. If the proximate cause is negligence of the accused, the presence of another and contributary cause is not a defence. 18 S. L. R. 199=A. I. R. 1925 Sind. 233. Death should be direct result of rash and negligent act. 145 Ind. Cas. 612=1933 A. L. J. 205=34 Cr. L. J. 1013=55 A. 263=A. I R. 1933 All. 232. Person killing another in act of unloading pistol he knows to be loaded is guilty of negligence. A. I. R. 1930 Lah. 462=1930 Cr. C. 531. The accused who was driving a motor-bus when coming across a stationary tramcar instead of proceeding straight drove the bus to the other side of the tram with the result that a boy was knocked down and killed. It appeared that the accused did not blow the horn while so crossing and that he accelerated the speed while in the act of crossing and immediately after. *Held* that the act of the driver in making the deviation was not such a rash act as would bring the case within section 304 A. I. P. Code. *Held*, however that the conduct of the accused in not blowing the horn and in accelerating the speed just when passing close to the tramcar amounted to culpable negligence and that he was liable to be convicted under s. 304 A. I. P. Code. 30 Bom. L. R. 665=111 Ind. Cas. 657=29 Cr. L. J. 897=A. I. R. 1928. Bom. 208.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate, or Magistrate of first class.

Charge.—I (*name and office of Magistrate*, etc.) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at caused the death of by doing a rash or negligent act not amounting to culpable homicide, namely, by and thereby committed an offence punishable under s. 304 A of the Indian Penal Code and within my cognizance (or the cognizance of the Court of Session or the High Court).

and I hereby direct that you be tried on the said charge.

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be

punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Scope.—Insanity, idiocy, or deliriousness of a person takes away the criminality of the suicide. *Bishop. Cr. Law Vol. II p. 877.* But a person who abets the commission of suicide of such persons is guilty of an offence which is equal in magnitude to murder. A person abets the doing of a thing, who intentionally aids, by any act or illegal omission, the doing of that thing, (section 107). "It seems to us" say the Law Commissioners "that the rule would fail to be applied under these clauses chiefly in such a case as this, where a person legally bound to take care of the person of another has by an illegal omission of his duty intentionally given him the opportunity, or permitted him to obtain the means of killing himself. It would apply also, we conceive, in the case of a person seeing another to destroy himself, say by hanging, and allowing him to accomplish his purpose without any attempt to prevent him, if as may be expected, the law of procedure makes it a common duty incumbent upon all men to assist in preventing offences about to be committed in their presence. The intention here would be inferrable from the circumstances. In the former case collateral proof of the intention would be requisite. But we apprehend that it is active aid which is principally intended in these clauses, and to which the higher penalty is meant to be applied." *First Report, §§ 322, 323.* "Upon a charge of abetting suicide, under section 305, it will be incumbent on the prosecution, in adition to the ordinary evidence of abetment by instigating or aiding etc., to show to the satisfaction of the Court the incapacity, whether it arises from infancy, or insanity. or intoxication of the person who has committed suicide,—in the same manner as incapacity has to be proved by the accused when, upon an ordinary trial, it is relied on by way of defence."—*Morgan and Macpherson.*

Charge.—I (*name and office of Magistrate, etc*), hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at abetted the commission of suicide by A. B. a person under eighteen years of age (or an insane person, etc.) and thereby committed an offence punishable under s. 305 of the Indian Penal Code, and within the cognizance of the Court of session (or High Court).

And I hereby direct that you be tried by the said Court on the said Charge.

Procedure.—Cognizable—Warrant—Not-Bailable--Not-Compound-able—Triable by Court of Session.

Abetment of suicide

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—"This and the preceding section contain express provisions for the punishment of abetting suicide when that offence is actually committed. The ordinary law of abetment is inapplicable here. Suicide or self-murder may be the act of a person who is by law incapable of committing an offence (see sections 82, 83) ; or it may be committed by a person who is criminally responsible for his actions. In the former case section 305 makes the abetment of suicide an offence which may be punishad as severely as murder.—*Morgan and Macpherson.* Actively assisting a Hindu widow to become a *Sati* is an offence under this section. 36 A 26=11 A. L. J. 997 ; see also 148 Ind Cas. 880=1931 A. L. J. 7=34 Cr. L J. 1069=A. I. R. 1933 All. 160. According to English Law, a suicide is a felony, and not, a misdemeanour, so if it is committed in the adviser's absence, the latter at the common law goes free of punishment ; because the principal, being dead cannot be first convicted. *Reg v. Ledington,* 9 Car. & P. 79 ; *Reg v. Jessop,* 16 Cox. C. C. 204 ; *Bishop's Cr.* Law *P. 876.* But when one advises another to kill himself, and he does it in the presence of the adviser, the latter becomes guilty of murder, probably as principal of the second decree but at all events as principal. *Ibid.* Accused were charged under sections 149 and 306 with being members of an unlawful assembly whose common object was to abet the suicide of a woman and with abetting the woman's suicide. It was found that they induced her to get her burnt along with the body of her deceased husband. With that object, they made her sit on the pyre with the husband on her lap and instantly a fire broke out from her hand. She tried to escape and leapt in the adjoining river wherefrom she was rescued by the police but she died ultimately. The accused foiled the attempts of the police to save her at an earlier stage. *Held* that the accused were guilty and the method of destruction resolved on for the suicide

was fire and the method of ignition of the fire whether miraculous, whether self-applied or whether applied by others is totally immaterial. 9 Pat. L. T. 683=112 Ind. Cas. 363=29 Cr. L. J. 1035=A. I. R. 1928 Pat. 497.

Charge.—I (*name and office of Magistrate etc*). hereby charge you (*name of accused*) as follows :—That on or about the day of at one A. B. committed suicide and that you abetted its commission by (state in what way), and thereby committed an offence punishable under s. 306 of the Indian Penal Code and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session.

307. Whoever does any act with such intention or knowledge and under such circumstances, that if he, by that act, caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and if, hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempt to murder.

*When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused be punished with death.

Attempts by life convicts.

Illustrations.

(*a*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty or murder. A is liable to punishment under this section.

(*b*) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by his section, though the death of the child does not ensue.

(*c*) A, intending to murder Z buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such fieing he wounds Z., he is liable to the punishment provided by the latter part of *the first paragraph*,† of this section.

(*d*) A intending to murder Z by poison, purchases poison, and mixes the same with food which remains in A's keepig ; A has not yet committed the offence, in this section. A places the food on Z's table, or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

Legislative Changes.—The clause marked* has been added by Act 27 of 1870 s. 11 and the words marked† have been inserted by Act 12 of 1891.

Attempt to murder.—The accused, with the deliberate intention of causig the death of his father-in-law, gave him three blows on the head. He fell down senseless on the ground. The accused, thinking that he was dead, put under his head a bundle of fire wood, and set fire to the hut in which he was lying, with the intention of removing all evidence of crime. The medical evidence in the case showed that the injury caused by blows would have caused death if the hut had not been set fire to and that the burning caused the death. *Held*, that the accused was not guilty of murder, because, when he set fire to the hut he thought that his father-in-law was dead, and his object in setting fire to the hut was apparently to remove evidence of the crime, and not to make the deceased's death certain. He was therefore guilty of an attempt to commit murder under s. 307 I. P. Code. 15 B. 194. A culprit who inflicts 20 incised wounds on the body on a person most of which were aimed at his head must be charged with murderous intent and the sentence of transportation for life is not excessive. 13 P. W. R. 1915 Cr.=132 P. L. R. 1915. The accused, in the course of a quarrel with her sister-in-law and in a fit of anger, flang her child, three years old, into a pond four feet deep, on the edge of which her house was situated, and at the same time gave expression to wish that the death of the child should rest as a curse on the woman with whom she was quarrelling ; *Held*, that the circumstances gave rise to a presumption that the intention of the accused was to cause death of the child, and that she was therefore, guilty of an offence

under s. 307, although the child was picked up by a stander-by without loss of time. 5 Ind. Cas. 138=11 Cr. L. J. 48. A person intentionally discharging a loaded gun at another from a short distance inflicting injuries which might have proved fatal, is guilty of an offence under s. 307, Penal Code, and not merely of causing grievous hurt. 16 Cr. L. J. 542=29 Ind. Cas. 670.

The prisoner in this case threw two bricks, described as large, at a jailor, one of which struck him in the shoulder. *Held* that the facts did not justify a conviction for attepmt to murder. A. W. N. 1881, 172. Where the appellant was proved to have put something found subsequently to be poisonous by the Chemical Examiner, into the food prepared for the prosecutor's family, and there was no evidence as to the quantity of the poison found in the food or as to the probable effects on any one who might have eaten it, *held* that the accused must have intended to cause hurt and was guilty of offences under ss. 328 and 511. 5 L. B. R. 79=3 Ind. Cas. 721=10 Cr. L. J. 363 ; but see A. I. R. 1921 Lah. 108=3 L. L. J. 191=22 Cr. L. J. 194=60 Ind. Cas. 50.

Scope.—To support a conviction under this section, it must be proved that the accused intended by his act to cause death and also that the act was one capable of causing death in the natural and ordinary course of things, although death did not eventually ensue. I Weir 328 ; 32 P. L. R. 1911=12 Cr. L. J. 125=9 Ind. Cas. 731 ; see also A. I. R. 1935 Oudh. 281. If a person who has an evil intent does an act which is the least possible act that he could do towards the the accomplishment of a particular crime that he has in his mind, he is not entitled to plead in his aid an obstacle intervening not known to himself. 14 A. 31. This section is exhaustive. 14 A, 38. "The intention or knowledge which is necessary to constitute murder may exist, combined with an act which falls short of the complete commission of that offence. The murderer may do an act towards the commission of the murder, but may involuntarily fail or be intercepted or prevented from consummating the crime. This and the following section seem to apply (as the illustrations show) to attempt to murder, in which there has been not merely a commencement of an execution of the purpose, but something little short of a complete execution, the consummation being hindered, by circumstances independent of the will of the author. The act or omission, although it does not cause death, is carried to such a length as at the time of carrying it to that length, the offender considers sufficient to cause death. Whether the act causes hurt or not is material only with reference to the degree of punishment which the section authorises. There may be many atrocious and deliberate attempts to murder falling within the provisions, which not only cause no hurt, but which are not even trespasses or assaults.—*Morgan and Macpherson.* The intention must be gathered from the nature of the act, manner and object proclaimed. Where complainant was beaten to unconciousness conviction under section 307 is justified. A. I. R. 1929 Lah. 67=29 Cr. L. J. 1008=112 Ind. Cas. 224 ; see also 125 Ind. Cas. 183=A. I. R. 1930 Lah. 253 ; A I. R. 1930. Lah. 491=126 Ind. Cas. 573. This section applies where the act is done with sufficiently guilty intention and knowldge that death would occur but death does not occur owing to something which is beyond the accused's control. A. I. R. 1932 Bom. 279=56 B. 434=33 Cr. L. J. 613=34 Bom. L. R. 571=138 Ind. Cas. 503.

Where on the evidence, the act of the accused amounts to an attempt to commit murder, the Magistrate should commit the accused to the Sessions Court for trial and should not try the case himself. 5 M. L. T. 25=4 Ind. Cas. 114=11 Cr. L. J. 196. A person firing two shots successively at another person clearly shows murderous intent. 11 P. W. R. 1910 Cr.=5 Ind. Cas. 602=11 Cr. L. J. 171. An offence under this section does not depend at all on the nature of the hurt actually inflicted. It is an offence which may be committed without inflicting any hurt at all, as will be clear from the first illustration to the section. 4 L. B. R. 311 (F. B.)=9 Cr. L. J. 11. Where in a case under this section, A and B were named as assailants at the *Thana* and when the Police reached the spot the name of C was substituted instead of B, and the only eye-witness said their backs were seen. *Held*, that the accused could not be convicted on account of these being blood stains on the clothes and on the evidence of the trackers which is by no means infallible. 14 P. W. R. 1913 Cr.=67 P. L. R. 1913=19 Ind. Cas. 196=14 Cr. L. J. 196.

The act which is punishable under s. 307 I. P. Code must be an act which is itself capable of causing death. Where a person pulled the trigger twice and aimed the gun at a certain person but with no result in the absence of proof that the gun was

loaded, a conviction under s. 307 I. P. Code cannot be had. 2 Bur. L. J. 76=1923 Rang. 251=24 Cr. L. J. 850=74 Ind. Cas. 1042. Where appellant, a sower pursued deceased whom he thought to be the person wanted at the police station and fired three shots and the deceased who was standing in the river at the time of the third shot never appeared again. *Held*, there is no sufficient evidence to support the conviction. 1923 Lah. 415. Act must by itself be capable of causing death in natural or ordinary course of events. A. I. R. 1930 Lah. 63 ; see also 31 P. L. R. 1004. Important consideration under s. 307 is intention or knowledge of accused and circumstances under which offence is committed. A. I. R. 1930 Lah. 253. Where in a dark night the accused was proved to have fired a revolver in order to keep guard and it appeared that the shot was aimed at any one in particular. *Held*, that the accused was not liable to be convicted under s. 307 I. P. Code, because the evidence was not conclusive and the accused was entitled to the benefit of doubt. 9 Lah. L. J. 331=1927 Lah. 853=109 Ind. Cas. 342=29 Cr. L. J. 518. Where the accused fires at police-officer who attempts to arrest him he is guilty under this section. A. I. R. 1933 All. 627=1933 Cr. C. 1006 ; see also 143 Ind. Cas. 593=37 C. W. N. 312=1933 Cr. C. 490=60 C. 643=34 Cr. L. J. 611=A. I. R. 1933 Cal. 354 ; A. I. R. 1933 Lah. 852=1933 Cr. C. 1108=34 Bom. L. R. 672. Where there was no evidence except disappearance of the deceased and three shots by accused, he could not be convicted under s. 307 unless he could have had knowledge or intention to cause death in a charge under s. 302. A. I. R. 1923 Lah. 415=25 Cr. L. J. 308=76 Ind. Cas. 1028. Where two persons fought almost to their death and one of them laid a complaint, conviction of the other under s. 307 was not right as if death had ensued, accused would have been entitled to benefit of exception 4 to s. 300. A. I. R. 1925 Rang. 133=26 Cr. R. J. 409=84 Ind. Cas. 1049. Where an accused was charged under section 307 and the trying Magistrate, in convicting him, relied on the fact that some abrasions were found in his person. *Held*, that unless an incriminating circumstance is proved by the prosecution to exist against an accused person he should not be called upon to explain away its existence. A. I. R. 1929 Nag. 350=1929 Cr. C. 673.

Procedure.—Cognizable—Warrant—Not-bailable—Not-Compoundable—Triable by Court of Session.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at did an act, namely , with such intention (or knowledge), and under such circumstances, that if by that act you had caused the death of A and B you would have been guilty of murder under s. 302 (and that you caused hurt to the said A. B by the said act) and thereby committed an offence under s. 307 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct you to be tried by the said Court on the said charge.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge, and under such circumstances, that, if, he, by that act, caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z under such circumstances that, if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Scope.—Similar attempts may be be made to commit culpable homicide in any of the mitigated forms which prevent that offence from amounting to murder. Here as in the preceding section, the attempt must be carried to the point of completion, so far as the criminal is concerned ; but the complete effect is frustrated by accident or otherwise—*Morgan and Macpherson.*

Sentence.—Where the offender acted with malice aforethought full penalty allotted by law should be imposed. 141 Ind. Cas. 392=34 Cr. R. L. J. 147=1932 Cr. C. 810=26 S. L. R. 302=A. I. R. 1932 Sind. 207.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

Charge.—As in section 307. supra.

309. Whoever attempts to commit suicide, and does any act towards, the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, "or with fine, or with both."

Attempt to commit suicide,

Principle.—The same principle which forbids one to take the life of another prohibits equally the taking of his own life. Therefore suicide like any other felonious homicide is a common law felony. *Bishop Cr. Law § 1187.* In New York as in this country, an actual suicide is no offence, but it is a felony punishable by imprisonment to attempt it unsuccessfully. *Ibid.* The only punishment which can be inflicted for actual suicide is to forfeit the property of the deceased, but in that case no punishment is inflicted on the guilty but on this innocent heirs. According to the Laws of England, an attempt to commit *fels-de-se* is not an attempt to commit murder within the Stat. 24 & 25 Vict. C. 100, s. 15 but is a misdemeanour at common law. *R.* v. *Burgess*, 32 L. J. M. C. 55. The question for the jury is whether the accused did intend to take his own life, and it is a material factor to determine whether the accused really meant, to kill himself. *R.* v. *Doody*, 6 Cox. 463. A lenient sentence should be given where on account of ill-treatment the woman jumped into a well. 26 P. L. R. 581.

Scope.—Any act which is a part execution of the criminal design, is sufficient to constitute abetment under this section. But the act is a beginning of the act of self-murder, or such an approach to it as manifestly shows that there is a present intention to commit the crime.—*Morgan and Macpherson.* A deaf and a dumb person may be guilty under this section. 25 Bom. L. R. 43. If accused attempts to commit suicide but causes death of child undelivered, she is not guilty under section 307. 20 Cr. L. J. 395=17 A. L. J. 478=50 Ind. Cas. 1003. The law confers on the Court a very wide discretion in the matter of punishmeut under this section. 35 P. L. R. 439=1934 Cr. C. 805=A. I. R. 1934 Lah. 514.

Legislative changes.—The words within quotations have been substituted by Act 8 of 1882, s. 7.

Suicide.—The offence itself is not punishable when completed because the offender has gone out of the jurisdiction of all Courts here on earth. The attempt is only made punishable.

Cases.—For cases vide, 14 Bom. L. R. 146 ; 8 M. 5 ; Rat. Un. Crt C. 188 ; I. B. H, C. 4 ; 22 P, R. 1878 Cr ; 20 Cr. L. J. 395.

Procedure.—Cognizable—Warrant—Bailable—Non-compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

Charge.—I (*name and office of Magistrate etc.,*) hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of at attempted to commit suicide and did an act namely towards the commission of such offence and thereby committed an offence punishable under s. 309 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with, murder, is a thug.

Thug.

Notes—Act XXX of 1836, made it an offence punishable with imprisonment for life with hard labour to have belonged to a gang of Thugs, either within or without the territories of the East India Company. This section explains what is a Thug. Gangs of persons habitually associated for the purpose of inveigling and murdering travellers or others in order to take their property etc., are so called.—*Morgan and Macpherson.*

Punishment.

311. Whoever is a thug shall be punished with transporation for life, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of accused*) as follows :—

That you, on or about the day of at were a thug and that you thereby committed an offence punishable under s. 311 of the Indian Penal Code, and within the cognizance of the Court of Session (or the High Court).

And I hereby direct that you be tried by the said Court on the said charge.

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Birth.

Causing miscarriage.

312. Whoever voluntarily causes a woman with child miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or both : and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

Miscarriage.—Miscarriage is the expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed. The offence defined in this section can only be commited where the woman is in fact pregnant. For although there may be a guilty intention and attempt to commit it on the person of a woman believed to be, but who really is not, pregnant,—the offence, as here defined seems to require that the woman should be with child—*Morgan and Macpherson.* The Indian Law Commissioners observe : "with respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehension that this, or any other law on that subject may, in this country, be abused to the vilest purposes. The charge of abortion is one which, even where it is not substantiated, often leaves a stain on the honour of families. The powers of bringing a false accusation of this description is, therefore, a formidable engine in the hands of unprincipled men. This part of the law will, unless great care be taken produce few convictions, but much misery and terror to respectable families and a large harvest of profit to the vilest pests of society. We trust that it may be in our power in the Code of Cr. Procedure to lay down rules which may prevent such an abuse. Should we not be able to do so we are inclined to think that it would be our duty to advise His Lordship in Council rather to suffer abortion, where the mother is a party to the offence, to remain wholly unpunished, than to repress it by provisions which would occasion more suffering to the innocent than to the guilty."

The term "miscarriage" is not defined in the Code. In its popular sense, it is synomous with abortion, and consists in the expulsion of the embryo or *foetus i. e.* the immature product of conception. The stage to which pregnancy has advanced and the form which the *ovum* or embryo may have assumed are immaterial. This section requires proof that the woman is "with child" but it is enough if the fact of pregnancy and the intentional expulsion of the immature contents of the uterus are established. The words 'with child' mean pregnant, and it is not necessary to show that "quickening" *i. e.* preception by mother of the movement of the *foetus* has taken place, or that the embryo has assumed a *foetal* form. 9 M. 269=1 Weir. 331. A *foetus* not bigger than a man's finger, but having the shape of a child, is a child within the meaning of s. 312. 5 C. P. L. R. Cr. 21. The offence defined in s. 312 can only be committed when a woman is in fact pregnant. 15 W. R. Cr. 4. Where a child was full grown a conviction under s. 312, Penal Code was set aside, and one under s. 511 for attempt to bring about miscarriage was maintained. 19 W. R. Cr. 32. Intention to commit crime alone, or intention followed by preparation is not sufficient to constitute attempt. Intention followed by preparation and any act towards commission of offence is sufficient to constitute attempt. 37 C. W. N. 1157=A. I. R. 1933 Cal. 893.

If the woman be quick with child.—Quickening, is the name applied to the peculiar sensations experienced by a woman about the fourth or fifth month of pregnancy. The symptoms are popularly ascribed to the first perception of the movements of the *foetus*. But quickening is not a constant, uniform and well marked distinction of the pregnant state. The phrases "quick with child" is here used probably merely to denote an advanced stage.— *Morgan and Macpherson.*

Explanation.—According to the explanation a woman who causes herself to miscarry is within this section. But in awarding punishment. it will not be forgotten that the high caste young widow, who to hide her shame, may at the risk of life cause herself to miscarry, does not under the circumstances in which she is placed by the institutions of society commit an offence of like criminality with that of the seducer of young girl to married woman who to cover his offence causes such woman to miscarry.—*Morgan and Macpherson.*

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

Charge.—I (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of at voluntarily caused one XY then being with a child to miscarry, such miscarriage not being caused by you in good faith for the purpose of saving the life of the said XY, and thereby you committed an offence punishable under section 312 of the Indian Penal Code and within the cognizance of the Court of Session (or the High Court).

And I hereby direct that you be tried by the said Court on the said charge

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing miscarriage without woman's consent.

Procedure.—Not-Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session.

Charge.—As in section 312.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ;

Death caused by act done with intent to cause miscarriage.

and, if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

If act done without woman's consent.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Notes.—"This species of homicide may be committed involuntarily that is, in the language of the Code, by a person who does nor intend to cause. or think it likely that he will cause, death by the act which he does. If A intending only to cause miscarriage to Z, involuntarily does an act which causes her death, he is liable to punishment under this section and he is thus liable whether he acts with caution in order to prevent the risk to Z's life, or whether he acts rashly or negligently. Even if he takes such precautions and there is no reasonable probability that Z's death will be caused, and if the medicine is rendered deadly by some accident which no human sagacity could foresee, or by some peculiarity in Z's constitution, such as there was no ground whatever to expect, A will be liable to punishment under this section for causing death by an act done with intent to cause miscarriage. The consent of the woman freely and intelligently given, is allowed to mitigate the offence. If A kills Z by administering abortives to her with the knowledge that those abortives are likely to cause her death, he is guilty of

culpable homicide, which will be culpaple homicide by consent. if Z agreed to run the risk, and murder, if she did not so agree" – *Morgan* and *Macpherson.*

"This is an offence which can, it seems, be committed only where the woman is actually pregnant".—*Ibid,*

Procedure.—Not-cognigable—Warrant—Not-bailable—Not-compound able—Triable—by Court of Session.

Charge.—I (*name and office of Magistrate, etc.,*) hereby charge you (*name of accused*) as follows :—

That you , on or about the day of at with intent to cause miscarriage of XY did a certain act namely, which caused the death of the said XY, and you thereby committed an offence punishable under s. 314 of the Indian Penal Code and within the cognizance of the Court of Session (or High Court.)

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Act done with intent to prevent child being born alive, or to cause it to die after birth.

Notes.—"The causing of the death of a child in the mother's womb and before any part of the child has been brought forth is not homicide. See section 299, Explanation 3,

"This section punishes offences directed against the life of an unborn child. Any act done with the intention here mentioned, which results in the destruction of the child's life, whether before or after its birth, is made punishable. Suppose a child's life is destroyed by potions, or bruises which it receives in the womb, it is immaterial whether the child is born alive or afterwards dies by reason of them, or whether they cause it to be born dead. The offence is one which will ordinarily be committed where the woman is in an advanced state of pregnancy. But the section is not expressly confined to causing the death of quick unborn children. The offence of causing miscarriage consists in procuring the expulsion of the child or *foetus*, by criminal violence or other means, from the mother's womb before the term of gestation is completed. The offence which the present section punishes is the injury to the child's life—the child may be born in proper time, or if born before due time, the miscarriage may happen by natural causes and not by criminal means.

"Acts done in good faith to save the mother's life are excepted. Cases of negligent treatment by doctors and others, where due care and attention have not been used, though not protected by this Exception, are not reached by the words of the section,—which apply only to acts done with the intention of destroying the child's life".—*Morgan and Macphrson.*

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session,

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows :—

That you , on or about the day of did an act, to wit to XY before the birth of her child with the intention of thereby preventing that child from being born alive (or causing it to die after its birth) and the said act was not done in good faith for the purpose of saving the life of the mother, and thereby committed an offence punishable under s. 315 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge.

316. Whoever does any act under such circumstances that if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing death of unborn child by act amounting to culpable homicide.

Illustration.

A. knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die ; but the death of an unborn quick child with which she is pregnat is thereby caused. A is guilty of the offence defined in this section.

Notes.—"This section punishes offenecs against children in the womb where the pregnancy has advanced beyond the stage of quickening, and where the death is caused after quickening and before the birth of the child. Any act or omission of such a nature and done under such circumstances as would amount to the offence of culpable homicide, if the sufferer were a living person, will, if done to a quick unborn child, whose death is caused by it, constitute the offence here punished. If a person strikes a pregnant woman and thereby causes the death of her quick unborn child he will be guilty of the offence here defined, if the blow was intended by him to cause the woman's death or was one which he knew or had reason to believe to be likely to cause it.

"The act done to the woman. if the death of her child is not thereby caused, will probably be punishable as an attempt to commit culpable homicide under the preceding sections.

"Cases of gross ignorance or rashness in the treatment of a pregnant woman will be punishable under this section, if in their circumstances they would amount to the offence of culpable homicide if the woman's death had been the result."—*Morgan and Macpherson.*

Procedure.—Not-cognizable— Warrant——Not-bailable—Not-compoundable—Triable by Court of Session.

Exposure and abandonment of child under twelve years by parent or person having care of it.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Notes.—The offence consists in the desertion by the parent, or other person who has undertaken parental duties, of an infant or child of such tender age that it is not able to provide for and to take care of itself. This offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life. Thus, suppose a mother leaves her illegitimate intant child at a hospital or at some place where it is certain the child will be seen or cared for,—she has committed this offence, if she intended to abandon the child. It is true that she has committed the offence under circumstances greatly mitigating it, as compared with a desertion on a barren health or in an unfrequented place, where the consequence of desertion is great danger or risk of danger to life. The explanation shows that a desertion under such circumstances that death is the result of the exposure, may amouut to murder or culpable homicide : and though the death of the child may not ensue, the offence may amount to an attempt punishable under section 307"—*Morgan and Macpherson.*

Where a woman immediately after giving birth to an illegitimate child and throwing it into a thorn bush, walked nearly a mile and a half, gave a false account of her condition to her companions, dispensed with any assistance even after she reached home, denied having given birth to a child when questioned by the head man next morning, and never asked after the child's welfare at any time or showed any solicitude on the subject : *Held*, that the woman was guilty of the offence under s. 317. U. B. R. 1914 1st Qr. 5= 24 Ind. Cas. 837=15 Cr. L. J. 525. Where a woman abandoned her newly born child, but left it in a place which was quite close to the village and also near a public road, where in fact, the child was shortly discovered, *held* that the mother could not be rightly convicted of an attempt

to murder, but should rather be convicted of the offence described in s. 317. A. W. N. 1903, 43. Under section 317, Penal Code, the only intention required to complete the offence is an intention of wholly abandoning the child. It is not necessary that there should be an intention to abandon the child so as to endanger its life. 1 Weir. 331. The manner of exposure or leaving and the consequences likely to ensue from it are not essential ingredients of the offence under the Indian law, though they may often be properly taken into consideration in estimating its gravity and apportioning the sentence. 24 M. 662=1 Weir. 332. The real object of s. 317, Penal Code, is the prevention of the abandonment or desertion by a parent of his or her children of tender years in such a manner that children not being able to take care of themselves may run the risk of dying or being injureb. 16 W. R. Cr. 12. A mother would be liable to be punished under s. 317, and not under section 307, Penal Code, although she left her child in a place which was quite close to a village and also near a public road where it was, in fact, shortly after discovered. A. W. N. 1933, 43. A newly born child was left by its mother in an enclosure near a road not far from the village, was there discovered by a passer-by and shortly after breathed its last. *Held*, that the mother could not be convicted of murder, the child not having been left on a barren heath or in an unfrequented place, but of an offence under s. 317, Penal Code. 23 P. R, 1886 Cr. ; see also 10 W. R. Cr. 52. But where a mother exposed an infant child, knowing that such abandonment by her was likely to cause its death, and death ensued in consequence thereof, *held* that she could properly be convicted of culpable homicide under s. 304 and not under both s. 304 and s. 317. 2 A. 349. Accused must be clearly shown to have intended to abondon the child completely. 21 Cr. L. J. 253 (Nag)=55 Ind. Cas. 205. Whoever has custody of the child other than the mother, is liable to conviction ; and if mother handed it over with such purpose both are guilty under s. 317 and s. 109. 18 Bom. L. R. 934=18 Cr. L. J. 98=41 B. 152=37 Ind. Cas. 306. In case of offence under s. 317 by women of 18 who is not weak s. 562 Cr. Pro. Code should not be applied. A. I. R. 1935 Pesh. 48.

Being the father or mother.—Both are equally bound by ties of duty, and this equally whether the child be born in wedlock or be illegitimate. An infant requiring nurture, or a child of tender years, will ordinarily be in the immediate charge of the mother the father's duty being that of providing for both mother and offspring. The person who has the immediate care of the child is the person contemplated. A parent who is absent, but who has provided duly for the maintenance and protection of his child, would not be criminally answerable for its abandonment by the person in whose charge he had left it. The offence consists in the desertion of the child, by a person who is bound by nature to support and protect it, or who has taken on himself that duty, whether by adopting the child, or by way of contract with the parent, or in some other way"—*Morgan and Macpherson.* The mother of an illegitimate child, aged 6 months, made over the child to a blind woman in whose company she was, and promised to return with food which she said she was going to buy ; she went off to another village and probably had no intention whatever of returning. *Held* that she was not guilty of an offence under s. 317. 18 A. 364=A. W. N. 1896, 117. A married woman, who eloped leaving her suckling baby a month and a half old in the house of her husband, was held not to be guilty of an offence under s. 317, Penal Code, as she knew that her husband would surely take care of it. 5 P. R. 1878 Cr. A married woman quarrelled with her husband and left for her parents' home when he had gone out, leaving her child six months old in his house. The husband took charge of the crying infant on his return home : *held*, that the woman was got guilty of an offence under s. 317, Penal Code. 4 P. R. 1879 Cr.

Shall expose or leave, etc.—Exposure or leaving the child with the intention of wholly abandoning it is an essential part of the offence—*Morgan and Macpherson.* Upon the question of intention, the previous treatment, as well as the circumstances of the particular case, will throw light. Thus previous neglect or ill-treatment of the child may add to the probability of the exposure being with intent wholly to abandon it. In a time of famine, a child may be deserted, not because those who have the care of it intended wholly to abandon it, but from mere destitution and inability to support it. *Ibid.*

When a woman left her daughter's newly born babe with the sister of her son-in-law, who was then absent from the place, saying that it was her brother's child,

and the infant died shortly after her departure, *held* that the woman was not guilty of an offence under s. 317 and that her daughter had not abetted any such offence. 33 P. R. 1872 Cr. An accused person who caused the death of her infant child by deliberately starving it, but did not either abandon or part with it, was held to have been wrongly convicted under s. 317, Penal Code and it was pointed out that the Sessions Judge, in convicting the mother under s. 304, ought to have specified the exception under s. 300, which covered the case. 18 P. R. 1870 Cr. Where the jury doubted whether a woman had abandoned her child at all, or whether she was the mother of it, although the Sessions Judge had no reasonable doubt from the evidence of these points, it was pointed out that it was his duty in summing up the evidence to lay before the Jury all the facts requiring to be determined by them. I. W. R. Cr. Letters, 10. In a case which was one of abandonment of child, the circumstances which were revealed in evidence precluded the idea that appellant intended to do more than abandon her illegitimate child, and even this was done in a way to give the child every chance of being rescued. *Held*, that under such circumstances the finding and sentence of the Sessions Judge must be modified. 23 P. R. 1886 Cr.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

Charge.—I (*name and office of Magistrate, etc.*,) hereby charge you (*name of accused*) as follows :—

That you, being the father (or mother or having the care) of a certain child under the age of twelve years, to wit of the , age of years, did expose (or leave) the said child in a certain place, to wit with the intention of wholly abandoning it, and thereby committed an offence punishable under section 317 of the Indian Penal Code, and within my cognizance or the cognizance of the Court of Session (or High Court.)

And I direct that you be tried by the said Court on the said charge.

Concealment of birth by secret disposal of dead body.

318. Whoever, by secretly burying, or otherwise disposing of the dead body of a child, whether such child die before or after, or during its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisoment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—The offence under this section, cannot be committed unless the child had arrived at the stage of maturity, at the time of birth, and that it might have been a living child. 4 M. H. C. App. 33 ; 2 C. P. L. R. 153 ; 3 Cr. L. J. 432 ; 1 Bom. L. R. 155 ; 1 Weir, 333 ; 1 Weir. 334 ; Rat. Un. Cr. C. 721.

In order to constitute an offence under this section, there must be a secret burial or other disposal of the dead body. The disposal must clearly be *ejusdem generis* with the secret burial. The disposal need not necessarily be a final disposal. It is sufficient if the body be temporarily concealed with the intention of removing it elsewhere when opportunity occurs. 13 C. P. L. R. Cr. 188 ; Rat. Un. Cr. C. 961 ; 5 C. P. L. R. Cr. 29. A necessary ingredient of this offence is intentional concealment. 8 C. P. L. R. Cr. 5 ; 1 N. L. R. 89. See also 26 P. W. R. 1913 ; 12 Ind. Cas. 650 ; I. C. P. L. R. 163 Cr. ; Rat. Un. Cr. C. 775 ; Rat. Un. Cr. C. 607.

"The concealment of the birth of a child is not in itself an offence, but only a circumstance of suspicion which may form part of the evidence of an offence. This circumstance the law has thought fit to enact by the definition of a substantive offence. Such enactments are justified by the facility with which the life of an infant at its birth is extinguished, and the temptation to take it away in cases of bastard children.

"The prosecutor must first establish, to the satisfaction of the Court, the fact of the birth of the child. And the secret of burying or other disposal of the dead body must be proved.

"Whether the father, mother or a stranger, does the act, regard must be had to the doer and the person who orders it to be done. Suppose the mother is passive, giving no directions, but another near her directs the burial or other disposal, it seems she cannot be punished. If there is no act of concealment or disposal of the body after the child is dead, the offence is not committed. A mere denial of its birth is not sufficient."—*Morgan and Macpherson.*

Conceals or endeavours to conceal birth, etc.—Not the concealment of

the fact of pregnancy, or the death, but the birth i. e., the delivery of a child dead or living is made punishable by this section. There must be it seems, a disposal in some secret place, whether the place is intended only as a place of temporary deposit, or as a place of permanent deposit. Merely putting the body in an open exposed position, as on a bed, would not be such a place. But if it be put in a case, or under a bed, pillow, mattress etc. this will be a sufficient disposal—*Morgan and Macpherson.*

Of Hurt.

Hurt.

319. Whoever causes bodily pain, deesase, or infirmity to any person, is said to cause hurt.

Notes.—Many of the offences within this division, will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious portion, and places it on the table of another ; (*Vide* 21 A. L. J. 844) ; a person, who conceals a scythe in the grass on which another is in the habit of walking ; a person, who digs a pit in a public path, intending that another may fall into it ;—all these may cause serious hurt, and may be justly punished for causing such hurt. But they cannot, without extreme violence to language, be said to have committed assaults. All bodily hurts, not only those which are serious but also those which are slight, are within the provisions inserted under this division. But a distinction is made between "hurt" and "grievous hurt". It may not be possible to draw a line between the two, with perfect accuracy. But it is better that some such line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good natured man would hardly resent, should be classed together. The several penal provisions which are here made for these offences, are intended to mark by corresponding degress of punishment the different degrees of bodily injury caused. Still more they mark the mischievous intentions with which such injuries have been perpetrated. For it is the intention or knowledge with which the hurt is inflicted that must chiefly be regarded in the award of punishment. Where a wicked intention is shown to the satisfaction of the Judge, the severity of the hurt inflicted is not a circumstance which ought to be mainly considered in apportioning the punishment ; though it is undoubtedly by a circumstance which is important as evidence when the intention is not clearly established, *Morgan and Macpherson.* An act which causes death unintentionally is tantamount to "hurt" *vide*, Rat. Un. Cr. C. 673 ; 3 C. 623 ; 18 W.R. Cr. 29 21 Bom. L.R. 1101 ; 162 P. L. R. 1913 ; 157 P. L. R. 1913 ; 2A. 522 ; 19A. 295 ; 2A. 776 ; 3A. 507. The pain caused by a blow across the chest with an umbrella was held not to be of such a trivial character as would come within the meaning of the Penal Code, s. 95, but to be hurt under s. 319. 24 W. R. Cr. 67. Where an infatuated young man administered *dhatura* under the impression that it was a love *philtre*, there is no intention to cause hurt. The offence falls under s. 319 and not under s. 328. 21 A. L. J. 844=L. R. 4A. 229 Cr. A person can be convicted for grievous hurt only when the effect of the injuries inflicted by him actually lasts for 20 days but not when the sufferer dies before the period expired. 84 Ind. Cas. 438= 26 Cr. L. J. 294=A. I. R. 1925 Lah. 297. Where the accused dazed by a blow, kicked the prostrate man and pressed his head into ground he was guilty of simple hurt only. A. I. R. 1928 Oudh. 282=5 O. W. N. 391=30 Cr. L. J. 173=113 Ind. Cas. 481.

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous:—"

First.—Emasculation.
Secondly.—Permanent privation of the sight of either eye.
Thirdly.—Permanent privation of the hearing of either ear.
Fourthly.—Privation of any member or joint.
Fifthly.—Destruction or permanent impairing of the powers of any member or joint.
Sixthly.—Permanent disfiguration of the head or face.
Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Hurt or grievous hurt.—In cases of hurt, it is for the Magistrate to classify and to come to a finding of his own, as to whether the hurt was grievous or simple and for this purpose, the Magistrate should examine the medical officer to ascertain whether the injuries are of any of the kinds specified in this section. It is not the business of the medical officer to decide whether a wound is grievous hurt or not, but to describe the fact from which the Magistrate will decide. 4 Cr. L. J. 202.

"Some hurts which are not like those kinds of hurts which are mentioned in the first seven classes, obviously distinguished from slight hurts, may nevertheless be most serious. Thus a wound may cause intense pain, prolonged disease, or lasting injury to the constitution, although it does not fall within any of these classes. Again a beating which does not maim the sufferer or break his bones, may be so cruel as to bring him to the point of death. It is clear that such hurts should be classed with those which are grievous, and not with hurts, all traces of which disappear in a few days. Accordingly the 8th clause provides for them. Three circumstances are mentioned in the clause, any one of which can make a hurt a grievous hurt of that kind, (1) if life is endangered by it, or (2) if severe bodily pain is caused for twenty days, or (3) if the sufferer is unable to follow his ordinary pursuits for that length of time. The length of time during which he is in pain or diseased, or incapacitated for pursuing his ordinary avocations, though a defective criterion of the severity of the hurt is the best that can be devised. And it is one which may be employed, not merely in cases where violence has been used, but in cases where hurt has been caused without any assault, as by the administration of drugs, the placing of ropes across a road, etc.—*Morgan and Macpherson.* Wounds which, though not likely to cause death, must be held to have endangered life within the meaning of s. 320. A. I. R. 1923 Oudh. 97=9 O. L. J. 490=26 O. C. 18=24 Cr. L. J. 513=73 Ind. Cas. 49; see also A. I. R. 1930 Lah. 305=31 Cr. L. J. 77=11 L. L. J. 519=120 Ind. Cas. 431.

Emasculation.—*Vide* 19 M. 356; 22 P. R. 1878.

Sixthly.—*Vide* 1 B. H. C. R. 101.

Seventhly.—*Vide* 5W. R. 12; Rat. Un. Cr. L. 558.

Eighthly.—*Vide* 19 B. 247; 84 Ind. Cas. 438=26 Cr. L. J. 294=1925 Lah. 297.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing hurt.

Scope.—"Both the extent of the hurt and the intention of the offender must be considered. His intention may, in this, as in all other cases, usually be inferred from the act which he has done. It should be observed that the definition now under consideration will include a case in which a person, intending to cause hurt to A, or knowing it to be likely that he will cause such hurt unintentionally, hurt B."—*Morgan and Macpherson.*

Intention.—The intention or knowledge of the accused can only be inferred from the nature and extent of the injury. U. B. R. (1897-1901) Vol. I, 316. This offence is caused when the blow is intended for another. 2 C. L. R. 304.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Voluntarily causing grievous hurt.

Explanation.—A parson is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A intending or knowing himseif to be likely, permanently to disfigure Z's face, gives Z, a blow which does not permanently disfigure Z's face but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Scope.—The provisions of this section are very precise and incapable of misconstruction. A magistrate dealing with a charge under this section must decide and consider not only whether grievous hurt has been caused, but, if it has been caused, whether the accused intended or knew himself to be likely to cause grievous hurt. If he intended or knew himself to be likely to cause simple hurt only, he cannot be convicted under s. 325. 28 Ind. Cas. 1907. "It is requisite not only that the hurt itself should be grievous, but also that the offender should intend or know himself to be likely to cause a grievous hurt. A man who means only to inflict a slight hurt may, without intending or expecting to do so, cause a hurt which is exceedingly serious. A push which to a man in health is a trifle may, if it happens to be directed against a diseased part of an infirm person, occasion consequences which the offender never contemplated as possible. A blow designed to inflict only pain for a moment, may cause the person struck to lose his footing, to fall from a considerable height and to break a limb. But it would be unjust to punish the offenders in such cases for results which could not reasonably be expected or intended to follow their acts. But if grievous hurt of any kind was contemplated, it is immaterial (as the explanation and illustration show) whether the hurt caused is the hurt contemplated, provided only it is grievous. The result and the intention must to this extent correspond.

"The offender's intention may be reasonably proved from his acts. But now, it may be asked, are we to discover what degree of hurt the offender "knows himself to be likely to cause" ? It is not necessary that there should be any hurt of which it could with truth be said, this and this alone is the degree of hurt which the offender knew himself to be likely to cause. A person who ties a rope across a road by night, may know himself to be likely to cause grievous hurt, even though he thinks it on the whole more probable that he will only cause hurt not grievous. He may contemplate both at the same time. The duty of the Judge in such a case will be, not to seek for direct proof of the precise degree of hurt which the offender thought himself likely to cause, but to draw a conclusion from the nature of the act and the evidence generally as to whether, among other consequences, grievous hurt might not reasonably have been thought likely to ensue from it. If the fair conclusion at which he arrives is that nothing more than simple hurt was probably to be anticipated, then although grievous hurt may unexpectedly have ensued, it will be his duty to convict the offender of causing simple hurt only."—*Morgan and Macpherson.*

The Law Commissioners say : "We agree with Mr. Bacon what we conceive to be his meaning as to the duty of the Judge, that is to say that he is not to trouble himself with seeking for direct proof of what the offender thought was likely to happen, but is to infer it from the nature of his act, taking him to have intended grievous hurt, or at least to have contemplated grievous hurt as likely to occur, when he did what everybody knows is likely to cause grievous hurt, and the more certainly drawing this conclusion where there is evidence of previous enmity against the party who has suffered. If the act was such that nothing more than simple hurt could reasonably be thought likely to ensue from it, then although grievous hurt may unexpectedly have ensued, it would be his duty to convict the offender of simple hurt only.....judging that grievous hurt was not in his contemplation ; for according to clause 317 (=this section) a person can be convicted of grievous hurt only when the result and the intention correspond, or when grievous hurt has been suffered from an act which was intended to cause grievous hurt, though it may be of a different kind." *First Report* s. 377.

Cases.—Where B, the accused was much enraged at being turned out of the shop whither he had gone for drink, and intended to revenge himself on the man who turned him out, and where B hit that man over the head with a stick hard enough to fracture his skull. *Held* that, in the circumstances, B must be presumed to have intended either to cause grievous hurt or known that he was likely to cause it, within the meaning of this section. U. B. R. 1911, 4th Qr, 105=15 Ind. Cas. 311=13 Cr. L. J. 471. Where a person intends to inflict injury upon one person, but actually inflicts injury upon another, his act constitutes the offence of hurt or grievous hurt, within the meaning of s. 321 or 322

of the Penal Code, according to circumstances. 3 C. 623=2 C. L. R. 304. The provisions of s. 322, Penal Code, are very precise and incapable of misconstruction. A Magistrate or Court dealing with a charge of voluntarily causing grievous hurt must consider and decide not only whether grievous hurt has been caused, but, if it has been caused, whether the accused intended or knew himself to be likely to cause grievous hurt. If he intended or knew himself to be likely to cause simple hurt only, he cannot be convicted under s. 325. U. B. R. (1914), 4th Qr. 35=28 Ind. Cas. 1007=16 Cr. L. J. 431.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished, with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Notes.—A criminal prosecution under this section does not abate by reason of the death of the person injured. 81 Ind. Cas. 719.

The intention or knowledge of the accused can only be inferred from the nature and extent of the injury. U. B. R. (1897-1901) Vol. I, 316. In executing a writ of possession a bailiff can use a reasonable degree of force in order to effect the removal of persons bound by the decree and refusing to vacate. So he cannot be convicted under this section where he acts within his rights. 19 C. W. N. 273=42 C. 313. A bailiff can also call upon the decree-holder to help him in removing the judgment-debtor, and the decree-holder cannot be prosecuted under this section for helping the bailiff. 5 Bom. L. R. 977. Where an accused caused hurt intending to cause simple hurt and thereby death is caused, he is punishable under this section. A. W. N. 1888, 236 ; 5 C. P. L. R. 69 Cr., 1 P. W. R. 1913 Cr.=18 Ind. Cas. 664=14 Cr. L. J. 104=162 P. L. R. 1913 ; 4 Bom. L. R 879 ; 2 P. W. R. 1908 Cr.=77 P. L. R. 1908=7 Cr L. J. 321 ; 41 P. W. R. 1914 Cr.=16 Cr. L. J. 93=26 Ind. Cas. 1005 ; L. B. R. (1872-1892), 179 ; Rat. Un. Cr. C. 67 ; 11 P. R. 1880 Cr. ; 5 W. R. 1913=157 P. L. R. 1913 ; 18 W. R. Cr. 29.

The charge under section 323 should distinctly deny the existence of circumstances constituting a special exception, as the terms of s. 237 of the Cr. Pro. Code should prevail in preference to any direction which may be inferred from the forms of charge contained in s. 239. Rat. Un. Cr. C. 20. In the absence of a charge for an offence voluntarily causing hurt and the common object charged for causing rioting not specifying the intention to cause hurt, there can be no conviction for voluntarily causing hurt under s. 323 of the Penal Code. 13 C. L. J. 329=38 C. 293=9 Ind. Cas. 965=17 Cr. L. J. 169. Person beating public servant is guilty under s. 323 irrespective of s 99. A. I. R. 1927 Lah. 851=28 P. L. R. 290=28 Cr. L. J. 972=105 Ind. Cas. 684. offence of causing bodily pain includes the use of force. A. I. R. 1928 Mad. 18=53 M. L. J. 653=28 Cr. L. J. 982=105 Ind. Cas. 806. Where death was caused by simple injuries without knowing of a deceaseds' spleen, offence is only under s. 323. A. I. R. 1924 Lah. 218=24 Cr. L. J. 421=72 Ind. Cas. 533 ; see also A. I. R. 1929 Lah. 531=30 Cr. L. J. 300=114 Ind. Cas. 442. Where accused commits different offences in respect of injuries caused to different persons in the same transaction, separate convictions are proper. 149 Ind. Cas. 231=11 O W. N. 680=35 Cr. L. J. 935=A. I. R. 1934 Oudh. 244.

The act on which an accused person must be punished under s. 323 is the hurt which he intended to cause or might be reasonably held likely to cause, by the act done, and not an unfortunate and an entirely unforeseen result of that act. 11 P. R. 1897 Cr. see also 18 W. R. Cr. 29. If in evidence, there is nothing to show that the accused was rash, and death has resulted from the rupture of a greatly enlarged spleen, caused by a slight kick with bare foot, no offence is committed except that of voluntarily causing hurt. U. B R. (1892-1896), Vol. I, 217 ; 8 W. R. Cr. 29 ; 5 W. R. Cr. 97. Where a person intends to inflict injury upon one person, but actually inflicts upon another, his act constitutes the offence of hurt or grievous hurt, within the meaning of s. 321 or s. 322 of the Penal Code, according to circumstances. 3 C. 623=2 C. L. R. 304. Causing disability for a fortnight is punishable as voluntarily causing hurt. In order to constitute grievous hurt, the disability must be for 20 days. 1 W. R. Cr. 9. A person who is tried and discharged for the offence of assault under s. 352, Penal Code, cannot again, upon the same complaint be tried for causing hurt. 7 B. L. R. Ap. 25=16 W. R. Cr. 3. If the prosecution could establish that hurt was caused and that the causing of hurt was a common object of the accused, and the persons who caused the hurt were less than five in number,

the persons who caused hurt would be liable to punishment under section 323 Penal Code. 14 Cr. L. J. 142=18 Ind. Cas. 894=155 P. L. R. 1913=16 P. R. 1913 Cr.=20 P. W. R. 1913 Cr ; 14 Cr. L. J. 66=18 Ind. Cas. 402=40 C. 511. Where a charge under s. 147 has been framed but no charge has ben framed under this section against an accused he cannot be convicted under this section. 18 C. W. N. 1276=15 Cr. L. J. 704=26 Ind. Cas. 152 ; see also 18 C. W. N. 1274=16 Cr. L. J. 42=26 Ind. Cas. 634 ; 30 C. 288 ; 13 Cr. L. J. 593=16 Ind. Cas. 161. But where there has been no failure of justice and the accused is not prejudiced, such conviction was upheld. A. W. N. 1881, 28. Conviction under section 323 on charge under s. 148 is not illegal. A. I. R. 1923 Lah. 326=26 Cr. L. J. 598=85 Ind. Cas. 822. Section 149 creates no substantive offence but s. 147 does. The moment one injury is inflicted, force, is used and conviction for s. 147 can be given ; if none are inflicted s. 323 also applies. A. I. R. 1926 All. 225=24 A. L. J. 178=92 Ind. Cas. 463=27 Cr. L. J. 287 ; see also 145 Ind. Cas. 913=1933 A. L. J. 1178=1933 Cr. C. 1417=A. I. R. 1933 All. 819 ; A. I. R. 1921 Pat. 432=2 P. L. T. 91. So in conviction under s. 147 and 323, separate sentence is legal. 142 Ind. Cas. 31=1933 M. W. N. 254=64 M. L. J. 314=34 Cr. L. J. 273=56 M. 481=A. I. R. 1933 Mad. 338. Offences of assault or causing hurt involve breach of peace and order under s. 106 Cr. Pro. Code can be passed without separate finding as to breach of peace. 144 Ind. Cas. 954=1933 Cr. C. 981=1933 A. L. J. 1345=A. I. R. 1933 All. 609. Where accused gave only kicks without any intention to cause death, offence is only under s. 323. 21 Cr. L. J. 666=57 Ind. Cas. 826 ; see also A. I. R. 1925 All. 126=26 Cr. L. J. 470=84 Ind. Cas. 150 ; A. I. R. 1923 All. 87=20 A. L. J. 921=45 A. 142=71 Ind. Cas. 503. Where a police constable asked the complainant not to create any disturbance on a public road. Upon the complainant's declining to do so, he demanded his name and address which were not given. The constable thereupon abused, arrested and dragged the complainant to the Police Chowkey and detained him there till his name and address were ascertained. *Held,* that he cannot he convicted under ss. 220 and 323 I. P. Code but a conviction can be made under s. 504. 5 Bom. L. R. 597.

In this case, the accused person struck a man one blow on the head with a bamboo yoke and the injured man died afterwards in hospital, principally from the excessive use of opium surreptitiously administered by his friend. *Held,* that as there was no intention to cause death, and as the blow in itself was not of such a nature as was likely to cause death the offence committed was that of voluntarily causing hurt. L. B. R. (1872-1892); 179 ; see also 2 P. W. R. 1908 Cr.=77 P. L. R. 1908=7 Cr. L. J. 321 ; 1 P. W. R. 1913 Cr.=18 Ind. Cas. 664=14 Cr. L. J. 104=16 P. L. R. 1913 ; see also 1925 All. 126 ; 21 Bom. L. R. 1101.

Where, being insulted in a drunken brawl, the accused threw down the deceased and stampted his feet on his body and death ensued within twenty days, the offence was one under s. 323 of the Penal Code, and not under s. 304 A. Rat. Un. Cr. C. 67. A conviction is not sustainable where death was resulted from violence intentionally directed against the deceased by the accused. 11 P. R. 1880 Cr. The accused, after a trivial domestic quarrel beat his wife with a light stick, with the result that she fell down and expired. *Held,* that as all the physical injuries sustained by the deceased were simple hurts, the prisoner should properly have been convicted of an offence under s. 323 I. P. Code. 5 P. W. R. 1913=157 P. L. R. 1913. Where the accused approaches the prostrate body of a dying man, kicks him on neck and then presses with his foot the dying man's head into the ground so that it becomes buried in earth it is a serious form of simple hurt for which maximum sentence ought to be awarded. A. I. R. 1928 Oudh. 282. Separate sentences cannot be passed under ss. 323 and 326 of the Penal Code in the case of an assault upon a single person. 103 Ind. Cas. 198=28 Cr. L. J. 662=1 Luck. C. 199=A. I. R. 1927 Oudh. 313. It is by no means uncommon for an offence punishable under s. 323 to require, and set a much heavier sentence than one punishable under s. 325. 97 Ind. Cas. 1053=27 Cr. L. J. 1229=A. I. R. 1927 Nag. 49. A conviction under s. 147 I. P. Code cannot be entered into one under s. 323 in the absence of a charge under that section. 87 Ind. Cas. 842=26 Cr. L. J. 1018. Where a police constable is guilty of the offence of wrongful confinement, the accused person is entitled to exercise against him his right of private defence. He cannot therefore be convicted under s. 323 for assaulting the constable. 85 Ind. Cas. 44=26 Cr. L. J. 428=A. I. R. 1923 All. 34. A school master cannot be convicted under this section for giving a boy 8 or 9 strokes with a cane in as much as he must be taken to have an implied authority delegated

to him by the parents or the guardians of the school boy to the infliction of such reasonable punishment as may be necessary for the purpose of school discipline. 94 Ind. Cas. 412=3 Rang. 661=A. I. R. 1926 Rang. 107=27 Cr. L. J. 636. A Criminal prosecution under s. 323 I. P. Code does not abate by reason of the death of the person injured. 22 A. L. J. 520=81 Ind. Cas. 719=25 Cr. L. J. 1007=1924 A. 666 ; see also A. I. R. 1921 Mad. 278=44 M. 417=40 M. L. J. 351=23 Cr. L. J. 117=65 Ind. Cas. 549 ; but see 25 P. R. Cr. 1919=52 Ind. Cas. 797=20 Cr. L. J. 717 ; 26 P. R. 1917 Cr. Where the accused were tried for an offence under s. 325 for inflicting an injury to the knee-cap of the complainant and for no other offence an appellate Court is not justified in altering the conviction under s. 325 to one under s. 323, I. P. Code, inasmuch as the accused had not been given an opportunity of answering the charge in the first instance of inflicting injuries other than the injury to the knee-cap. 72 Ind. Cas. 72=24 Cr. L. J. 312. Where a complainant did not mention of assault conviction under s. 323 is illegal. 17 Cr. L. J. 111=I. P. W. R. 1916 Cr=32 Ind. Cas. 847 ; see also 20 Cr. L. J. 303=50 Ind. Cas. 351. If accused's dog bit complainant he is guilty under s. 289 only. A. I. R. 1923 Rang 147=25 Cr. L. J. 565=81 Ind Cas. 53. When the accused only threw stones at a house and injured an inmate, he should be convicted under s. 233 and not under s. 336 as the hurt was the probable consequence of his act. 17 Cr. L. J. 465=36 Ind. Cas. 145. Where a police constable is guilty of the offence of wrongful confinement the accussed person is entitled to exercise against him his right of private defence. He cannot therefore be convicted under s. 323 for assaulting the constable. 1923 A 34. Where a constable pursuing some rioters wounded one of them by a gun shot whereupon the other assaulted him in the course of an attempt to snatch away his gun and thus prevent further harm being done, *held*, at that stage they ware acting in self-defence and could not be guilty of an offence under s. 323 of the Penal Code. 1922 Lah. 75. Unless the evidence is good enough to warrant a clear finding as to the fact and as to the guilt of the accused no conviction under ss. 323 aud 325 I. P. Code, can be arrived at simply on the ground that enmity has been proved and that serious injuries have been caused in the fight. 3 Lah. L.J. 97=3 U. P. L. R. Lah. 11=60 Ind. Cas. 55=22 Cr. L. J. 199. Where some injuries have been inflicted by the accused he was liable to conviction under s. 323 I. P. Code. 59 Ind. Cas. 321=22 Cr. L. J. 65. An order of an Appellate Court, maintaining conviction for causing hurt under s. 323 of the Penal Code, is illegal, and liable to be set aside in revision after it finds "that there was probability of an altercation and squabble between the parties." 50 Ind. Cas. 351=20 Cr. L. J. 303. A prosecution under s. 323 I. P. Code, is essentially a personal action and the right to carry on a prosecution under this section does not survive to the legal representative of the deceased complainant. 26 P. R. 1917 Cr.=31 P. W. R. 1917 Cr. Removing by force a person other than judgment-debtor in decree for enjectment and possession is assault within meaning of s. 323. A. I. R. 1930 Cal. 720. Where there are serious irregularities in connexion with house-search and the person whose house is searched assaults and beats a constable, the offence falls under s. 323 and not under s. 332. A. I. R. 1930 Pat. 387.

Procedure.—Not-cognizable—Summons—Bailable—Compoundable-Triable by any Magistrate.

Charge.—I (*name and office of Magistrate*), hereby charge you (*name of the accused*) as follows :—

That you, on or about the day of at voluntarily caused hurt to A. B and thereby committed an offence punishable under section 323 of the Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing hurt by dangerous weapons or means.

An instrument etc.—The expression "an instrument, which used as a weapon of offence, is likely to cause death," in this section should be construed with reference to the nature of the instrument, and not the manner of its use. U. B. R. (1897-1901), Vol. I. 311. In a case under this section the charge should follow the wording of the section. U. B. R. (1897-1901), V. I. 318.

Section 334.—This section applies to the case of a person who causes hurt on grave and sudden provocation to the person giving the provocation. 1 B. H. C. R. 17.

Object.—The object of this section is to make a simple hurt more grave and liable to more severe punishment. 7 M. H. C. App. II.. "The means used to inflict the hurt indicate great malignity. A blow with the fist may give as much pain and cause as lasting injury as cutting with a knife or branding with a hot iron. But in most cases, the offender who has used a knife or a hot iron is a far worse and more dangerous member of society than he who has only used his fist. The hurt actually inflicted may not, according to the classification of hurts, be a grievous hurt. Yet, on account of the mode in which it is inflicted, it deserves to be punished more severely than many grievous hurts. The administering deleterious or stupefying drugs with the view to commit an offence is made punishable by a subsequent section (*vide* section 328). The mere administering any such deleterious thing, where the object or intention is not apparent, may be an offence within this section.—*Morgan and Macpherson.* Causing hurt on grave and sudden provocation is not an offence under this section. 1 B. H. C. R. 17. But a charge and finding in case of causing hurt under this section, need not contain a negation that the hurt was caused on grave and sudden provocation. 4 M. H. C. R. Ap. 5. Husbands have no right whatever to chastise their wives, even with small canes or bamboos. L. B. R. (1872—1892), 421. A husband, causing hurt to his wife in order to constrain her to obey a demand of his to return to his house, will not be guilty of an offence under s. 330, which, apparently, refers to some demand in respect of property. In this case, as the husband slightly cut his wife with an instrument of stabbing or cutting, it was held that he was guilty under s. 324, Penal Code. 11 M. 257=1 Weir. 336. An accused can not be convicted under this section where a charge of affray has been framed against him. 4 L. B. R. 237=7 Cr. L. J. 498. It is wrong to say that no offence is committed by an accused person who strikes a blow under provocation. 6 Cr. R. 157=94 Ind. Cas. 142=27 Cr. L. J. 574 ; A. I. R. 1930 Cal. 720. Simple injury caused by cutting weapon falls under s. 324, not under s. 326. 1930 Lah. 950 ; see also 34 Cr. L. J. 271=141 Ind. Cas. 861=15 N. L. J. 46 ; 145 Ind. Cas. 702=1733 Cr. C. 549=34 Cr. L. J. 1051=A. I. R. 1933 Lah. 315 ; A. I. R. 1933 Oudh. 269=1933 Cr. C. 596. A person convicted both under ss. 324 and 148 I. P. Code can be sentenced only under one or the other of the two sections. 35 P. L. R. 587=A. I. R. 1934 Lah. 614.

Procedure.—Cognizable—Summons—Bailable—Compoundable—When permission is given by Court—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first or second class.

Charge.—Same as in section 323, only after A. B. add the name of the instrument with which the hurt is caused.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for voluntarily causing grievous hurt.

Number of accused.—Where a number of accused intended to beat the complainant but grievous hurt was inflicted. *Held*, that it must be proved, before any one could be convicted under this section that the common object was the intention to cause grievous hurt or the knowledge that any one of them might be likely to cause grievous hurt in the course of the beating which they intended to give to the complainant. 15 Cr. L. J. 192 ; 5 W. R. Cr. 12 ; 6 P. R. 1901 Cr ; 83 Ind. Cas. 589 ; 1923 Lah. 35.

Scope.—To establish an offence under this section, it is necessary to prove that the grievous hurt, as described in s. 320, has been caused by the accused and was caused voluntarily. 12 W. R. Cr. 25 ; 21 P. R. 1889 Cr ; 23 W. R. Cr. 65. A disability for 20 days constitutes grievous hurt. 1 W. R. Cr. 9. When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can

cause death, the offence is not culpable homicide not amounting to murder, but "voluntarily causing" grievous hurt. 2 W. R. Cr. 39 ; 5 C. P. L. R. Cr. 41 ; Rat. Un. Cr. C. 558 ; 12 Ind. Cas. 296=12 Cr. L. J. 528=(1911) 2 M. W. N. 1888.

When one man takes away the life of another, he should prove circumstances, if any, justifying his doing so. Even if the act is done in exercise of the right of private defence, it lies upon him to show that he did not exceed that right. 8 C. W. N. 714 =1 Cr. L. J. 708. The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting, as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them. 17 Bom. L. R. 888=3 Bom. Cr. C. 100. Where a person has sexual intercourse with a girl of little over twelve years of age, with her consent and thereby causes grievous hurt to her, he commits an offence under section 325 I. P. Code, and is not protected by s. 80 or s. 88 of the same Code. 12 C. P. L. R. Cr. 11 ; see also 18 C. 49. On a finding that the accussed charged with murder had no intention of killing the deceased or perhaps of badly injuring him, *held* that the accused could not be convicted of murder or culpable homicide not amounting to morder and that, as there was not present in the mind of the accused any thing more than a knowledge that he was likely to cause a grievous hurt, the accused was guilty only of an offence under s. 325. 18 P. R. 1893, Cr ; see also 18 C. W. N. 1279=15 Cr. L. J. 709=26 Ind. Cas. 157 ; A. W. N. 1892, 105 ; 30 A. 568=A. W. N. 1908, 243=4 M. L. T. 402=8 Cr. L. J. 383 ; U. B. R. (1897—1901) Vol I, 293 ; Rat. Un. Cr. C. 398 ; A. W. N. 1881. 172. Where in a case of robbery attended with death, there was no intention to cause death or such bodily injury as was likely to cause death, the proper conviction would be for voluntarily causing grievous hurt in committing robbery and not for voluntarily causing hurt in committing robbery. 6 W. R. Cr. 16. The conviction of an accused person, who emasculated himself under s. 309, Penal Code was held to be illegal and that he could not be convicted of causing grievous hurt to himself under s. 325. 22 P. R. 1878 Cr. Where for the purpose of facilitating robbery, *dhatura* was administered by two persons to certain travellers in consequence of which one of the travellers died and others were made seriously ill, it was held that, in respect of the traveller who died, the offence committed was that punishable under s. 335 of the Code. A. W. N. 1908, 243=30 A. 568=8 Cr. L. J. 383=4 M. L. J. 402. The offence of voluntarily causing grievous hurt cannot legally be compounded. 1 B. 147. An accused person charged with the offence of grievous hurt should be committed for trial to the Sessions Court. 1 B. H. C. 101. The mere fact that the accused who has been convicted of grievous hurt, is a man of bad character would not justify an enhanced punishment. 49 P. R. 1873 Cr. When the accused persons were charged under s. 325 I. P. Code read with s. 149 and the charge under section 149 fails they cannot be convicted under s. 325 alone. 16 C. W. N. 1077=15 Ind. Cas. 646=13 Cr. L. J. 502. Offence of causing grievous hurt is not an offence against public peace. A. I. R. 1923 Oudh. 37=24 Cr. L. J. 491=72 Ind. Cas. 955. Conviction under s. 325 is proper in case of causing death of child by accident while beating his mother. A I. R. 1924 Oudh. 228=24 Cr. L. J. 789=74 Ind. Cas. 533. An accused who is proved to have struck the deceased with a *lathi* on the head and caused a fracture of the skull which resulted in death is guilty under s. 325. 20 Cr. L. J. 139=3 Pat. L. J. 636=49 Ind. Cas. 171 ; see also A. I. R. 1925 Oudh. 135=11 O. L. J. 363=25 Cr. L. J. 1145=81 Ind. Cas. 969 ; A. I. R. 1925 Lah. 559=26 Cr. L. J. 1118=7 L. L. J. 573=26 P. L. R. 430=88 Ind. Cas. 286. Where intention to cause death is absent conviction should be under s. 325. A. I. R. 1928 Oudh. 36=2 Luck. 433=4 O. W. N. 337 ; see also A. I. R. 1927 Lah. 217=8 Lah. 521=28 P. L. R. 559=28 Cr. L. J. 266=100 Ind. Cas. 234 ; A. I. R. 1929 Lah. 178=30 Cr. L. J. 917=118 Ind. Cas. 433 ; 1930 M. W. N. 74=31 Cr. L. J. 477=123 Ind. Cas. 43. Conviction in alternative under ss. 325 and 304 Part 2, is not proper. 146 Ind. Cas. 221=1933 Cr. C. 112=A. I. R. 1933 Lah. 865. Where the common object of the unlawful assembly is to abduct and murder S, but grievous hurt is caused to G by some, others are not liable for the offence under s. 325. 143 Ind. Cas. 55=10 O. W. N. 7=1933 Cr. C. 279=34 Cr. L. J. 498=8 Luck. 301=A. I. R. 1933 Oudh. 148. Before framing charge on 20 days' rule, Court should see that there is some evidence of injured person being in severe bodily pain or unable to carry on ordinary avocations for that period. Merely laying in hospital for that period is not sufficient. 134 Ind. Cas. 829=32 Cr. L. J. 1254=A. I. R. 1931 Lah. 1280. Where the accused is prejudiced by not having notice of facts which constitute ingredients of offence his conviction of such offence must be set aside. A. I. R. 1933 Mad. 843=65 M. L. J. 723=38 M. L. W. 760. Great caution should be exercised in cases under s. 325 read with s. 147 so as to

prevent innocent persons being punished. 133 Ind. Cas. 865=32 P. L. R. 405=32 Cr. L. J. 1079=A. I. R. 1931 Lah. 465.

Where the accused gave a blow to the deceased which caused his death, without any intention to kill, or to inflict bodily injury likely to cause death, or with the knowledge that the death must be the probable result, he was neither guilty of murder nor of an offence under s. 304 A, but was merely guilty of voluntarily causing grievous hurt. 3 A. 776=A. W. N. 1881, 132=6 Ind. Jur. 264. Where the conviction is for causing grievous hurt, the record must show under which of the categories of "grievous hurt" specified in s. 320 Penal Code, the offence falls. 1 W. R. Cr. Letters, 5. When accused persons are acquitted of rioting, they cannot be properly convicted of grievous hurt under s. 325, by the application of s. 149 of the Penal Code, when it is not found that those persons, or any one of them were members of an unlawful assembly. 27 C. 566=4 C. W. N. 546. A resistance to the execution of an illegal warrant does not render perssons liable to cooviction under s. 147, but when the right of resistence is exceeded and a severe injury, not called for, is inflicted, the person who inflicts such injury may be convicted under s. 325. 29 C. 244=6 C. W. N. 164. Where the accused armed with sticks (the size of which is not known) gave blows, which fell on the temple of the deceased in consequence of which he died four days after, it must be inferred that the accused did not intend to cause death but only grievous hurt, and a conviction for this offence only can be sustained. (1911) 2 M. W. N. 188=12 Ind. Cas. 296=12 Cr. L. J. 528 ; 18 P. R. 1893 Cr. ; A. W. N. 1892, 105 ; A. I. R. 1929 Lah. 863 ; 30 P. L. R. 171=114 Ind. Cas. 704=A. I. R. 1909 Lah. 456.

A member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as the offence of causing grievous hurt. 7 A. 414=A. W. N. 1885, 105 ; S. C. 125 Oudh ; A. I. R. 1924 Rang 291=3 Bur. L. J. 49=25 Cr. L. J. 1305=82 Ind. Cas. 473. When a man has been struck on the head and a fracture caused, to surround him and beat him with *lathis* is to cause hurt which endangers life. 104 Ind. Cas. 708=28 Cr. L. J. 868. A poor old sweeper went out towards the latter part of the night and was taking cowdung cakes belonging to the accused's master when the accused fell on him with a *dang* beating him severely on the head and arms, whereby the arms were disabled completely. There was no evidence whatever that the accused had any intention of killing the sweeper. *Held*, that the accused could not be convicted under s. 308 but was guilty of an offence under s. 325. 102 Ind. Cas. 907=28 Cr. L. J. 619. A person can be convicted for grievous hurt only when the effect of the injuries inflicted by him actually lasts for 20 days but not when ths sufferer dies before the period has expired. 84 Ind. Cas. 538=26 Cr. L. J. 294 ; A. I. R. 1925 Lah. 297. For an offence under s. 325 I. P. Code a sentence of fine alone is legal. 83 Ind. Cas. 587=26 Cr. L. J. 61=A. I. R. 1924 Oudh. 334 Where in a trial of the accused for offences under the Penal Code, ss. 147 and 325, the Court sanctions the compromise of the charge under s. 352, the prosecution for the offence under s. 149 does not *ipso facto* fail. If in such a case the circumstance require it, the Court can discharge the accused in respect of the charge under s. 147. 26 P. L. R. 35=86 Ind. Cas. 62=29 Cr. L. J. 686=A. I. R. 1925 Lah. 474. Where a joint attack was made by two men armed with *Jatrees* on another who died of the injuries received. *Held*, that there can be no doubt that there was a common intention to cause grievous hurt or that at least they knew it was likely that grievous hurt would be caused, and that the accused were guilty under s. 325, though in the absence of clear proofs as to who caused the fatal injury neither of them could be convicted under s. 304. 7 Lah. L. J. 44=86 Ind. Cas. 341=26 Cr. L. J. 57=A. I. R. 1925 Lah. 318. Where it is proved that the deceased and his party attacked the accused who acted in the exercise of his right of private defence and is not shown that the accused in causing grievous hurt had not exceeded the right of private defence, he ought to be acquitted of any offence under s. 325 I. P. Code. 83 Ind. Cas. 589=1924 Oudh. 334. If it is not shown which of the two appellants dealt the blow which caused grievous hurt, both the accused cannot be convicted of an offence under s. 325, unless they had a common intention of causing grievous hurt. 1923 Lah. 35. Where three men attacked another with *dangs* and caused two separate grievous hurts. *Held*, both were liable under s. 325. A. I. R. 1924 Lah. 555=6 L. L. J. 268=26 Cr. L. J. 653=85 Ind. Cas. 941 ; see also A. I. R, 1922 Lah. 394=24 Cr. L. J. 451=72 Ind. Cas. 611 ; A. I. R. 1925 Lah. 117=6 L. L. J. 385=26 Cr. L J. 753=86 Ind. Cas. 337 ; A.I,R. 1934 Lah. 335 ; 84 Ind. Cas. 861=26 Cr. L. J. 381=6 L. L. J.=317 ; A. I. R. 1923 Lah. 43=25 Cr. L. J. 691=81 Ind. Cas. 179. Two persons making

concerted attack on deceased are both guilty although it is not proved that one of them struck any blow. 144 Ind. Cas. 300=1933 Cr. C. 547=34 P. L. R. 699=34 Cr. L. J. 724=A. I. R. 1933 Lah. 313; see also A. I. R. 1931 Lah. 538=32 P. L. R. 537=32 Cr. L. J. 1083; 35 Cr. L. J. 467=147 Ind. Cas. 734=11 O. W. N. 32=1934 Cr. C. 257=A. I. R. 1934 Oudh. 87; A. I. R. 1934 Oudh. 251=1934 Cr. C. 710=11 O. W. N. 698=35 Cr. L. J. 943=149 Ind. Cas. 343; A. I. R. 1934 Lah. 486=1934 Cr. C. 767=35 Cr. L. J. 1355=151 Ind. Cas. 391. It is illegal for a Magistrate who is seized of the case regarding offence under s. 325 I. P. Code to make reference to another Court for instructions whether to accept a compromise or not. A. I. R. 1925 Lah. 226.

Where there were 3 persons on the side of the appellants and only two on the side of the deceased, who accidentally received injuries on the head it was not clear from whom and subsequently died, the presumption is that the appellants were the first to attack and were not acting in self-defence, They committed an offence under s. 325 and not under s. 304. 3 Lah. L. 589=67 Ind. Cas. 817=23 Cr. L. J. 465. An offence under s. 325, Penal Code, is compoundable with the permission of the Court, but the only person who can compound is the man who is hurt. Where, therefore, the man who is hurt dies of the injury, the case cannot be compounded by the heirs of the deceased. 13 A. L. J. 630=37 A. 419=16 Cr. L. J. 586=30 Ind. Cas. 138. The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them. 17 Bom. L. R. 888=3 Bom. Cr. Cas. 100. Accused who had dispute with his wife because she ran away to her father's house, beat her with a stick after her return as a result of which she died two days later. He was convicted under s. 325 for causing grievous hurt to his wife and was sentenced to three years' rigorous imprisonment. A. I. R. 1930 Bom. 593. Where two or more persons are tried for simple hurts, and a grievous hurt caused by a stone thrown from an unknown distance, even were it definitely *held*, that a certain man was identified as the person who threw the stone, no extra punishment would be called for unless the stone is thrown at very close quarters. For mere throwing of stone is not as serious an offence as the wielding of a *lathi*. A. I. R. 1930 Lah. 1054.

Sentence.—In matter of petty character sentence of fine without imprisonment though irregular is adequate and High Court will not interfere in revision. 142 Ind. Cas. 624=14 P. L. T. 71=34 Cr. L. J. 407=A. I. R. 1933 Pat. 179. In case of grievous hurt, but not of serious character committed under misguided zeal of helping employer, held sentence of three years' rigorous imprisonment is sufficient. 10 O. W. N. 482=1933 Cr. C. 596=A. I. R. 1933 Oudh. 269; see also A. I. R. 1934 Lah. 111=35 Cr. L. J. 1456. Where some accused caused death of person, while others were only members of unlawful assembly and did not take part in attack on murdered man, the former were sentenced to seven years' rigorous imprisonment while the latter were sentenced to five years. 134 Ind. Cas. 1041=33 Cr. L. J. 1=1931 Cr. C. 758=35 C. W. N. 345=A. I. R. 1931 Cal. 606.

Procedure.—Cognizable—Summons—Bailable—Compoundable, when permission is given by Court—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first or second class.

Charge.—I (*name and office of Magistrate, etc.,*) hereby charge you (*name of the accused*) as follows :—

That you ,on or about the day of at voluntarily caused grievous hurt to A. B. and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Sessions or High Court).

And I hereby direct you to be tried on the said charge by the said Court.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Whoever, except in the case provided for by section 335, voluntarily causes grevious hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to

receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—The section can only apply to a person who does a substantive act himself, and inflicts a blow which causes grievous hurt as defined in the Code. 6 C. W. N. 98.

The crime mentioned in the section requires severe repression, and where grievous hurt is caused it usually calls for a heavy sentence. Where some aggravating circumstance exists to which the law attaches a severe punishment, such as the use of a deadly weapon, it is the duty of the court to ascertain the aggravating circumstance and not to assume jurisdiction by ignoring it, and then by passing a sentence for a minor offence, defeat the plain intention of the Law. L. B. R. (1872-1891), 182 ; See also, 20 P. R. 1915 Cr. Sections 325 and 326 like the two sections immediately preceding provide the ordinary punishment, and punishment under certain aggravating circumstances, of the offences mentioned—the two latter sections applying to the case of causing "grievous hurt," and the two others to the case of "hurt." Many acts made punishable under the preceding provisions may approach closely in character to those deliberate attempts to commit culpable homicide which are punished by sections 307 and 308. Such attempts, when hurt is caused by them, are distinguishable from the offences here punished,—because in the former, the act done is intended or known to be likely to cause death : whereas nothing more than hurt or grievous hurt is contemplated in cases falling under the present sections. But it may happen that the same act and the same circumstances which satisfy the Court that hurt or grievous hurt has been voluntarily caused, are equally cogent to show that the intention of the accused was to cause death. *Morgan and Macpherson.* A person urged another to attack the complainant, and such other person cut the complainant in the fore-arm with a clasp knife, while the former threw sticks at him. It appeared from the evidence that there was no proof that the latter had the knife in his hand at the time of the former's urging him on, nor was there evidence that the former knew in any other way that the latter would be likely to use the clasp knife. *Held,* that the former could not be convicted of abetting the offence of causing grievous hurt with a dangerous weapon under s. 326, Penal Code, but that he would only be convicted of abetting an assault. 4 L. B. R. 271=8 Cr. L. J. 472. Where a person caused grievous hurt by means of *chhavi* in excess of his right of private defence he can be convicted under this section. 29 P. W. R. 1914 Cr.=182 P. L. R. 1914=15 Cr. L. J. 540=24 Ind. Cas. 948. Where the accused in the course of a quarrel, stabbed the opponent in four places out of which he died, *held,* that in the absence of any evidence to show the character of the wounds inflicted, and whether death was the probable result of the wounds, the accused could not be convicted of culpable homicide, but should have been convicted of voluntarily causing grievous hurt with dangerous weapon. L. B. R. (1872-1892), 463. A person cutting his wife's nose and ears with a razor and her gut with a pair of scissors, is guilty of the offence of voluntarily causing grievous hurt with an instrument of cutting and the offence is not therefore, compoundable. 19 P. R. 1902 Cr. To constitute an offence under s. 326 of the Penal Code, the act must have been done "voluntarily." That is the very essence of the offence. 12 C. W. N. 530=7 Cr. L. J. 362. Before a conviction for the offence of grievous hurt can be passed, one of the injuries defined in s. 320 must be strictly proved ; and the eighth clause is no exceptions to the general rule of the law that a penal statute must be construed strictly. 19 B. 247. Where the accused struck two blows, one of them severe and the other slight on the head of the deceased, and the deceased died in consequence, *held,* that it was safer and sounder to convict the accused under s. 326 than under s 304 of the Indian Penal Code. 115 Ind. Cas. 66=30 Cr. L. J. 378=A.I.R. 1929 Lah. 37. Where the accused shot the deceased at his thigh and the latter died after ailing for two months and it appeared that he would not have died but for an attack of dysentry, *held,* that the accused was liable to be convicted under s. 326 and not under s. 300. 11 Lah. L. J. 44=A. I. R. 1929 Lah. 433. See also A. I. R. 1934 Lah. 368=1934 Cr. C. 617=35 Cr. L. J. 1283=151 Ind. Cas. 238 ; A. I. R 1931 Lah. 103. Where blows are dealt with *lathis,* intention to cause grievous hurt is presumed. A. I. R. 1922 Nag. 141=23 Cr. L. J. 313=66 Ind. Cas. 665 Where there is no premeditation and the accused inflicts an injury on abdomen with pen-knife on sudden provocation, offence is under s. 326. A. I. R. 1924 Lah. 234=24 Cr. L. J. 663=73 Ind. Cas. 695 ; see also A. I. R. 1922 Lah. 26=3 L. L. J. 581=22 Cr. L. J. 658=63 Ind. Cas. 450 ; A. I. R. 1933 Lah. 733. Where in an unlawful

assembly, substantive offence under s. 326 are committed in prosecution of common object by some all can be convicted under s. 326 read with s. 149 even though no conviction under s. 148 is passed. 1933 M. W. N. 109=1933 M. Cr. C. 75=A. I. R. 1933 Mad. 842. A conviction under s. 326 ought not to be passed on the uncorroborated dying declaration of the deceased person. 11 Mys. L. J. 328.

In a prosecution for an offence under s. 326, I. P. Code, a lenient sentence should be inflicted where the eye-witness did not profess to see the beginning of the fight and consequently it is impossible to say whether any provocation was given and to what extent. 30 P. L. R. 582.

Where a person was charged under ss. 326 and 149, he can be convicted under s. 326 read with s. 34 where it was proved that the accused being present and armed with a deadly weapon gave an order to other persons armed with deadly weapons to assault the complainant. 113 Ind. Cas. 676=30 Cr. L. J. 205=A. I. R. 1929 P. II; see also 47 M. 746=35 M. L. T. (H. C.) 21=82 Ind. Cas. 465=1925 Mad. 1=25 Cr. L. J. 1297=47 M. L. J. 221. Where the Court had been able to make up his mind definitely about the actual persons who caused the injuries sustained by the complainants and there was delay in making their complaint a conviction can not be sustained. 1923 Lah. 447. The accused were charged with offence under s. 326 read along with s. 149. They were acquitted on the latter charge as the alleged motive was not convincing and the common object was not made out. *Held*, this does not prevent a conviction being bad under s. 326 I. P. C. if grievous hurt was caused. 74 Ind. Cas. 717=24 Cr. L. J. 813. Where accused were charged separately with having entered complainant's house and cut off his ears and removed his ear-rings and there was no specification of a common intention to inflict grievous hurt; *held*, that as the identification of the person who inflicted the grievous injury was not made out, and as there was an absence of common intent, the conviction under s. 326 was bad, for which must be substituted convictions under s. 323. 47 Ind. Cas. 445=19 Cr. L. J. 929. Where an accused was found guilty of having cut off his wife's nose by a razor he should be convicted under s. 326. 20 P. R. 1915 Cr.=39 P. W. R. 1915 Cr. Where deceased struck on hand with *thakwa* died of septicæmia long after wound was inflicted and after keeping normal temperature and the injury by itself could not be called dangerous to life. In this case the offence was held to fall under s. 326 and not under s. 304. A. I. R. 1931 Lah. 103. Wound on neck with sharp-edged weapon is dangerous to life, but it is not sufficient in itself to cause death. A. I. R. 1930 Lah. 305. Fact that quarrel during which deceased gets fatal wound is sudden and arises in heat of passion is mitigating circumstance in favour of accused. A. I. R. 1930 Lah. 311. Where blows on head causes death a sentence of five years' rigorous imprisonment was held proper. A. I. R. 1930 Bom. 483. A person causing injury so as to endanger life, is presumed to know that he would cause death. A. I. R. 1930 Bom. 483. Blow with spear on fleshy part of body is not necessarily fatal and the offence does not fall under s. 302 but under s. 326. A. I. R. 1930 Lah. 950=129 Ind. Cas. 483=1930 Cr. C. 1046. In case of mutual infliction of injury on each other conviction should be under s. 326 and not under s. 307. A. I. R. 1925 Rang. 133=2 Rang. 558=26 Cr. L. J. 409=84 Ind. Cas 1049; see also A. I. R. 1929 Pat. 523=1929 Cr. C. 283; 151 Ind. Cas. 760=35 Cr. L. J. 1407=36 P. L. R. 88=1934 Cr. C. 763=A.I.R. 1934 Lah. 477. In case of joint assault with deadly weapon common intention is presumed. A. I. R. 1924 Lah. 216=24 Cr. L. J. 401=72 Ind. Cas. 513.

Procedure.—Cognizable—Summons——Not-bailable——Not-compoundable——Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first class.

Charge.—The same as in section 325, only after A. B. add the name of the instrument with details.

Voluntarily causing hurt to extort property, or to constrain to an illegal act.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferers, to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—The bodily hurt is inflicted by way of torture. The execrable cruelties which are committed in India by robbers, dacoits etc., for the purpose of extorting property, or information relating to property, render a severe punishment necessary. The section applies not only to such cases, but to all cases in which the hurt is for

purpose of extorting, or compelling against the sufferer's consent, the delivery of property, notwithstanding that the offender may have a valid claim or title to such property.—*Morgan and Macpherson.* Torture by means of stinging rattles, the effect of which was to extort property, is an offence under this section. 18 W. R. Cr. 8.

Person interested in the sufferer.—Any tie of blood relationship, marriage, service, or even friendship, seems sufficient. The Court must ascertain for what purpose the suffering was caused, whether it was directed wholly at the sufferer or at another through him. Besides the purposes above referred to, of extorting property or information relating to property, another purpose may be to constrain to any illegal act. *Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not-bailable—Not-Compoundable—Triable by Court of session, Presidency Magistrate or Magistrate of the first class.

Separate conviction.—It is doubtful whether separate convictions under s. 147 and this section are legal. 8 C. L. R. 390.

328. Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug, or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, &c. with intent to commit an offence.

Scope.—In order to convict a person of an offence under this section mere administration of the drug will not do. There must also be evidence to show that such administration was with the intent specified in the section and to cause injury to the person to whom it was administered. 15 Cr. L. J. 512 : 25 Cr. L. J. 517; 46 A. 27; 4 Bom. L. R. 425; 1 Weir, 335; 30 A. 568; A. I. R. 1931 Pat 346=32 Cr. L. J. 1228=134 Ind. Cas. 639; 60 Ind. Cas. 50=22 Cr. L. J. 194=3 L. L. J. 191. "This offence is complete although no hurt is caused to the person to whom the poison or drug is administered. It is sufficient if he is induced to take it by a person who has any such intention as is specified in the section or who knows that it is likely to cause hurt. A person who knowingly cause another to take poison, may be presumed without further proof to intend to cause hurt unless he is able to show satisfactorily a good intention, e. g, that it was administered in good faith medicinally. Stupefying, intoxicating, or unwholesome drugs or liquors may often be given and taken by those who know their qualities, or who have no intention to cause hurt or to commit an offence by means of them. Where such things are administered, the criminal intention, which is an essential portion of the offence here defined, should be made to appear to the satisfaction of the Court. The sale of intoxicating or unwholesome liquor or drugs by persons who know their qualities, and that they are likely to cause hurt, is not, it seems, an offence falling under this section."—*Morgan and Macpherson.*

Hurt.—In order to constitute an offence under the section it is not necessary that the hurt should be caused to any particular person intended or that the person injured or likely to be injured should have been previously known. 5 B. H. C. Cr. 50; 5 L. B. R. 79. The accused called in a "medicine man" to detect a case of theft. The latter told the accused that he could administer the juice of some leaves to all the villagers, and that it would cause the belley of the thief to swell. The medicine man mixed some drug with the juice in the presence of the accused and those who took the medicine really submitted themselves to the ordeal. Three of them showed symptoms of having been poisoned and suffered severely for upwards of a fortnight. *Held*, the accused had committed an offence under s. 328, for having caused an unwholesome drug likely to cause hurt to be administered. 1 Weir. 335. The words "or other thing" in s. 328 of the Penal Code must be referred to the preceding words and be taken to mean "unwholesome" or "other thing" and not other thing simply. 1 W. R. Cr. 7. The offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, Penal Code, and not as for grievous hurt under s. 326. 4 W. R. Cr. 4.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

Notes.—*Vide* notes under s. 327. Grievous hurt under the like aggravated circumstances is here made punishable.

Procedure.—Cognizable—Warrant—Not-compoundable—Not-bailable —Triable by Court of Session.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

Illustrations.

(*a*) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b*) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c*) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d*) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

Elements.—There must be connection between the assault and restoration of property. 5 Pat. L. W. 109. It must be proved that the assault was inflicted for the purpose of extorting confession or restroration of property. 46 Ind. Cas. 525=5 Pat. L. W. 109=19 Cr. L. J. 749 ; 13 W. R. 23 Cr ; 138 Ind. Cas. 133=33 Cr. L. J. 557=35 M. L. W. 61=1932 M. W. N. 65=62 M. L. J. 223=A. I. R. 1932 Mad. 214. The word "demand" refers to some demand in respect of some property. 11 M. 257. A person voluntarily causes hurt when he himself does an act with the intention of causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person and actually causes hurt therby to any person. 9 C. P. L. R. Cr. 18. An offence under this section is committed when hurt has been caused for the purpose of extorting information which might lead to the detection of an offence. 20 W. R. Cr. 41. Where the accused was shown to have tacitly instigated the commission of an offence by others by expressing approval of their conduct in maltreating a tenant and by suggesting that the tenants having lost their heads they should be given a sound beating. *Held*, that the accused was rightly convicted and sentenced under s. 330 read with s. 114 I. P. Code. 25 A. L. J. 149=8 L. R. 28 Cr.=100 Ind. Cas. 537=28 Cr. L. J. 313.

Cases.—Where a police constable, in the course of an enquiry, violently beat the deceased who died of the beating nine days subsequently, *held* that he was guilty of an offence under s. 330 I. P. Code. 86 P. R. 1866. An Excise Inspector searching the house of a person, under the suspicion that he would find cocaine there, committed many irregularities. He had no warrant authorising him to make the search, he had brought only one search witness and he directed a constable to scale the outer wall of house. The accused assaulted and beat him. *Held* that the Inspector and the constables was not acting in the discharge of their duties as public servants and the accused were not guilty of an offence under s. 330, Penal Code, but was guilty of causing hurt only. 13 A. L. J. 439=37 A. 358=16 Cr. L. J. 495=29 Ind. Cas. 335.

Sentence.—In this case the accused, a sergeant of Police, was convicted under s. 330 I. P. Code, and sentenced to three months' simple imprisonment for causing hurt to a prisoner in his custody for the purpose of extorting a confession. On revision, the sentence was enhanced to rigorous imprisonment for two years, for the reason that the offence found to have been committed was of the gravest character, and such as to shake judicial confidence in a most important portion of the evidence, which has commonly to be relied on by the Courts of Justice, namely, the genuineness and trustworthiness of early confessions, for such evidence ought to be free from the slightest taint, and to tamper with it is to pollute justice at the fount. U. B. R. (1897—1901) Vol. I, 320.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—The hurt or grievous hurt in these sections is supposed to be committed by way of torture, but for purposes differing from those mentioned in the two preceding sections. The illustrations show the operation of these provisions. The information sought for may be required for the advancement of justice—nay more, it may be such information as cannot be withheld without offending against public justice—the property, the extortion of which is sought, may be property which the sufferer has borrowed from the offender, and which he illegally refuses to give back—the claim or demand may be a just claim—but the law will not tolerate the employment of such means as are here made punishable, even when used for honest ends. *Morgan and Macpherson.* Here the word "demand" must be with respect to property; consequently the extortion of a promise to restore an abducted woman is not an offence under this section. 5 Lah. L. J. 374=73 Ind. Cas. 272=24 Cr. L. J. 576=1924 Lah. 167. Torture by police-officer for getting confession which causes death is an offence under this section. 40 Ind. Cas. 710.

Procedure.—Cognizable—Summons—Not-bailable—Not-compoundable—Triable by Court of Session.

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Notes.—Where a constable was employed to watch the accused, and the accused knew of it when he assaulted him. *Held*, that the constable was not doing anything in excess of his authority at the time of the assault, and the accused was rightly convicted under s. 332, I. P. Code. 7 M. L. T. 386=6 Ind. Cas. 12=11 Cr. L. J. 221. But no offence under this section is committed when a public servant does not act in the discharge of his duty. 76 P. L. R. 1903. Under s. 54, Criminal Procedure Code, a police-officer investigating a charge of burglary (a cognizable case) is empowered to arrest, without an order from a Magistrate or a warrant, persons against whom a reasonable suspicion of having been concerned in the burglary existed, and so the persons assaulting the police-officer while arresting them

would be guilty of an offence under s. 332, Penal Code. 18 P. R. 1910 Cr.=6 Ind. Cas. 956=32 P. W. R. 1910 Cr.=104 P. L. R. 1910=11 Cr. L. J. 423. An accused cannot be found guilty of an offence under s. 332, I. P. Code because the object of the riot is to resist the search by the police and in making the searches the police are not acting in the discharge of their duty. 8 S. L. R. 1=16 Cr. L. J. 15=26 Ind. Cas. 319. So also when a public servant is acting in his private capacity it is no offence under this section if the accused voluntarily causes hurt to him. 161 P. L. R. 1911=12 Cr. L. J. 236=10 Ind. Cas. 278. A public servant acting under irregular search warrant cannot take benefit of this section, where he is hurt, in executing such warrant. 14 Cr. L. J. 142=18 Ind. Cas. 894=155 P. L. R. 1913=16 P. R. 1913 Cr.=20 P. W. R. 1913 Cr. An accused person while under trial struck a Sub-Inspector of Police, who was in the witness-box giving evidence against him. *Held*, that the offence of which the accused was guilty in this respect was rather that provided for by s. 355 of the Penal Code, than that punishable under s. 332 of the Code. A. W. N. 1907 186=6 Cr. L. J. 22. The words "in discharge of his duty" mean that the officer has a duty to discharge and is discharging it at the particular time. This section cannot mean that the officer is acting under colour of his office. 18 A. 246=A. W. N. 1896, 48. Where the common object of an unlawful assembly was to assault the police-officers in discharging their duty, and hurt was actually caused in some of them, separate sentence under s. 147 and 332, I. P. Code were disallowed and sentence under s. 332, I. P. Code only was maintained. 38 P. W. R. 1907 Cr.=6 Cr. L. J. 446 ; see also 223 P. L. R. 1112=41 P. W. R. 1912 Cr. Resistance to the execution of a warrant under this section is an offence under this section, and where the warrant has been destroyed by the accused the presumption is that it has been properly drawn up. 16 C. W. N. 336=13 Ind. Cas. 1002=13 Cr. L. J. 186. Where a public servant receives a blow from a stick while trying to quiet the riot, but the evidence to show who actually struck it is discrepant, it is not lawful to frame a separate charge under s. 332, Penal Code against any one of the rioters in particular. 14 P. W. R. 1912 Cr.=111 P. L. R. 1912=15 Ind. Cas. 92=13 Cr. L. J. 460 ; 19 C. 105. Where the police harrassed a person during an investigation and the latter consequently threw himself into a well and his sympathisers among whom were the accused attacked the police, *held*, that there was no question of grave and sudden provocation, and that the accused was rightly convicted under s. 332 Penal Code. 11 Lah. L. J. 287=A. I. R. 1929 Lah. 739. Person obstructing or assaulting a vaccinator ordered to vaccinate ladies and children is guilty under section 332. A. I. R. 1935 All. 160.

In order to substantiate a charge under s. 332, I. P. Code, it must be established that the person to whom the offence was caused was acting in the discharge of his duty as a public servant. 9 Lah. L. J. 424=105 Ind. Cas. 817=A. I. R. 1927 Lah. 706 ; see also 17 N. L. J. 78=1934 Cr. C. 1120=A. I. R. 1934 Nag. 247 ; 142 Ind. Cas. 790=34 Cr. L. J. 439=1932 Cr. C. 570=1932 A. L. J. 530=A. I. R. 1932 All 449. Where a police servant is acting in the legitimate discharge of his public functions and is hurt, the offender is guilty of one of the special offences relating to public servants. But when a public servant is acting *bona fide* but not in the legitimate exercise of his public functions, he can be guilty only of causing hurt or assault. 83 Ind. Cas. 899=26 Cr. L. J. 195. Both ss. 332 and 333 I. P. Code require as an ingredient of the offence, the presence of an intention on the part of the accused persons, namely, to prevent or deter a public servant from discharging his duty. If the accused persons were unaware of the fact that the persons confined were public servants, the offence has not been committed. 22 A. L. J. 501=L. R. 5 A. 177 Cr.=1924 A. 645. An officer of police who is empowered to conduct an investigation, is entitled to carry out a search without a warrant. In carrying out such a search he is bound, under s. 103 of the Cr. Pro. Code to call upon two or more respectable inhabitants of the locality to attend and witness the search, and if he omits to do so, a house-holder would be justified in closing the door and refusing ingress into the house, and would not be guilty of an offence under section 332. 42 All. 67=17 A. L. J. 1047=52 Ind. Cas. 663=20 Cr. L. J. 695. The words "in the discharge of his duty as such public servant" in section 332 of the Penal Code mean in the discharge of a duty imoposed by law on such public servant in the particular case. 15 A. L. J. 813. A distrainer having a warrant has no right to take the front door of a house, and if he threatens to do so, such a proceeding renders the house unsafe calling for immediate defence of private property. Further if the accused resists such attempts he cannot be said to have exceeded his right of self-defence and any conviction

under Penal Code, s. 332 is liable to be set side. A. I. R. 1930 Mad. 430. Separate sentence under ss. 147 and 332 of the Indian Penal Code are not illegal. A. I. R. 1926 Lah. 521=27 Cr. L. J. 824=95 Ind. Cas. 600. In case of illegal search-warrant, persons resisting police is not guilty under s. 332. 38 A. 14=16 Cr. L. J. 819; see also A. I. R. 1930 Pat. 387=125 Ind. Cas. 784. Where public servant is acting *bona fide* but not in legitimate exercise of his function, the accused causing hurt is not guilty under the section. A. I. R. 1921 Sind. 51=26 Cr. L. J. 195=16 S. L. R. 161=83 Ind. Cas. 899; see also A. I. R. 1926 Lah. 250=27 P. L. R. 74=27 Cr. L. J. 377=92 Ind. Cas. 889. Where Court is unable to free its mind from possibility of accused having been roughly beaten under orders from public servant, s. 332 does not apply. 142 Ind. Cas. 897=33 P. L. R. 1065=34 Cr. L. J. 460=A. I. R. 1933 Lah. 162.

Procedure.—Cognizable—Warrant—Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes.—Under s. 333 a person who causes grievous hurt to a public servant can be convicted under three circumstances (1) when grievous hurt is caused while the public servant in the discharge of his duty as such public servant; in this case motive and object are irrelevant. (2) when a public servant is prevented or deterred from discharging his duty as such public servant in this case it is necessary that the object of the accused should be to deter the public servant from discharging his duty but it is not necessary to prove any motive; (3) when the public servant is assaulted in consequence of any thing done or attempted to be done by that public servant in the discharge of his duty; in this case it is necessary that the public servant should be discharging his duty at the time of assault. The object too is irrelevant. The only thing that has got to be seen is motive. A. I. R. 1935 All. 563. The offence contemplated by section 332 and section 333 consists in causing hurt or grievous hurt to a public servant in the lawful discharge of his duty, or in order to deter him from it, or in consequence of it, *vide* 18 S. L. R. 221=88 Ind. Cas. 15=26 Cr. L. J. 107; 105 Ind. Cas. 817; 83 Ind. Cas. 899; 26 Cr. L. J. 195; 13 A. L. J. 439; 15 A. L. J. 565; 37 A. 353; 18A 246; 22 A. L. J. 501; 85 Ind. Cas. 245; 26 Cr. L. J. 551; 83 Ind. Cas. 899. Such public servants as officers of justice, while in the execution of their offices, are under the peculiar protection of the law. Without this special protection, the public tranquility cannot be maintained or private property secured; nor in the ordinary course of things can offenders be made amenable to justice. This protection is not confined to the moment during which the public servant is upon the spot and at the scene of action engaged in the business which brought him thither. He is under the same protection of the law while proceeding to the place, while remaining there, and while returning from it. *Morgan and Macpherson.* The protection which the law affords to these public servants is not, it seems, confined to them, but extends to persons acting in good faith by his directions. *Ibid*; 19 M. 349; 21 M. 296; but see 38 A. 14=13 A. L. J. 979=31 Ind. Cas. 995=16 Cr. L. J. 819; 4 C. L. J. 92. But when public servants step beyond the limits of law, they wholly forfeit the protection and privilege which it confers on them.—*Morgan and Macpherson*; 44 C. L. J. 92. Mere resistance is no offence under s. 333. 24 M. L. T. 96=20 Cr. L. J. 145=8 L. W. 225=49 Ind. Cas. 337. No offence under this section is committed by rescue from improper custody of *Chawkidar*. 17 Cr. L. J. 529=14 A. L. J. 789=36 Ind. Cas. 577. Where constable unauthorisedly firing was roughly handled by way of self-defence, to prevent him from doing further harm, no offence is made out. A. I. R. 1922 Lah. 75=24 Cr. L. J. 201=71 Ind. Cas. 665. In case of assault on public servant within precincts of Court in open and high handed manner, 18 months' rigorous imprisonment is not sufficient. A. I. R. 1935 All. 563.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing hurt on provocation.

Scope.—The punishment is mitigated because the hurt is caused on grave and sudden provocation. Causing grievous hurt on grave and sudden provocation is punishable more severely than causing hurt not grievous on such provocation. The provisions on this subject are framed on the same principles on which the corresponding portion of the law of culpable homicide has been framed. *Morgan and Macpherson.* This section applies to the case of a person who causes hurt on grave and sudden provocation to the person giving the provocation. 1 B.H.C.R. 17; see also 27 Ind. Cas. 559=16 Cr. L. J. 175; 94 Ind. Cas. 142=27 Cr. L. J. 574; 14 Cr. L. J. 442; L. B. R. (1892-1900) 484. Provocation is necessary at the time of assault. A. I. R. 1929 Lah. 739=11 L. L. J. 287=1929 Cr. C. 329.

Procedure.—Not-Cognizable—Summons——Bailable—Compoundable—Triable by any Magistrate.

335. Whoever "voluntarily" causes grievous hurt on grave, and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Voluntarily causing grievous hurt on provocation.

Explanation.—The last two sections are subject to the same provisos as exception 1, section 300.

Notes.—The accused was convicted of causing grievous hurt (*viz.* the cutting of nose) to his wife under grave and sudden provocation, and was sentenced to to suffer rigorous imprisonment for four months. On reference to the Sessions Judge for enhancement of sentence: *Held* enhancing the sentence to one of two year's rigorous imprisonment, that the particular act of which the accused was found guilty was one which imported deliberate design. 17 Bom. L. R. 68=3 Bom. Cr. C. 1=16 Cr. L. J. 168=27 Ind. Cas. 552. Where a person, suspecting his wife of infidelity, hid himself so as to see her in intimacy with her paramour, and seeing her do an improper act with him, caused grievous hurt to her, *held* that though there was grave provocation there was no sudden provocation. A. W. N. 1889, 9; see also A I. R. 1932 Lah. 144=33 Cr. L. J. 368=1932 Cr. C. 215=33 P. L. R. 72.

Legislative changes.—The word within quotations has been added by Act 8 of 1882.

Compoundable.—Only grievous hurt coming under this section and section 338 is compoundable. S. C. 74. Oudh.

Procedure.—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Act endangering life or personal safety of others.

Scope.—Hitherto cases in which hurt has been voluntarily caused have been provided for. But hurt may be caused involuntarily yet culpably. There may have been no design to cause hurt, no expectation that hurt would be caused. Yet there may have been a want of due care not to cause hurt. For these cases of the involuntary, yet culpable, infliction of bodily hurt, and also for the like cases of causing, risk of hurt, this and the following sections are provided. *Morgan and Macpherson.* Many

specific acts of rashness or negligence likely to endanger life or to cause hurt or injury, are made punishable by chapter XIV. This section punishes similar acts, of whatever kind, which cause risk to human life or to the personal safety of others, although no hurt may have been caused thereby. *Morgan and Macpherson.* For the conviction of an offence under this section, the fact that human life or the personal safety of others was endangered must be proved. It is not merely a question of the words "rashly or negligently." 1 L. B. R. 45.

Rashly.—A rash act is primarily an overhasty act and is thus opposed to a deliberate act but it also includes an act which though it may be said to be deliberate, is yet done without due deliberation and caution. L. B. R. (1893—1900), 426. An act which is in itself unlawful is neither rash nor negligent. U. B. R. 1905, Penal Code, 15=2 Cr. L. J. 475.

This section applies to acts which are in themselves lawful but which are done so rashly or negligently as to endanger human life etc. L. B. R. (1872-1892), 595. This section applies to illegal acts also. 140 Ind. Cas. 99=33 Cr. L. J. 889=1932 Cr. C. 291=1932 A. L. J. 224=A. I. R. 1932 All. 322. This section is meant to deal with cases of rashness or negligence in doing a lawful act, but not when the act is criminal in itself. Sel. Case No. 31 of 1887. The imputability of culpable rashness arises from acting despite the consciousness that mischievous consequences may follow but with the hope that they will not, and often with the belief that sufficient precautions have been taken to prevent their happening. *In re George Loveday*, 1 Weir, 337. The only questions in a case under s. 336, Penal Code, are (1) whether the act done is a rash and negligent act, and (2) whether it was such as was likely to endanger life. *In re Thippana Reddi*, 1 Weir 337. The provisions of the above sections are intended to meet cases where acts which are in themselves lawful are done so rashly or negligently as to endanger human life or the personal safety of others. L B. R. (1872-1892), 91. Section 336 is not appropriate for the punishment of a person deliberately throwing stone at a house. L. B. R. (1872-1892), 595; A. I. R. 1928 All. 745.

In order to convict a person under the above section, the prosecution must prove rashness or negligence on the part of the accused, and also that by such rashness or negligence human life or the personal safety of others was actually endangered. L. B. R. (1872-1892) 9. A village headman having a license to conduct swing during the *charak pujah* in his village was charged under s. 336 for allowing a person to swing by hooks inserted in the flesh, instead of by being attached to the swinging apparatus by cloths. *Held*, that the headman was not guilty under s. 336, Penal Code. 5 C. W. N. 376. Doing an act endangering human life or the safety of others, is an offence under this section. 18 C. W. N. 1176=27 Ind. Cas. 195=16 Cr. L. J. 131. An offence under s. 336 is not one of those which may be lawfully compounded. U. B. R. (1892—1896) Vol I. 219. Where the accused threw brick-bats, at the back of, the complainant's house, which had hit it and fallen to the grouud, and there was no evidence to show that human life or personal safety of any body was endangered by the accused's acts. 5 L. B. R. 100=4 Ind. Cas. 293=10 Cr. L. J. 552. The case of and accident to a motor-car due to the negligent and reckless driving of another motor car ought to be tried within a week. A. I. R. 1929 Cal. 776=1929 Cr. 520. Where during the occurrence of communal riots the accused threw brickbats from his roof on passers-by and fired 2 shots from his gun and no one was hurt by the bricks or the gunshots and he was convicted under s. 336, *held*, that the accused committed no offence. 23 A. L. J. 356=87 Ind. Cas. 523=47 A, 606=26 Cr. L J. 987=A. I. R. 1925 All. 396; see also A. I. R. 1928 All. 745=51 A. 465=112 Ind. Cas. 592=1929 A. L. J. 175. Where a taxi-driver was licensed to drive wearing spectacles on account of his defective eye-sight, he cannot be convicted under this section for driving without spectacles. 42 B. 396=20 Bom. L. R. 376=45 Ind. Cas. 506=19 Cr. L. J. 695.

Procedure.—Cognizable—Summons—Bailable—Not-Compoundable—Triable by any Magistrate.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

Causing hurt by act endangering life or personal safety of others.

Scope.—This section applies only to acts done without any criminal intent. Personal injury intentionally caused is neither a rash nor a negligent act. U. B. R.

(1904) 1st. Qr. Penal Code, 6. Where an operation was needlessly made by a physician in a primitive way without taking the most ordinary precautions and where the instruments used were not disinfected and sterilized and where the result was that the operation was unsuccesssful and the complainant's eye-sight was permanently damaged to a certain extent *held* that the accused's physician was rightly convicted under this section. 39 B. 523=17 Bom. L. R. 384. Causing hurt by negligence in the use of gun would fall under this section. 28 A. 464=3 A. L. J. 332. Where a wife administered to her husband a *Dhutura* poison to make him less quarrelsome which potion she received from her lover without enquiring what that potion is, she is guilty under this section. 19 Bom. L. R. 54=38 Ind. Cas. 1003=18 Cr. L. J. 443 ; see also 39 C. 855. The words "rashly and negligently" are distinguishable and one is exclusive of the other. The same act cannot be rash as well as negligent. Shooting pigs on foot always carries with it a certain amount of risk and if by chance a shot hit one of the beaters or spectators, the matter must be treated as that of a pure accident. A. I. R. 1931 Lah. 54. The accused's liability is determined by what is the proximate cause. A. I. R. 1925 Sind. 233=18 S. L. R. 199=27 Cr. L. J. 257=92 Ind. Cas. 433. Negligence must not be presumed merely because car hits something else. 1933 Cr. C. 1146=A. I. R. 1933 Rang. 329.

Procedure.—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable by Presidency Magistrate or Magistrate of the first or second class.

Causing grievous hurt by act endangering life or personal safety of others.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Notes.—Causing death of a child wife by having sexual intercourse with her is an offence under this section. 18 C. 49. For other cases under this section, *vide* 16 Ind. Cas. 511=18 Cr. L. J. 703 ; 6 M. H. C. R. App. 31 ; 100 Ind. Cas. 831=28 Cr. L. J. 351=1927 Lah. 65=28 P. L. R. 99. Where a person allowed his cart to proceed unattended along a road and ran over a boy who was sleeping on the oad, he could not be convicted under s 239, but convicted under s, 337 or 338 I. P. Code. Rat. Un. Cr. C. 198. Only grievous hurt coming under the provisions of s. 335 or 338, I. P. Code, is compoundable. S. C. 74, Oudh. Where the accused was driving a motor-lorry through a public road a little boy apparently in crossing the road came into contact with the lorry and his left foot was run over and fractured. It was found that the speed was moderate and the accused was driving on the correct side of the road. It did not appear that the accused when called upon to stop could have swerved the lorry and saved the boy. *Held* that on those facts the accused could not be convicted of an offence under s. 333 I. P. Code, 32 C. W. N. 612. The contributory negligence would not be a defence entitling a person convicted under s. 338, I. P. Code, to acquittal, but that it would be a factor for consideration in determining the sentence. 28 P. L. R. 99=100 Ind. Cas. 831=28 Cr. L. J. 351=A. I. R. 1927 Lah. 165. Where a car driven at moderate speed and on correct side of road runs over a boy crossing the road, conviction under s. 338 is not sustainable. 32 C. W. N. 612=30 Cr. L. J. 402=115 Ind. Cas. 96. Motor car cannot be said to have been used by accused for offence under section 338 and cannot be detained pending conclusion of trial. 136 Ind. Cas. 724=33 P. L. R. 386=33 Cr. L. J. 347=A. I. R. 1931 Lah. 565. In a case under this section a sentence of three months' rigorous imprisonment and a fine of Rs. 150 were held to be excessive. A. I. R. 1933 Oudh. 568 ; see also 147 Ind. Cas. 698=10 O. W. N. 1349=1934 Cr. C. 80=A. I. R. 1934. Oudh. 18.

Procedure.—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable by Court of Presidency Magistrate or Magistrate of the first or second class.

Of wrongful restraint, and wrongful confinement.

Scope.—The provisions under this head are for the punishment of offences, in which the offender, although he may have no design against human life, and no intention to inflict bodily hurt, either wholly deprives the injured person of his freedom, or in some degree abridges his personal liberty. The personal restraint or

confinement may, in some cases, be so slight as to deserve little more than a nominal punishment, but the arbitrary imprisonment of a person, which is often a quiet and convenient mode of prosecuting him, is a most serious offence, deserving of examplary punishment. *Morgan and Macpherson.*

339. Whoever voluntarily obstructs any person so as to prevent that person, from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restraint.

Exception.—The obstruction of a private way overland or water, which a person, in good faith, believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Scope.—This section relates to the voluntary obstruction by a person, and not obviously, at least, to obstructions, which are not voluntarily continued by the persons accused of the obstruction, throughout the time this obstruction lasts. 9 Bom. L. R. 30 : 36 M. 547. Restraining a horse on which a person is riding so as to prevent him from proceeding at the moment of wrongful resraint amounts to wrongful restraint within the meaning of s. 339 of the Penal Code. 100 Ind. Cas. 544 = 28 Cr. L. J. 320 = A. I. R. 1927 Mad. 506. Ss. 339 and 341 do not cover cases where there is no ordinary or special reason for a person to proceed in the direction which is obstructed. 29 Bom. L. R. 494 = A. I. R. 1927 Bom. 369. No doubt there is authority for the view that all that section 339 protects is the obstruction of any person and that it does not cover a case where he himself is free to proceed in a direction in which he has a right to proceed but without any impediments that he may have with him. On the other hand this veiw of personal obstruction must obviously have some limits. 27 Bom. L. R. 1419. Obstructing a person going with bullocks to a place where he had a right to go is an offence under s. 339. A. I. R. 1926 Bom. 118 = 27 Bom. L. R. 1419 = 27 Cr. L. J. 139 = 91 Ind. Cas. 811. Obstruction to a person having a right to go upwards is an offence. But projecting a shed over a well not obstructing any person is no offence. A. I. R. 1927 Bom. 369 = 29 Bom. L. R. 494 = 28 Cr. L. J. 1023 = 100 Ind. Cas. 544. Voluntary obstruction of vehicle is not wrongful restraint. A. I. R. 1935 Oudh. 252.

Under this section the obstruction should be so complete and successful as to prevent the person obstructed from proceeding in any direction in which he has a right to proceed. 15 Bom. L. R. 103. Physical presence of the obstructor is not necessary as an ingredient of the offence of wrongful restraint. To constitute the offence, the obstructor must intend or know or have reason to believe it to be likely that the means adopted would cause the obstruction of the complainant. 9 M. L. T. 103. There must be obstruction atributable directely to the person charged. 5 M. L. T. 207. An obstruction made by a person who acts in good faith in the supposed exercise of any right is not an offence. And it is not apparent why the exception appended to the definition is confined to the case of obstructing a private way, The obstruction must be voluntary ; that is, the act or the illegal omission which causes it must be intended or known to be likely to obstruct. If there is this intention or knowledge, it is not necessary that there should be actual obstruction by physical means, by some act done, etc.—*Morgan and Macpherson.* This obstruction must be against a person. 15 Bom. L. R. 103 ; but see 10 W. R. 35. The obstruction must be a physical obstruction. 1 Weir 339. The mere ploughing up of a path does not amount to an obstruction within the meaning of s. 339. 2 L. W. 1035. A person will not be justified in complaining of wrongful restraint against a *pariah*, who being lawfully in the public street on his own business, refused to move when directed to remove himself to a distance, knowing that, if he remained, the complainant would be debarred. by fear of pollution, from passing near him. So where A caused certain *pariah* to stand in the public street in the vicinity of a temple, with the object of preventing B from conducting a procession from the temple through the street, *held*, the act of A did not amount to an obstruction within the meaning of s. 339, and it was B's disinclination to go near the *pariahs*, and not presence of the *pariah*, which prevented him from going where he would,

and that A did not therefore commit the offence of wrongful restraint. 7 M. L. T. 366=15 Ind. Cas. 851=11 Cr. L. J. 263. No offence of wrongful restraint is committed where the complainant is detained by the moral influence. Rat. Un. Cr. C. 89. A police officer refusing to let a person go home until he had given bail would be guilty of wrongful restraint. 10 W. R. Cr. 10. The act of preventing a person from proceeding in a certain direction, with his carts and exacting from him a sum of money on a false plea would constitute an offence of wrongful restraint. 10 W. R. Cr. 35. The accused landlord prevented a tenant of his who was holding over, from entering the room which the tenant had rented from the accused. *Held* that the accused has committed an offence under s. 339 I. P. Code. 43 Bom. 531=21 Bom. L. R. 261=20 Cr. L. J. 417. To justify a conviction for an offence under s. 341 I. P. Code, it must be found that the person complaining has a right to proceed along the path and that he was obstructed from doing so. 2 L. W. 1035=16 Cr. L. J. 701 =30 Ind. Cas. 749.

Exception.—Where the accused believed that they had a right to prevent the complainant from passing over their ground, and erected a wall between their premises in good faith, *held* that their case was covered by the exception. 2 P. R. 1886, Cr ; see also 30 C. W. N. 921, 24 C. 885 ; 47 C. 818 ; 15 Cr. L. J. 532 ; 12 B. 377 ; 5 P. W. R. 1914 ; 34 M. 547 ; 16 Cr. L. J. 701.

Wrongful confinement

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations.

(*a*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

What constitutes.—The use of physical force is not a necessary ingredient of the offence of wrongful confinement. The mere detention of a person at a police station by moral force, exercised by the police or other persons guarding him, would be sufficient to constitute the offence. 1 Weir. 341 ; 4 Bom. L. R. 79. A person may be guilty of wrongful confinement though he acts without malice. 13 B. 376. Confinement of a prisoner already undergoing imprisonment in a cell within the jail for the purpose of administering *enema*, against his will, and without legal authority, amounts to wrongful confinement. 30 C. 95=6 C. W. N. 511. Illegal arrest and custody fall within this section. 1 Weir. 338 ; 1 Weir. 341. A I. R. 1923 All 34=26. Cr. L. J. 428=85 Ind. Cas. 44. There can be no wrongful confinement when a desire to proceed has never existed, nor can a confinement be wrongful if it was consented to by the person affected. 36 P. R. 1894. Cr. As regards wrongful confinement for the purpose of extortion *vide* 27 C. 925=4 C. W. N. 755. Where the landlord prevents his tenant from entering his house he is guilty under this section. 43 B. 531 ; see also 42 B. 141=20 Bom. L. R. 79. Confinement by reason of mistake of fact is not an offence under this section. 47 C. 818.

Punishment for wrongful restraint.

341. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both.

Essentials of an offence.—To justify a conviction, for an offence under this section, it must be found that the person complaining has a right proceed along the path and that he was obstructed from doing so. 2. L. W. 1035. The slightest unlawful obstruction to the liberty of the subject to go when and where he likes to go provided he does so in a lawful manner, cannot be justified, and is punishable as an offence under this section. 1 Weir 339. Mere direction or demonstration will not constitute wrongful restraint. 4 M. L. T. 141 ; 1 Weir 339. "The offence of wrongful restraint, which consists in the keeping a man out of place where he wishes to be and has a right to be, when it does not amount to wrongful confinement and when it is not accompanied with violence or with the causing of

bodily hurt, is seldom a serious offence. It is therefore visited with light punishment." *Morgan and Macpherson.* Unreasonable dealy on the part of a Plague passport officer to issue a passport, to a person who cannot lawfully proceed to another place, though highly reprehensible, cannot amount to wrongful restraint or imprisonment of such person, in the absence of anything to show that the officer objected to such person going on without a passport, or that he, either physically or by the show or suggestion of force prevented such person from proceeding. 2 M. L. T. 159=5 Cr. L. J. 357. If a watchman prevents an intending immigrant from leaving the Emigration Depot, he commits an offence under this section. 21 M. L. J. 439=10 Ind. Cas. 107=12 Cr. L. J. 212=1911, 1 M. W. N. 369. Voluntary obstructions to any person fron entering upon the land under *bona fide* colour of title and possession is not such an obstruction as can be made the subject of a criminal prosecution under s. 341 of the I. P. Code 5 P. W. R. 1914 Cr.=34 P. L. R. 1914=15 Cr. L. J. 533=24 Ind. Cas. 844. Mere obstruction to carts and bullocks passing by a particular road, without interfering with the free passage of persons by the same, does not amount to an offence of using criminal force under s. 341 I. P. Code 2 L. W. 185=1915 M. W. N. 203=16 Cr. L. J. 176=20 Ind. Cas. 560. Addressing a respectable gentleman in the singular is not an offence under this section. Rat. Un. Cr. C. 933. Offence can be compounded before filing a complaint. A. I. R. 1927 All. 375=25 A. L. J. 396=28 Cr. L. J. 495=49 A. 484=131 Ind. Cas. 671. A conviction under s. 341 is bad where there was no physical restraint of complainant's person. 19 Cr. L. J. 445=44 Ind. Cas. 973. A Magistrate has no jurisdiction to try an offence summarily under s. 342 nor can he create a jurisdiction charging for the lesser offence under s. 341. 1932 M. W. N. 478.

A person cannot be convicted of wrongful restraint where he locks up a house under a *bona fide* claim to the same. Rat. Un. Cr. C. 451=Cr. Rg. 10 of 1889. Where a Civil Court peon in executing a warrant of arrest against a judgment-debtor, stopped a *palki* with closed doors coming out of the male apartments of the judgment debtor's hoses, believing that the judgment-debtor was making his escape thereby, and a *purdanashin* lady of rank was in the *palki, held,* that having regard to the terms of s. 79, the peon could not be convicted under s. 341 of the Code. 24 C. 885= 1 C. W. N. 655. A person preventing his neighbours from building a party-wall within their back yards not guilty of wrongful restraint within the meaning of s. 341. 1 Weir 339. An accused had not committed an offence within the definition of this section, where he has not prevented a person from proceeding in any direction in which that person had a right to proceed. 1 Weir 340. Removing a ladder and thereby detaining a person on the roof is an offence under this section. 1 Weir 340. Where the accused came up and ordered the complainant not to remove certatin things he was removing from a shop to another, and overturned the cart with the things, and the complainant went to the other shop leaving the things laying in the road, *held* the accuased would not be convicted under s. 341 of the Penal Code, but that an offence under s. 425 had been established. 12 C. 55. Where a person accused of wrongful restraint by erection of a fence over a way contended that he had acted in accordance with a decree of a Civil Court, *held,* that a Magistrate should confine his attention to observing or enforcing the terms of the decree of Civil Courts without obtaining evidence to modify or question it. 5 C. W. N. 215. Mere excessive and mistaken exercise of powers not civilly excusable in a police officer, would not amount to the offence of wrongful restraint. 24 W. R. Cr. 51. The complainants in this case charged six accused persons with the offence of wrongful restraint, in as much as they had restrained the complainants from passing through certain fields on the way to their well. *Held* that the accused cannot be convicted of an offence under s. 341, I. P. Code because complainants' right of way is not sufficiently established. 22 P. R. 1910 Cr.=120 P. L. R. 1900=7 Ind. Cas. 493=11 Cr. L. J. 495. Section 341 does not cover the case of a person reasonably wanting to go vertically upwards if he has a right to do this and being prevented from so doing by a voluntary obstruction. 29 Bom. L. R. 494=A. I. R. 1927 Bom. 369. All members of the public have equal rights in public streets in a Municipality and no one section of the community can interdict another section of it from the lawful use of such streets. 50 Mad. 673=1927 M. W. N. 279=102 Ind. Cas. 481=28 Cr. L. J. 545=A. I. R. 1927 Mad. 938. Where a person obstructed his co-owner from using a mot to which he had yoked his bullocks on the slope to a well which existed for that purpose on the ground that he had not paid his share of expenses on the well, *held* that he was guilty of the offence of wrongful restraint under s. 341 I. P. Code as his co-owner had a right to use the mot. 27 Bom. L. R. 1419.

A private citizen has a right to arrest or put under restraint a person who is not only threatening to commit a breach of the peace ; but is a danger to the other villagers. Except where a statute expressely or by implication abrogates it, the common law (criminal law) of England may be applied to India. 44 M. 913=14 L. W. 189=61 Ind. Cas. 652=22 Cr.L.J. 412. If a joint owner puts his own lock without the consent of his co-owner he commits an offence under this section. 20 Bom. L. R. 106=44 Ind. Cas. 463=19 Cr. L. J. 351. Before convicting a person of wrongfully restraining the other from making use of a particular place or thing it is necessary for the Court to determine if that other person has right to use it. A. I. R. 1930 Cal. 760.

Procedure.—Cognizable—Summons—Bailable—Compoundable—Triable by any Magistrate.

342. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for wrongful confinement.

Scope.—"This section punishes the offence defined by section 340. Wrongful confinement, which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go. It may, like wrongful restraint, be a slight offence. But when attended by aggravating circumstances it may be one of the most serious that can be committed."—*Morgan and Macpherson.*

In the present state of the Indian Law, an arresting officer, who confines a judgment-debtor in the decree-holder's house, whilst waiting to produce him before the Court on its reopening after a holiday, is not guilty of wrongful confinement. 30 M. 179=16 M. L. J. 530=5 Cr. L. J. 102=2 M. L. T. 28. In all actions taken by the police authorities it is necessary that they should distinctly understand their responsibility in detaining witnesses, unduly or disobeying directions of law concerning the detention of the accused or suspected persons in custody, whether by actual physical restraint or practical co-ercion through fear. U. B. R. (1892-1896) Vol I, 221. Separate sentences for wrongful confinement and rioting are not, having regard to the provisions of s. 71, legal, when the common object of the unlawful assembly is the wrongful confinement of the complainant, and is the essential ingredient in the constitution of the offence under s. 147. 8 C. W. N. 483=1 Cr. L. J. 365. Under certain circumstances separate sentences can be inflicted under ss. 342 and 352 ; 4 C. L. J. 90=4 Cr. L. J. 69. Where five accused assaultel a constable who was acting under colour of office, accused was held rightly convicted of rioting and wrongfnl confinement. 138 Ind. Cas. 844=33 Cr. L. J. 706=13 P. L. T. 135=A. I. R. 1932 Pat. 171. When a person exempted from arrest under s. 135 (2) C. P. Code, was arrested after one hour of closing of Court at a place not on way to the person's residence and where no explanation was given how hour was spent, persons arresting cannot be convicted under s. 342. 141 Ind. Cas. 605=36 C. W. N. 1071=1933 Cr. C. 31=34 Cr. L. J. 173=A. I. R. 1933 Cal. 11. The act of the accused in taking a woman from her house to their *haveli* in broad daylight amounts to an offence under section 342 and not under s. 365. 109 Ind. Cas. 677=29 Cr. L. J. 597=10 A. I. Cr. R. 277. A conviction under section 342 was set aside because the incident was not mentioned in the first information report the next day at the police station. 26 P. L. R. 97=86 Ind. Cas. 426=26 Cr. L. J. 794=7 Lah. L. J. 121. Where all that was proved was that a woman was wrongly confined and not that her whereabouts were concealed from her relations. *Held*, that the accused can not be convicted under s. 365 I. P. Code but cannot be convicted under s. 342. 7 Lah. L. J. 520=26 P. L. R. 733=A. I. R. 1925 Lah. 614. Where a decree-holder gets his judgment-debtor arrested during the subsistence of a protection order, he is guilty of an offence under ss. 342 and 114 I. P. Code irrespectively of actual presence at the time of arrest. 18 L. W. 167=1924 M. 31. A decreeholder is guilty of an offence under s. 342 of the Indian Penal Code, if he causes arrest of judgment-debtor while he is returning from Court under circumstances mentioned in s. 135 of the Civil Procedure Code, and the Court officer who arrests or makes over the warrant of arrest to his subordinate for compliance is also guilty of the offence. 121 P. L. R. 1916=17 Cr. L. J. 525=36 Ind. Cas. 495. Submission by the complainant to arrest does not detract from the accused's acts or diminish its legal effect. *Mens rea* does not render into offence under s. 342 at all. A. I. R. 1929 Cal. 730=33 C. W. N. 751=1929 Cr. C. 366. Wrongful confinement by police officer comes under s. 342. A. I. R. 1930 Cal. 711=1930 Cr. C. 1111

=128 Ind. Cas. 208. But where police acts under illegal orders, there is no wrongful confinement. 22 Cr. L. J. 5=47 C. 818=59 Ind. Cas. 37 ; see also A. I. R. 1923 Mad. 523=46 M. 605=24 Cr. L. J. 599=44 M. L. J. 655=73 Ind. Cas. 343. Where principal offenders are acquitted under s. 342, minor offender cannot be convicted under ss. 368 and 109. A. I. R. 1929 Cal. 767=33 C. W. N. 891=1929 Cr. C. 479.

A Sub-Inspector conducting an investigation is within the law when he sends for a person to the police station who can in his opinion give information about a crime ; and a constable and a *Chowkidar* who did no more than bring such a person to the Sub-Inspector and tell him to sit down until the Sub-Inspector sees them are committing no offence whatever. A. I. R. 1930 Oudh. 505.

Procedure.—Cognizable——Summons——Bailable—Compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Wrongful confinement for three or more days.

343. Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Notes.—One aggravating circumstances in this offence of wrongful confinement is the duration of the confinement. Confinement for a quarter of an hour may possibly be a mere frolic, deserving only a nominal punishment. It may indeed be so harmless as not to amount to an offence. But the like confinement if continued for a length of time may come to be a very serious offence—*Morgan and Macpherson.* The confinement must be against the person's wishes. *Vide* 1923 Lah. 274=5 L. L. J. 38. Where the prisoner was sentenced for abetment of abduction of a woman under ss. 109 and 498, Penal Code, and for wrongful confinement of her under s. 343, *held*, that both the sentences were illegal as the essence of the case was abduction, and that the accused, as abettor therein should be sentenced for it alone. W. R. 1864, Cr. 21. Accused No. 1 brought a woman who was his kept mistress from *Kolhapur* and kept her with accused No. 2, a brothel house-keeper in Bombay. On previous occasions too he had supplied women to accused No. 2 to be used as prostitutes. The woman was made to live as a prostitute in the house the entrance to which was guarded ; and watch was kept over her movements. Occasionally she was allowed to go out under surveillance. *Held*, that both accused were guilty of wrongly confining the woman. 42 B. 181=20 Bom. L. R. 79=44 Ind. Cas. 114=19 Cr. L. J. 258.

Procedure.—Cognizable—Summons—Bailable—Compoundable with permission of Court—Presidency Magistrate or Magistrate of the first or second class.

Wrongful confinement for ten or more days.

344. Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Notes.—Chaining an insane brother for a period of nearly three months is an offence under this section. 47 A. 475=21 A. L. J. 391.

Sentences.—The sentence should include imprisonment. 1 B. H. C. 39.

Procedure.—Cognizable—Summons—Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Wrongful confinement of person for whose liberation writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

Notes.—This is another circumstance of aggravation. The offender persists in wrongfully confining a person notwithstanding an order issued by a competent authority for the liberation, or for the production of such person.—*Morgan and Macpherson.*

Procedure.——Not-Cognizable——Summons——Bailable——Not-compoundable——Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as herein before mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement in secret.

Scope.—To render a person liable, under this section, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered. 9 C. 221. No separate sentence is to be passed in cases of restraint in attempt to kidnap. 6 N. W. P. 293. The offence consists in in wrongful confinement aggravated by the offender's endeavour to deprive his prisoner and those intersted in him or bound to protect him, of the remedies which the law gives against this wrong. This intention of the offender is not expressly, made part of the definition.—*Morgan and Macpherson.*

Procedure.—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable—by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort property or constrain to illegal act.

Notes.—Where the charge was one under s. 347 of the Penal Code and the evidence of the prosecutor and other evidence had been taken, and the case postponed for the evidence of further witnesses which was considered necessary by the Magistrate, and they failed to appear, an order by the Magistrate dismissing the case for want of sufficient evidence was held to be legal. 7 B. L. R. 9. Where it was alleged that the police officer illegally detained a person with the object of extorting money but the Court found that no money passed, *held* that the elements of an offence under s. 347 were wanting. 7 O. W. N. 957=A. I. R. 1930 Oudh. 505. Separate convictions under ss. 147 and 347 are legal. 140 Ind. Cas. 752=34 Cr. L. J. 81=13 P. L. T. 288=A. I. R. 1932 Pat. 335. Where a person by fear of injury was induced to place thumb mark on blank paper and such paper is valuable security a conviction under s. 347 is legal. *Ibid.*

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence, or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined, to restore or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession, or compel restoration of property.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first class.

Notes.—Where a village Magistrate was present at the beating and the wrongful confinement, by a police constable, of a person suspected of having committed

theft and it was proved that the village Magistrate actually encouraged the ill-treatment by the constable, *held*, that he was guilty of abetting the offences punishable under ss. 333 and 348 Penal Code. 14 Wier, 50 ; see also 1930 M. W. N. 723.

Of Criminal Force and Assault.

Of Criminal Force and Assault.—A large proportion of acts designated as assaults, will also be offences falling under the heads of hurt and restraint. Thus a stab with a knife is an offence falling under the head of hurt, and it is also an assault. The seizing a man by the collar, and thus preventing him from proceeding on his way, is unlawful resraint, and is also an assault. But there will be many assaults which it is absolutely necessary to punish, yet which cause neither bodily hurt nor unlawful restraint. A man who impertinently puts his arm round a lady's waist, who aims a severe stroke at a person with a horse whip, who maliciously throws a stone at a person, squirts dirty water over him, or sets a dog at him, may cause no hurt and no restraint,—yet it is evident that such acts ought to be prevented —*Morgan and Macpherson.*

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact, with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contacts affects that other's sense of feeling.

Force.

Provided that the person causing the motion or change of motion, or cessation of motion, causes that motion, change of motion, cessation of motion, in one of the three ways hereinafter described :—

First.—By his own bodily power.

Secondly.—By desposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly—By inducing any animal to move, to change its motion or to cease to move.

Raising a lathi.—Where the accused raised a lathi to strike the complainant, and the latter ran away to save himself the offence under this section is completed. 12 A. L. J. 154=23 Ind. Cas. 183=15 Cr. L. J. 231 ; 74 Ind. Cas. 1049=24 Cr. L. J. 857=1923 A. 333.

Force.—Where violence has been caused to an inanimate object only and not to any person, there was no criminal "force" as defined in this section. 18 C. W. N. 1150=15 Cr. L. J. 720=26 Ind. Cas. 168 ; 17 N. L. J. 27. "Force" as defined in this section contemplates the presence of the person to whom it is used, that is to say, it contemplates the presence of the person using the force and of the person to whom the force is used. 152 Ind. Cas. 162=36 P. L. R. 91=1934 Cr. C. 702=A. I. R. 1934 Lah. 454. As regards other cases of criminal force, *vide* 28 Cr. L. J, 191 ; 4 P R. 1880 : 72 Ind. Cas. 616=24 Cr. L. J. 456. Where it is proved that a person broke open the lock of the plaintiff's house, threw out all the property belonging to him thereform, and put a lock of his own on the house thereafter, the offence of criminal force within the meaning of s. 349 of the Penal Code is made out. 99 Ind. Cas. 863=28 Cr. L. J. 191=A. I. R. 1927 Nag. 131.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, ot intending by the use of such force, to cause, or knowing it to be likely that, by the use of such force, he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Criminal force.

Illustrations.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings and thus intentionally causes the boat to drift down the stream. Here A intentionally

causes motion to Z, aud he does this by disposing substances in such a manner that the motion is produced without any other acts of any person's part. A has therefore intentionally used force to Z ; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z. A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z ; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z., A has used criminal force to Z.

(*c*) Z is riding in a palanquin. A intending to rob Z seizes the pole, and stops the palanquin. Here A has caused a cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z ; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z ; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produces the effect of causing any substance to come into contact with Z, or Z's clothes. A has used force to Z, and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her ; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z ; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z. A has used criminal force.

(*h*) A incites a dog to spring upon Z without Z's consent. Here if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

Intentionally.—The word 'intentionally' shows that all involuntary accidental, or merely negligent acts are excluded. (*Vide* Mayne s. 415).

Without his consent.– There is a difference between doing an act without the consent of a person, and against his will. The latter implies mental opposition to an act which is anticipated before it, takes place. Where it is an element of an offence that the act should have been done without the consent of the person affected by it, some evidence must be offered that the act was done to him against his will or without his consent. *Reg.* v. *Fletcher*, L. R. I. C. C 89 cited in Mayne's Criminal Law s. 415.

Criminal force.—' Criminal force" in s. 350 contemplates criminal force used against a person and not against any matter or substance. 22 Cr. L. J. 329=2 Pat. L. T. 120=61 Ind. Cas. 57. Breaking open of a lock is not use of criminal force. A. I. R. 1927 Lah. 830=26 P. L. R. 500=28 Cr. L. J. 676. The offence of being members of an unlawful assembly is one in the composition of which the use of criminal force does not enter, though the show of criminal force may exist. 25 C. 434=2 C. W. N. 305. To support an order under s. 522, for restoration of possession of immovable property there must be a finding that the dispossession was by the use of criminal force as defined in section 350 of the Penal Code. 27 C. 174=4 C. W. N. 307.

Scope.—This definition of criminal force appears to include what is termed by the English law "battery" that is, any even the least hurt or violence inflicted on the person of another. If there is the use of force as defined in the preceding section,

and this is intentional on his part who uses it, and is also wthout the consent of the person against whom it is used, such use of force becomes criminal, when it has for its object the commission of an offence (see section 40), or the causing of injury (see section 44), or the causing of fear or annoyance. It will be ovserved that the definition of the offence does not include anything that the doer does by means of another person.—*Morgan and Macpherson.*

351. Whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*) A shakes his fist at Z intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an asault.

(*b*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*) A takes up a stick, saying to Z, "I will give you a beating." Here though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompained by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Scope.—"An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. It seems to consist in an attempt or offer by a person having present ability with force to do any hurt or violence to the person of another. And it is committed whenever a well-founded apprehension of immediate peril from a force already partially or fully put in motion is created. An assault is included in every use of criminal force. Mere words, it is explained, do not amount to an assault. Such acts as the following,—a blow which is purely accidental, an injury received in playing at any lawful sport by consent, reasonable chastisement of a child by his parent or guardian, or of a scholar by his school master, a blow or other violence in self-defence, the use of force by a public servant within the sphere of his duty, force used in defence of a man's property, and like, *vide* 24 Cr. L. J. 276=71 Ind. Cas. 996—are not offences, either under the head of criminal force or assault, or under any other provision of the code. By the Chapter of General Exception such acts are saved from being accounted offences.—*Morgan and Macpherson.*

Any gesture calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence or is about to use criminal force to the person threatened, constitute, if coupled with a present ability to carry such intention into execution, an assault in law. 1 B. H. C. R. 205. To substantiate a charge of assault upon a particular person, it is necessary that a gesture or preparation should be made by a person which would cause another person to apprehend that the person was about to use criminal force to him then and there. It would not be enough to prove that the words used and the preparations made were calculated to cause that person to apprehend that criminal force would be used to him, if he persisted in a certain course of conduct 30 C. 97=6 C, W. N. 342. Whether particular act amounts to assault depends on circumstance. A. I. R. 1935 Pat. 214.

Gesture or preparation.—Mere words do not amount to assault. But the words which the party threatening uses at the time may either give to his gestures such a meaning as may make them amout to an assault, or on the other hand, may prevent them from doing so. 1 B. H. C. 205. Mere threatening attitude is not sufficient. 8 M. L. T. 118=7 Ind. Cas. 416.

Cases.—Throwing a bottle into a house with the intention of frightening the inmates, constitutes an offence under this section. 4 Cr. L. J. 201=3 B. L. R. 194. Causing the death of a man, who had an enlarged spleen, by striking him is an offence under this section. 21 P. R. 1876 Cr.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for assault or criminal force otherwise than on grave provocation.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

Criminal force.—To constitute 'criminal force', the offender must intentionally use force to any person without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used. Unless all these elements are present a person cannot be convicted under this section. U. B. R. (1892-1896), Vol. I. 226; U. B. R. 1892-1896) Vol. I. 228. An assault made by parties proceeding together and acting (in conjunction as to time, place, and assault is one single act, and not a divisible and distinct act. In such a case it cannot be said that the cause of action is not one common to all the parties. 14 W. R. 419. Where harm is very slight accused cannot be convicted under this section. A. W. N. 1887, 73. The fact that a person, who was assaulted, brought a criminal complaint does not prevent him from subsequently bringing a suit for damages. A. W. N. 1887, 104; A. W. N. 1893, 62. A person tried and acquitted on a charge of using criminal force under s. 352 (which includes the offence of battery) cannot be tried in respect of the same criminal matter on a charge of hurt. 7 B. L. R. Ap 25=16 W. R. Cr. 3. Illegal seizure of carts for Government officer's use is an offence under this section. 9 B. 558; see also 4 A. L. J. 132=29 A. 272=A. W. N. 1907, 42. Where the petitioners are convicted under ss. 352 and 242 of the Code, and sentenced separately for each of the offences, the acts found against them being, that they seized, dragged and pushed the complainant to a certain place, in order to punish him; *held*, that the petitioners have been punished for the whole series of acts, and that series of acts comes within the definition both of wrongful confinement and of using criminal force, and, accordingly the case falls within the second paragraph of s 71 of the Code. 4 C. L. J. 90 =4 Cr. L. J. 69. The complainant, a young woman, was going with an earthen jar through a public throughfare to fill water at a well, after sunrise, when the accused who was standing, leaning against his *lathi*, caught hold of the complainant's hand which prevented her from going in the direction in which she was going. It was also alleged that the accused had also solicited her to commit adultery with him. The Magistrate, finding the latter part of the charge unproved, convicted the accused under s. 352 I. P. Code. *Held* that though there was evidence to sustain a charge of criminal force under s. 352, I. P. Code the principle of s. 95 I. P. Code applied to the act of the accused in the case as it was a mere piece of foolish and vulgar chaff, which seriously to treat as a crime would be absurd. A. W. N. 1887, 73. When the accused, a coolie, was charged under s. 352 of the Penal Code with using force to a peon in the *mamlatdar's* office who prevented his running away from service, *held*, that no offence was committed, since the accused had a right to defend himself from the illegal act of the peon in wrongfully restraining him. Rat. Un. Cr. C. 605. Where a Police Sub-Inspector attempts to search a house outside the circle and if the inmates of the house assault so as to prevent the search they are not guilty of an offence under s. 352 I. P. Code. 71 Ind. Cas. 996=24 Cr. L. J. 276=1923 All. 433; see also A. I. R. 1933 Pat. 66=13 P. L. T. 62=33 Cr. L. J. 233=136 Ind. Cas. 60. Where two persons were improperly arrested on an illegal warrant by a forest watcher and they were marched from the place of arrest to the police station and while so doing the accused came on the scene and gave a slap on the cheek of the watcher. *Held* that it was a trivial offence and was not a case in which the

accused should be convicted under s. 252 I. P. Code. 51 M. 873=28 L. W. 141 =109 Ind. Cas. 365=29 Cr. L. J. 541=A. I. R. 1928 Mad. 624=55 M. L. J. 220. Where a police officer was assaulted in a private place where he was deputed to control traffic, the offence falls under this section. A. I. R. 1928 Lah. 230=29 Cr. L. J. 905=111 Ind. Cas. 665 ; see also A. I. R. 1923 All. 87=45 A. 142=20 A. L. J. 921=24 Cr. L. J. 151=71 Ind. Cas. 503 ; see also A. I. R. 1933 Sind 174= 27 S. L. R. 209=146 Ind. Cas. 43. An assault on a citizen for appealing to the police needs a deterrent sentence. A. I. R. 1926 Bom. 255=28 Bom. L. R. 291= 27 Cr. L. J. 496=93 Ind. Cas. 896. Putting trigger of unloaded gun is not an attempt to murder but is only an assault. A. I. R. 1923 Rang. 251=1 Rang. 209= 2 Bur. L. J. 76=24 Cr. L. J. 850=74 Ind. Cas 1042. Person may not without actually committing an offence under section 352 and the theory that s. 147 embraces s. 352 is fallacious. A. I. R. 1928 Mad. 21=29 Cr. L. J. 2=106 Ind. Cas. 338. In a charge under s. 147, conviction under s. 352 can be given but not for abetment of assault. 23 Cr. L. J. 206=65 Ind. Cas. 862=A. I. R. 1922 Mad. 110.

Scope.—This section provides for the ordinary punishment for an assault or for using criminal force. A mitigation of punishment when there is grave and sudden provocation, is admitted here as in cases of culpable homicide and of hurt. The several General Exceptious concetning the right of private defence, acts done by consent, etc., should be borne in mind—*Morgan and Macpherson.*

Procedure.—Not-Cognizable—Summons—Bailable—Compoundable—Triable by any Msglstrate.

Assault or criminal force to deater a public servant from discharge of his duty.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—"The assault is aggravated because a public servant is the objet of it. To support a charge under this section,—besides proof of the assault or use of criminal force, and that it was used against one who either was or was acting as a public servant—it should be shown that the accused had knowledge of the official character of the person assaulted. It will of course be open to the accused to show illegality or excess on the part of the public servant."—*Morgan and Macpherson.* The prosecution must prove that person assaulted is a public servant and that the assault was made on him which he was discharging his duties as such? 18 Cr. L. J. 803=15 A. L. J. 565=41 Ind. Cas. 323. Officer executing orders under the Repealed Act if the orders are passed by a competent court is acting in discharge of his duty. 18 Cr. L. J, 689=13 N. L. R. 87=40 Ind. Cas. 689. Rescuing a person arrested under a valid order is an offence under s. 353. 42A. 283=22 Cr. L. J. 210=19 A. L. J. 196=60 Ind. Cas. 322. Where warrant of arrest is not illegal resistance amounts to offence under s. 353. 132 Ind. Cas. 244=35 C. W. N. 328=58 C. 940=32 Cr. L. J. 886=A. I. R. 1931 Cal. 443. Arrest or apprehension must be lawful in every way. A. I. R. 1932 Pat. 171=1932 Cr. C. 347=13 P. L. T. 135=33 Cr. L. J. 706. Tashildar removing unauthorised encroachment is acting in execution of duty as public servant. 1933 Cr. C. 1067=A. I. R. 1933 Nag. 295. Apprehension by executing peon is lawful and resistance cannot be justified. 142 Ind. Cas. 160=34 Cr. L. J. 269=13 P. L. T. 502=11 Pat. 743=1932 Cr. C. 853= A. I. R. 1932 Pat. 315. Where criminal force is used in obstruction to attachment, a sentence of fine of Rs. 100 was upheld. A. I. R. 1933 Nag. 392. Finding on guilty knowledge and person assaulted was public servant to knowledge of accused must be recorded. 146 Ind. Cas. 43=1933 Cr. C. 538=27 S. L. R. 209=A. I. R. 1933 Sind. 174. Where Excise Inspector in attempting to make search does not act lawfully, conviction of accused for assaulting such Inspector cannot stand. 146 Ind. Cas. 43= 1933 Cr. C, 538=27 S. L. R. 209=A. I. R. 1933 Sind. 174. An officer exercising official duties in grossly illegal and outragious manner is not "public servant in execution of his duty." 132 Ind. Cas. 711=1931 Cr. C. 665=32 Cr. L. J. 939=A. I. R. 1931 Rang. 169 ; see also 132 Ind. Cas. 214=32 Cr. L. J. 853=1931 Cr. C. 748=A. I. R. 1931 Lah. 524 ; 148 Ind. Cas. 818=35 Cr. L. J. 782=1934 M. W. N. 275=39 L. W. 388=1934 Cr. C. 351=A. I, R. 1934 Mad. 206=66 M. L. J. 408.

When it was found that the accused had threatened to assault the authorities and no assault had actualy been made, *held* that the accused were not guilty under s. 353. 150 Ind. Cas. 1048=35 Cr. L J. 1250=1933 Cr. C. 865=A. I. R. 1934 All. 687. A person resisting the execution of an illegal warrant does not commit an offence under s. 353. 1934 Cr. C. 1313=A. I. R. 1934 All. 1016. Where act constituting an offence was done when accused had lost temper, and no force or violence was used, a sentence of fine is sufficient. A. I. R. 1935 Pat. 214. Where a person was charged under s. 353, for having assaulted a police-officer in the discharge of his public duties, but it was found in the course of the trial, that he committed an assault on a private individual, a witness in the case, and not on the police-officer, held that he could not be convicted of the latter offence. 6 C. W. N. 202. The Mysore police do not answer the description of public servant within the meaning of the Penal Code. They have no authority to enter British territory and make an attempt to arrest persons suspected of crime. Persons using criminal force to them cannot be convicted under s. 353 Penal Code. 1 Weir 342=1 Weir. 837 ; see also 105 P. L. R 1904=1 Cr. L. J. 956. Where under a time-expired warrant a public servant attaches property, resistance to the attachment is no offence under s. 353. 19 N. L. R. 183 ; see also 2 Pat. L. J. 11=18 Cr. L. J. 370=38 Ind. Cas. 744. A warrant was executed by the Amin of a Civil Court aftet the expiry of the time fixed by the Amin and before the expiry of the time fixed by the Court for its return and the Amin was obstructed in the course of the execution by the accused. *Held*, that the accused was guilty of an offence under s. 353 I. P. Code. 45 M. L. J. 78=1923 M. W. N. 444=32 M. L. T. 248=(1923) Mad. 687. Assaulting a police officer when he is discharging his duties as such, amounts to an offence under s. 353 I. P. Code. 18 S. L. R. 221=88 Ind. Cas. 15=26 Cr. L. J. 1071=A. I. R. 1925 Sind. 280. The definition of a public servant in s. 21 of the Indian Penal Code, includes every officer in the service or pay of Government. 21 L. W. 704=78 Mad. 867=A. I. R. 1925 Mad. 1093=49 M. L. J. 192. The exprsssion "in consequence of" used under s. 353 of the Penal Code includes the motive which actuated an assault as the cause of such assault. 99 Ind. Cas. 935=28 Cr. L. J. 199=A. I. R. 1227 Lah. 162. A public servant was approached with a certain prayer by the accused in his capacity as a public servant and as such he expressed his inability to accede to his prayer. Subsequently the accused assaulted the public servant. *Held*, that the accused was guilty of an offence nnder s. 355 of the Penal Code though the person assaulted was not acting as public servant when the assault was made. 99 Ind. Cas. 935=28 Cr. L. J. 199=A. I. R. 1927 Lah. 162. While a police officer was deputed in a private place to control the traffic on the road leading from the private place to the public road and he was assaulted while so discharging his duty. *Held*, the police-officer was acting in the lawful discharge of his duty and the accused was guilty of an offence under s. 353. 111 Ind. Cas. 665=29 Cr. L, J. 905=A. I. R. 1928 Lah. 230 ; see also A. I. R. 1924 Lah. 257=4 Lah. 448=76 Ind. Cas. 29, To bring the act of the accused within the purview of this section it must be established that he assaulted the complainant in consequence of anything done by the latter in the lawful discharge of his duty as such public servant. 7 Mys. L. J. 136.

In the execution of his duty.—In a place where vaccination is not compulsory, a vaccinator is not discharging any duty under the law, when he is attempting to vaccinate a child against the will of his parent. 19 M. L. J. 238=4 Ind. Cas. 1116 ; 1 Weir 345. But where a thing is done by a public servant in the execution of his duty, an assault on him to deter him from doing that duty, will make the accused liable under this section. 24 P. R. 1880 Cr. 8 Ind. Cas. 881=9 M. L. T. 168=11 Cr. L. J. 727. An assault made on a public servant acting in obedience to the orders of his superiors is punishable under the section, the question whether those orders were right or wrong being immaterial in the case. 14 Cr. L. J. 141=18 Ind. Cas. 891. But where the public servant exceeds his power and where he is not empowered the offence under this section will not be committed. 1 Weir 343 ; 13 A. L. J. 691=16 Cr. L. J. 589=30 Ind. Cas. 141 ; 31 C. 424=1 Cr. L. J. 442 ; 59 Ind. Cas. 321 ; 25 Cr. L. 742 ; 75 Ind. Cas. 731 ; 76 Ind. Cas. 655 ; 75 Ind. Cas. 768 ; 47 M. L. J. 447 ; 1 Weir 344 ; 19 N. L. R. 183. Persons assaulting a collector *peadah*, who had been directed to keep the peace during a distraint are guilty under s. 353 of assaulting a public servant while in execution of his duty. 3 W. R. Cr. 49. An attempt by a vaccinator to take the lymph from the arm of a person who objects to it, notwithstanding the objection, is unlawful, and resistance to such an attempt will not be an offence under s. 353, Penal Code. 3 C. W. N. 627. Where no warrant is produced in

evidence an accused cannot be convicted under this section for assaulting a process-server while executing the warrant. 3 L. B. R. 128. The assaulting of a *malguzar*, who was holding an enquiry in the matter of damage due to a Government Forest, is not an offence under s. 353 of the Indian Penal Code, because the holding of such enquiry is not one of the legitimate duties of *malguzar*. 9 Ind. Cas. 669=12 Cr. L. J. 112.

Where a vaccinator attempted to vaccinate a child forcibly, his relations can assault the vaccinator in the exercise of their right of private defence. A. W. N. 1906, 98=3 A. L. J. 327=3 Cr. L. J. 368=28 A. 481 ; see also 3 C. W. N. 627 ; 38 P. W. R. 1913 Cr.=14 Cr. L. J. 512=20 Ind. Cas. 992 ; 28 C. 399=5 C. W. N. 413 ; 1 Weir 344.

But where a public servant is acting in colour of office, no right of private defence can arise. 18 C. W. N. 548=15 Cr. L. J. 427=24 Ind. Cas. 163. In the absence of any evidence as to the terms of a warrant either by the production of the original or by secondary evidence, a conviction for resisting a public servant in executing the warrant cannot stand. 3 C. W. N, 605. Searching of a house of person suspected of theft is not illegal and assault to the officer searching comes within s. 353. 20 Cr. L. J. 174=17 A. L. J. 115=49 Ind. Cas. 494. Absence of name of person to be arrested vitiates warrant and the arresting person is not a public servant as he acted beyond his jurisdiction. A. I. R. 1924 Cal. 959=51 C. 902=39 C. L. J. 452=20 Cr. L. J. 2=83 Ind. Cas. 481. A police constable arresting a person without written order is not acting in the discharge of his duty and an assault on him is not an offence under s. 353. 20 Cr. L. J. 48=48 Ind. Cas. 688 ; see also A. I. R. 1929 Mad. 624=51 M. 873=29 Cr. L. J. 541=55 M. L. J. 220=1928 M. W. N. 310=109 Ind. Cas. 365 ; A. I. R. 1929 All 903=30 Cr. L. J. 1145=120 Ind. Cas. 113 ; A. I. R. 1923 Pat. 388=4 P. L. T. 171=24 Cr. L. J. 490=72 Ind. Cas. 954. Members of an unlawful assembly assaulting public servant in furtherance of common intention are guilty under s. 354 and 353 also. A. I. R. 1928 Pat. 115.

Where a charge under s. 147 has only been framed, the accused cannot be convicted under s. 353. 18 C. W. N. 1274=16 Cr. L. J. 42=26 Ind. Cas. 634.

Separate sentences under s. 147 and under s. 353 should not be passed, when the common object of the unlawful assembly committing the riot was the offence under s. 353. 4 C. W. N. 245. Where many people are disposed to resist process-servers when their property is attached it is necessary to pass deterrent sentences even where such persons are not sure that the attachment is legal. 111 Ind. Cas. 576=29 Cr. L. J. 896=A. I. R. 1928 Nag. 135.

But slight irregularities will not help the accused. 46. M. L. J. 45 ; A. W. N. 1885, 244 ; 76 Ind. Cas. 186 ; 27 A. 491 ; 5 C. W. N. 843 ; 13 N. L. R. 87 ; 30 Ind. Cas. 141 ; 8 A. 293 ; 21 M. 78 ; 27 A. 49=2 Cr. L. J. 155.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Assault or criminal force to woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Scope.—In order to constitute an offence under this section mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outrage alone for its object. 1 Weir 347 ; 31 C. W. N. 583=103 Ind. Cas. 553. But an indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court be satisfied that the conduct of the accused indicated a determination to gratify his passions at all events and inspite of all resistance. 5 B. 403. In order to consitute the offence there must be intention or knowledge that the woman's modesty will be outraged. 14 Cr. L. J. 149 ; 42 P. W. R. 1910 ; 16 P. W. R. 1912 ; 15 Ind. Cas. 309. 'Woman' is explained to denote a female human being of any age (*vide* section 10). 14 Bom. L. R. 961=13 Cr. L. J. 858=17 Ind. Cas. 794. The phrase "to outrage modesty" is indefinite ; and it would be an outrage to the modesty of one woman to do her what would be thought nothing of by another. The taking indecent liberties with females will be punished by this section ; but the provision is not confined to such cases. In a country, where many women consider themselves as dishonoured by exposure to the gaze of strangers many

gross insults of a different kind, such as a man rudely thrusting his head into the covered palanquin of a woman of rank, may well be deemed to outrage female modesty.....Assaults committed with intention to commit rape are not, it seems, here contemplated."—*Morgan and Macpherson.*

Cases.—Where the accused took off the clothes of a woman, threw her on the ground and then sat down besides her but said nothing, he committed an offence under this section. 116 P. L. R. 1912 ; 14 Bom. L. R. 961=13 Cr. L. J. 858. But where evidence proves that the accused stripped a girl nearly naked and was lying upon her, when her cries attracted people to the spot, he committed an offence under sections 376, 511, and not merely under this section. 8 Ind. Cas. 257=42 P. W. R. 1910 Cr. In such cases magistrates should not try the case under s. 354, in order to give themselves jurisdiction. U. B. R. (1892-1896) Vol. I, 234 ; U. B. R. (1897-1901). Vol. I, 84.

Proof.—A charge under this section is one which is very easy to make and very difficult to rebut, and also one which experience shows women are sometimes apt to make from one motive or another without the slightest foundation. So, when such charges are made, it is necessary to see whether they are supported by independent evidence besides that of the woman hereself, or, are corroborated by her conduct and the surrounding circumstances and are consistent with ordinary probabilities. U. B. R. (1892-1896), Vol. I, 229 ; U. B. R. (1897-1901), Vol. I, 325.

Procedure.—It is obviously unjust to convict an accused under this section, without calling upon him for his defence in respect of the particulars which differentiate the offence from that stated in the charge against him under s. 352. 1 L. B. R. 287. See also, 15 Cr. L. J. 366=23 Ind. Cas. 734.

Where the accused was convicted and sentenced for the offence under s. 354 and 506, Penal Code, to three months' rigorous imprisonment for each offence ; *Held* that the intimidation by throwing a knife formed part of the assault in this case; consequently the sentence under s. 506 was illegal and must be set aside. 12 Cr. L. J. 242=10 Ind. Cas. 771. The fact that A is in love with B and is jealous of C does not authorise him to pull B's hair and hand. An assault of this kind made in the presence of several persons is calculated to outrage the woman's modesty and is punishable under s. 354 of the Penal Code. 13 Cr. L. J. 53=13 Ind. Cas. 389=4 Bur. L. T. 268. Every assault on a woman or every use of criminal force to a woman does not necessarily fall under s. 354, I. P. Code namely, an assault or use of criminal force to a woman with intent to outrage her modesty. In order to construct an offence under that section it is necessary that the assault or use of criminal force must be used with intent to outrage a woman or knowing it to be likely that he would thereby outrage her modesty. 31 C. W. N. 583=103 Ind. Cas. 553=28 Cr. L. J. 697=A. I. R. 1927 Cal. 505. An offence under s. 354 is only committed when a person assaults or uses criminal force to a woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty. Where it is clear that the woman either had no modesty to mention or that it was not such as would be outraged by any of the acts which are attributed to the accused such an offence cannot be said to be committed. 108 Ind. Cas. 81=29 Cr. L. J. 325=A. I. R. 1928 Pat. 326. Intention to outrage or knowledge that assault is likely to outrage modesty of girl is necessary under section 354. Per M. C. Ghose in 142 Ind. Cas. 297=1933 Cr. C. 203=34 Cr. L. J. 308=A. I. R. 1933 Cal. 142. Offence under s. 354 can be committed on girl of five and half years though she has not developed sense of modesty. 142 Ind. Cas. 297=1933 Cr. C. 203=34 Cr. L. J 308=A. I. R. 1933 Cal. 142. Where the accused threw down a girl, put sand in her mouth and got on her chest to have intercourse with her but was prevented from doing so by arrival of some persons, his act amounts not only to preparation but attempt to commit rape. 34 P. L. R. 832=A. I. R. 1933 Lah. 1002. Criminal assault of a daring nature on innocent woman should merit a substantial sentence of imprisonment. A. I. R. 1934 Lah. 36.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Provocation.—The complainant who was not a pleader, intruded into the pleader's room at Belgaum, in order to see a pleader. The accused, a pleader, objected to the complainant's presence in the room and had read out to him one of the rules which required an out-sider to withdraw from the room if his presence was objected to. The complainant refused to leave the room and sat resolutely down. The accused went to him and put him out of the room. *Held* that no offence was committed under this section since complainant's intention in remaining in the room, after his presence was objected to, was to annoy the accused, and the accused did not exceed his rights in putting the trespasser out of the room. *Emperor* v. *More Balvant*, 15 Bom. L. R. 1039. In order to convict a person under this section absence of grave and sudden provocation should be proved. 96 Ind. Cas. 859=27 Cr. L. J. 1003=1927 Nag. 47.

Intention.—The intention to dishonour may be supposed to exist when the assault or criminal force is by means grossly insulting, such as kicking a man, pulling a man's nose, or laying a whip across the shoulders.—*Morgan and Macpherson.*

Cases.—An accused person while under trial struck a Sub-Inspector of police, who was in the witness-box giving evidence against him. *Held*, that the offence of which the accused was guilty in this respect was rather that provided for by s. 355 of the Penal Code, than that punishable under s. 332 of the Code. A. W. N. 1907, 186=6 Cr. L. J. 22. In order to prove that the assault by the accused was made with intent to dishonour a woman, absence of grave and sudden provocation has to be proved. 96 Ind. Cas. 859=27 Cr. L. J. 1003=9 N. L. J. 157.

Procedure.—Not-cognizable—-Summons—Bailable-—Compoundable— Triable by Presidency Magistrate or Magistrate of the first or second class.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attemt to commit theft of property carried by a person.

Application.—This section applies to a case where criminal force is used in an attempt to commit theft and not where theft has been committed. The latter offence amounts to robbery. *Reg.* v. *Mukum*, Rat. Un. Cr. C. 3.

"The aggravation consists in the attempt to commit theft on property which is in personal use or under personal protection. Attempts to pick-pocket or to commit theft from the person, when the effence is not completed, and even when the offence could not be completed (as where the pocket contains nothing) will be punishable under this section, if the thief in his attempt does anything which amounts to an assault or use of criminal force." *Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not-bailable-—Not-Compoundable—Triable by any Magistrate.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force in attempt wrongfully to confine a person.

Notes.—Where the accused put his *safa* round the neck of a boy on his refusal to accompany him to a certain place and proceeded to drag him for a distance of about 50 or 60 yards as a result of which the boy subsequently died. *Held*, that an offence under s. 357 had been committed by the accused and not one under s. 304A. A. I. R. 1931 Lah. 275.

Procedure.—Cognizable—Warrant—Bailable—Compoundable with permission of the Court—Triable by any Magistrate.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Assaults or criminal force on grave provocation.

Explanation.—The last section is subject to the same explanation as section 352.

Notes.—In case of use of criminal force to canal patrol on being abused should be punished under section 358. 1934 Cr. C. 1081=A. I. R. 1934 All. 872=3 A.W. R. 699.

Procedure.—Not-cognizable—Summons—Bailable—Compoundable—Triable by any Magistrate.

Of Kidnapping, Abduction etc.

Notes.—The former division of this chapter of offences against the human body have gradually led to the present. Pain or hurt of body is not necessarily a part of the offence comprised under this head. And some of these offences may be committed without any such abridgment of personal liberty as amounts to wrongful restraint or confinement—*Morgan and Macpherson.*

Of Kidnapping, Abduction, Slavery, and Forced Labour.

Kidnapping.

359. Kidnapping is of two kinds : kidnapping from British India, and kidnapping from lawful guardianship.

Notes.—Accused separately charged with kidnapping and abduction can be tried for each of such offences in one trial. 146 Ind. Cas. 305=37 C. W. N. 1074=A. I. R. 1933 Cal. 676.

Kidnapping from British India.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person is said to kidnap that person from British India.

Scope.—"The offence of kidnapping from British India, consists, according to this definition, in conveying any person out of the protection of law without his consent vide 8 M. L. T. 91 ; (1910) M. W. N. 262 ; 20 Bom. L. R. 372=19 Cr. L. J. 602 or the consent of some person legally authorised to consent on his behalf ; or with such consent, when it is not freely or intelligently given, but is obtained by deception or under any of these circumstances which have been explained ; (*vide* section 90 to invalidate a consent). This offence is sometimes committed by means of assault, and is sometimes attended with restraint. But this will not always be the case. For example, a labourer who has been induced to embark on board of a ship by false assurances that he shall be taken to a country where he shall have good wages, but whom the captain of the ship intends to sell for a slave, or otherwise illegally to dispose of, may be conveyed beyond the limits of British India and so kidnapped without being either assaulted or restrained. This offence may be committed on a child, or on a grown up man or woman. The carrying of a grown up person by force from one place in British India to another, and the enslaving him within the British Territories, are offences sufficiently provided for under the heads of restraint and confinement.

"The enticing a grown up person by false promises to go from one place in British India to another place also within British India may be subject for a civil action and under certain circumstances for a criminal prosecution. But it does not come under the head of kidnapping. This offence can only be committed on a grown up man by conveying him beyond the limits of the British Territories in India"—*Morgan and Macpherson.*

Kidnapping from lawful guardianship.

361. Whoever takes or entices any minor under fourteen years of age, if a male, or under sixteen years of age, if a female, or any person of unsound mind, out of keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who, in good faith believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Object.—The object of this section and cognate sections is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians. 8 C. 971.

Application.—This offence consists in taking a minor, or a person of unsound mind, out of the keeping of his lawful guardian, without the consent of such guardian. This mode of kidnapping, like that defined in the last preceding section, may be committed with assault or the use of criminal force, and without being attended with any restraint. A child, for example, who is decoyed from its guardians, who soon forgets its home, and who consents to remain with the kidnapper, cannot be said to have assaulted or restrained, but it is none the less kidnapped. The consent of the kidnapped person is immaterial, and it is not necessary that the taking, or enticing should be shown to be by means of force or fraud.—*Morgan and Macpherson.*

Essence of the offence.—The essence of the offence kidnapping as defined in this section, is the taking of the minor out of the keeping of the guardian without the guardian's consent. 17 P. R. 1916 Cr ; 4 W. R. 6 ; 10 W. R. 35 ; 3 N. W. P. 146 ; 95 Ind. Cas. 372 ; 27 C. 1041 ; 28 Cr. L. J. 820. Motive has nothing to do with the offence under this section. 31 A. 448 ; 18 Ind Cas. 653.

Scope.—The section and the explanation are express and exhaustive in their terms, and to constitute the offence of kidnapping or abducting the following things must be proved. A taking and enticing of a minor under fourteen years of age if a male, or under sixteen years of age if a female or any person of unsound mind from the custody of the following persons : (1) the natural guardians ; (2) the legal guardians if the natural guardian be dead or (3) a person lawfully entrusted with the care and custody of a minor. The last kind of guardians includes all persons other than those mentioned in (1) and (2) who, for the time being, may be lawfully entrusted with the care and custody of a minor, such as a school master or a friend at whose house the minor may be staying or such like persons standing in a similar degree of relationship. But this section has no application to self-constituted guardians nor to persons such as waifs or strays who are taken up and maintained by charitable institutions. 4 Pat. L. J. 74. The offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as minor is kept out of such guardianship. 26 M. 454=2 Weir 296. A child, ten years of age, is *prima facie* subject to guardianship, and no one is at liberty to take away such child without permission properly obtained. 3 B. 178. The offence of kidnapping is not necessarily complete as soon as the minor is removed from the house of the guardian. When the act of kidnapping would be complete would appear to be a question of fact to be determined according to the circumstances of each case. 27 C. 1041=4 C. W. N. 645 (F. B.) Where a minor girl was driven from her parental roof and was found some days thence, in the company of the accused, no offence of kindnapping is established. 1912 M. W. N. 538= 13 Cr. L. J. 598=16 Ind. Cas. 166. The husband of a Hindu minor girl is her lawful guardian. It amounts to kidnapping even if, without any criminal intention, the father takes away his minor daughter from the lawful guardianship of the husband. 17 C. 298. To bring a case within the purview of the expression "lawfully entrusted" in explanation to s. 361, it must be clearly shown that not only the mother of girl requested the alleged guardian to take the girl under his protection but that he accepted the trust. 1930 Cr. L. J. 649=A. I. R. 1930 Sind. 164. According to Hindu Law, the husband's *sapindas* are the guardians of a minor widow in preference to her father and his relations. 27 P. R. 1915 Cr. The question whether the taking of a minor girl out of the custody of her lawful guardian was or was not complete at a given moment is a question for determination with reference to the circumstances proved in each particular case. It may no doubt be difficult in some cases of kidnapping from lawful guardianship to determine the precise moment at which the taking is complete. Speaking generally, the keeping of the guardian would be at an end when the person of the minor had

been transferred from the custody of the guardian or some person on his behalf in to the custody of some person not entitled to custody of the minor. 55 P. L. R. 1916 =25 P. W. R. 1916 Cr.=17 Cr. L. J. 236=34 Ind. Cas. 652. The pledging of girl to secure a loan is not a legal contract and may not be enforced in law but if a minor is retained in the custody of a person with the consent of the lawful guardian he will not commit the offence of kidnapping under s. 361, Penal Code. 10 Pat. L. T. 326 =119 Ind. Cas. 72=30 Cr. L. J. 580=A. I. R. 1929 Pat. 316=1922 Cr. 97. In the case of girl below 16 years of age, whose parents are dead, her brother, though he is under 18, is deemed to be her lawful guardian. 1929 Cr. 563=A I. R. 1929 Lah. 835.

Takes.—The word "taking" in this section is nothing but physical taking. 15 Cr. L. J. 630. The taking away must be by some overt act. 27 Ind. Cas. 181. The word "taking" is not confined to mere physical taking. It signifies some act done which is the proximate cause of the person going out. A. I. R. 1928 Mad. 585=54 M. L. J. 456. Abduction need not be forcible. 3 W. R. 9. The offence is completed as soon as the minor is actually taken away from lawful guardianship. A. I. R. 1926 Pat. 493=5 Pat. 536=7 P. L. T. 812 ; see also A. I. R. 1930 Oudh. 289.

Minor.—"The age or mental incapacity of the person taken is a matter of fact as to which the accused may either have no opinion or may have no erroneous opinion. It was decided in *Reg.* v. *Prince*. L. R. 2 C. C. 154, that even a *bona fide* belief reasonably entertained that a girl was over sixteen, was no defence." (Mayne's Cr. Law § 469) ; see also A. I. R. 1929 Pat. 651 ; 12 Mys. L. J. 133 ; A. I. R. 1929 All. 82=1929 A. L. J. 111=30 Cr. L. J. 218. Minority is determined by s. 3 of the Majority Act. 37 M. 567.

Consent of minor.—Consent of the minor is of no avail. A. I. R. 1930 Cal. 437=51 C. L. J. 352 ; see also A. I. R. 1930 All. 19=31 Cr. L. J. 85 ; 18 Cr. L. J. 18=17 P. R. 1916 (Cr.) ; A. I. R. 1926 Lah. 547=27 Cr. L. J. 851=95 Ind. Cas. 931 ; A. I. R. 1926 Lah. 677=27 Cr. L. J. 1018=96 Ind. Cas. 874 ; A. I. R. 1927 Nag. 279=28 Cr. L. J. 659 ; A. I. R. 1929 All. 703=30 Cr. L. J. 985.

Lawful.—The word "lawful" means that which is opposed to unlawful, *viz.* legal, proper, right, without fraud, pressure or constraint, This word does not necessarily mean that the person who entrusts a minor to the care or custody of another must stand in possession of a person owing to legal duty or obligation to the mother. It is sufficient if the entrusting is effected without illegality or the commission of any unlawful act by a person legally competent so to do. 4 Pat. L. J. 74=49 Ind. Cas. 481. The mother of an illegitimate child is her lawful guardian. 8 C. 971. The minor must be under the guardianship of some one otherwise the offence is not committed. 13 Cr. L. J. 528. In matters of lawful guardianship preference should be given to those who are entitled to guardianship under the Guardians and Wards Act. 15 Cr. L. J. 640 ; Rat. Un. Cr. C. 820. In the last two cases maternal relatives were preferred to paternal relatives and the latter were convicted for taking away the minor from the guardianship of the former. According to Hindu Law, husband's relatives are the lawful guardians of the minor widow. 27 P. R. 1915 Cr. Where husband of a minor girl sold her, the purchaser is her lawful guardian. 7 P. R. 1911 Cr. A minor brother cannot be the guardian of his sister. 1922 Lah. 75 ; A. I. R. 1921 Lah. 316=3 L. L. J. 588=67 Ind. Cas. 831 ; but see A. I. R. 1929 Lah. 835. Where a minor girl leaves her husband's house without any persuasion, inducement or blandishment held out to her by the accused, and then, she goes to him, he cannot be convicted of an offence under this section. 73 Ind. Cas. 260. See also 1 L. B. R. 205 ; 87 Ind. Cas. 513=30 C. W. N. 215 ; but see 36 Ind. Cas. 580=14 A. L. J. 792. When a father sent his daughter to live in a house with certain of his relatives and one of their relatives married in that house the daughter without the consent of the father. *Held* that there was no taking out of lawful guardianship. 15 Cr. L. J. 630. The husband of a Hindu minor girl is her lawful guardian, and her father cannot take her away without her husband's consent without committing an offence of kidnapping. 17 C. 298. In this section the Legislature has advisedly preferred the phrase "keeping of the lawful guardian" to the word "possession" which frequently recurs in the Code in connection with the inanimate objects. The word "keeping" connotes the fact that it is compatible with independence of action and movement in the object kept. It implies neither prevention nor detention but rather maintenance, protection and control, manifested not by continual action, but as available on necessity arising. This relation between the minor and the guardian is certainly not dissolved so long as the minor can at will

take advantage of it and place herself within the sphere of its operation. 6 Bom. L. R. 785=1 Cr. L. J. 93. Where minor is taken away from *de facto* guardianship with consent of alleged civil guardian, Sessions Judge should enquire into question of civil guardianship before deciding the case. A. I. R. 1931 Cal. 446=32 Cr. L. J. 888=58 C. 897=35 C. W. N. 195. The words "lawful guardian" in this section are used in a wider sense. Every person entrusted with the care or custody of a minor is a lawful guardian. A. I. R. 1934 Pat. 170=1934 Cr. C. 367=15 P. L. T. 229=35 Cr. L. J. 814. The term does not conclude a person with whom the minor by consent of legal guardian resides. 12 Mys. L. J. 133. The test of lawful guardianship is that the infant or minor should be in a position to apply to his guardian for protection. A. I. R. 1929 Sind. 249; 17 Cr. L. J. 236. Mother of a Mohomedan girl of 7 years of age, is her guardian and not her husband. 27 C. W. N. 531.

Consent.—In order to constitute an offence under this section there must be taking of the minor out of the keeping of the guardian without the guardian's consent. A consent given on a misrepresentation of fact is one given under a misconception of fact within the meaning of section 90 of the Penal Code, and the consent of a guardian so obtained is not useful as a consent under this section. 17 P. R. 1916 Cr. The consent of the girl does not affect the offence. 2 W. R. 61 : 2 W. R. 5; 7 W. R. 36; *Reg* v. *Mankletow*, Dears. C. C. 159.

Charge.—A charge of kidnapping from lawful guardianship should contain the name of the guardian. 1 Wyman's Rev. Cir. and Crim. Reporter, 16. In a charge the Judge should use the words of the section and must not substitute phraseology of his own. 13 C. W. N. 754.

When the offence is completed—The offence under this section is completed the moment a minor as described in this section is taken out of the custody of a lawful guardian and is not a continuing one. So there cannot be any abetment of this offence by conduct which commences only after the minor has once been completely taken out of the keeping of the guardian. 38 A. 664=14 A. L. J. 765. See also 6 P. R. 1894 Cr. The offence is complete when the minor is actually taken away from lawful guardianship and it is not an offence continuing as long as a minor is kept out of such guardianship. 26 M. 454.

Explanation—The explanation to this section is not intended to limit the protection which the section gives to parents and minors. It is intended to extend that protection by including in the term "lawful guardian", any person lawfully entrusted with the care and custody of a minor. 24 M. 284=1 Weir 349=2 Weir 458; 10 M. L. J. 405. The fact that a father allows his child to be in the custody of a servant for a limited purpose and for a limited time, cannot determine the father's rights as guardian or his legal possession for the purpose of the criminal law. Such a temporary guardianship does not exclude the higher legal guardianship of the father. In such cases, the court must consider all the facts and see whether they are consistent or not with the continuance of the father's legal possession of the minor. If they are not inconsistent the minor must be held to be in the father's possession or keeping, even though the actual possession should be temporarily with a friend or other person. *Ibid.* Where a minor girl comes to the house of her father with the consent of her husband, her father is her *de facto* guardian. 11 Cr. L. J. 9=4 Ind. Cas. 543=13 C. W. N. 754; see also 8 S. L. R. 182=16 Cr. L. J. 117=27 Ind. Cas. 181. The word "include" is not intended to limit the protection which the section gives to parents and minors, but rather to extend that protection by including in the term lawful guardian or any person, lawfully entrusted with the care or custody of the minor. 1922 Lah. 380=68 Ind. Cas. 620. Where a Hindu minor is living with a person who is not her nearest male relative, the latter commits an offence under this section if he takes the minor away from the guardianship of such relative without his consent. The technical plea of legal guardianship can be raised only by a guardian appointed by a Civil Court. 42 A. 146=18 A. L. J. 64. The mere fact that the minor leaves the protection of her guardian does not put her out of the gurdianship's keeping. The physical control of the minor is not always necessary to constitute "keeping" or custody. 12 Mys L. J. 133. Without the explanation the guardianship is limited to lawful guardianship. By the explanation the term 'guardian' has been extended to any person lawfully entrusted with the care and custody of a minor. The term "entrust" implies the giving, handing over or confiding of something by one person to another. It involves the idea of active, power and motive by the person reposing the confidence towards the person in whom the confidence is

reposed. The term "lawfully entrust or entrusted" means a declaration of trust and the handing over or the giving or confining of a minor to the care and custody of another by a person competent to do so unaffected by any illegality or impropriety coupled with the assent, express or implied of the person in whom the trust is vested or imposed. Neither the declaration of the trust itself nor its acceptance need be necessarily in writing ; it is sufficient if the declaration is verbally made and given or if it arises from a course of conduct consisrent only with the existence of such antecedent declaration and accepted verbally or by necessary implication arising from the conduct of the party so entrusted with duty imposed. 4 Pat. L. J, 74=(1919) Pat. 33. Intention to give child in marriage in contravetion of Act 19 of 1929 is 'unlawful purpose." 143 Ind. Cas. 873=11 Rang. 81=34 Cr. L. J. 696=A. I. R. 1933 Rag. 98 (F. B.).

Exception.—A woman should not be convicted of kidnapping her own minor children from the lawful guardianship of their father, when she believes, in good faith herself entitled to the lawful custody of the children. 1 Weir 384—2 Weir 665.

Cases.—The mother of Mahomedan minor girl of fifteen is her lawful guardian even if she attains puberty. 60 P. R. 1905 Cr. The prosecution must prove that the accused knew that the kidnapped person was under lawful guardianship. 27 P. R. 1887 Cr. Paternal relatives of a minor Hindu girl are not justified in removing her from lawful guardianship by fraud or force for the purpose of getting her married. Rat. Un. Cr. C. 320 Where the two accused took a minor girl from her husband in Bikhanir, detained her there for a month, then brought her to Karachi by train, where they detained her for three days, the offence was completed at Bikhanir. 7 S. L. R. 17=20 Ind. Cas. 599=14 Cr. L. J. 439. Where a girl under sixteen years of age left the guardianship of her husband and father-in-law of her own free will and not for the first time, and after that stayed with accused quite voluntarily and without any force having been exercised or deception practised upon her, *held*, it did not amount to taking or enticing the girl out of the keeping of her lawful guardian, nor did it amount to compelling her by force or inducing her by deceitful means to go from any place, and it was not an offence within the meaning of ss. 361, 362 and 366 Penal Code. 12 A. L. J. 265=23 Ind. Cas. 473=15 Cr. L. J. 265 ; see also U. B. R. 1912, 2nd Qr. 136=14 Cr. L. J. 109=18 Ind. Cas. 669. The consent of kidnapped person is immaterial, and it is not necessary for a conviction, under section 361, that the taking or entiting should be shown to have been by means of force or fraud. 2 W. R. Cr. 5 ; 2 W. R. Cr. 61 ; 3 W. R. Cr. 9 ; 3 W. R. Cr. 15 ; 7 W. R. Cr. 36. For conviction of kidnapping under ss. 361 and 363 of the Penal Code, that the accused took or enticed from lawful guardianship the person kidnapped must be established. 10 W. R. Cr. 53 ; 16 W. R. Cr. 42. To entice away a child playing on a public road is to kidnap it from lawful guardianship. 7 W. R. Cr. 98. It is not incumbent on the prosecution in a case of kidnapping under s. 361, Penal Code, to prove that the accused knew that the minor had a lawful guardian. It is for the accused to prove ignorance of the fact of the existence of a lawfull guardian, when he raises that plea, though it does not follow that such ignorance will be a cemplete answer to the charge of an offence under ss. 361 and 363. 27 P. R. 1887 Cr. Motive has nothing to do with the offence of kidnapping though it might have much to say to the punishment. 6 A. L. J. 682=3 Ind. Cas. 480=31 A. 448=10 Cr. L. J. 295. The right of a paternal relation of a minor girl to select a husband and perform her marriage is not according to the Hindu law, absolute as against the guardian. Rat. Un. Cr. C. 820.

Abetment of Kidnapping.—A Hindu wife removing her infant daughter and marrying her without her husband's warrant is guilty of abetment of kidnapping. 8 C. 969=11 C. L. R. 6. The only evidence against the accused person, charged with abetment of kidnapping was first, that he was at the house of certain prostitutes who kidnapped a girl, secondly that he was the first man, who had connection with the girl, thirdly that he carried her about from place to place, and fourthly, that he endeavoured to conceal himself and that he himself absconded. *Held* that there was no evidence to show that the accused abetted the offence of kidnapping. 2 C. W. N. 81. There can be no abetment of kidnapping by conduct commencing only after the minor has been completely taken out of the keeping of the guardian when the guardian keeping of the minor is at an end. 6. P. R. 1894 Cr.

62. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction.

Scope.—This section does not define an offence. It is merely a definition of the word "abduction" which occurs in some of the penal provisions which follow—abduction differs from kidnapping, because there may be abduction without a removal of the person from the protectioo of the law, or even from lawful guardianship. It may be observed on the things which constitute abduction according to this definition, that to compel by force a person to go from any place is not an offence specifically under this code, although it may necessarily involve the commission of an offence, an assult at least, and probably wrongful restraint. To induce a person by deceitful means to go from any place is ordinarily not an offence, but only a subject for a civil action. Neither of these things are specially punished as offence here ; they merely constitute the definition of abduction. An abduction is made an offence only when it is committed with certain aggravating circumstances.—*Morgan and Macpherson* ; vide also 8 P. L. C. 1924 ; 24 Cr. L. J. 921 ; 22 Ind. Cas. 730 ; 15 W. R. 4.

Abduction.—When a man by a promise of marriage induces a woman to leave her house, but does not marry her or get her married he is guilty of deceiving her as mentioned in this section. 4 A. L. J. 482. In order to constitute an offence under this section the woman must be compelled by force or induced by deceitful means to leave her husband's home. 11 P. R. 1888. Cr.

The offence of abduction is a continuing offence and a girl is being abducted not only when she is first taken from one place to another. 12 A. L. J. 91 ; 7 S. L. R. 128 ; 24 Ind. Cas. 599. When the accused uses deceitful means in abducting a woman from one place to another, he is guilty of an offence under this section. But if he repeats the same deceitful means in order to abduct her again from the latter place to a third place, he commits a second offence under this section. 24 Ind. Cas. 599 ; 40 A. 507. A person who compelled a girl by force to go away from the place where her mother-in-law was, evidently with the intention to have sexual intercourse with her, is liable to be punished for committing an offence under s. 366 read with this section. 9 M. C. T. 406=10 Ind. Cas. 290 Bare abduction, without the intention pointed out in the different sections dealing with the subject, is not *per se* an offence. 6 C. W. N. 208.

Where an accused person deceitfully married a girl with the intention of prostituting her *held*, that the fact of his marriage dishonestly contracted with an illicit view did not prevent his act of inducing the girl to leave her home from amounting to abduction under s. 362, or entitle the accused to be acquitted of an offence under s. 366 Penal Code. 7 P. R. 1881. Cr. A conviction for abduction was quashed no force or deceit having been practised on the person abducted. 2 W. R. Cr. 7. Where an accused person dishonestly induced a girl to marry him and leave her home with the view of causing her to prostitute herself. *Held*, that the fact of such marriage did not exculpate him from being guilty of abduction under s. 362, Penal Code, or of an offence under s. 366. 7 P. R. 1881 Cr. Neither under the Penal Code nor under the Frontier Regulation is it an offence for a married woman to abet her own abduction. 40 P. R. 1866 Cr, ; 6 P. R. 1871 Cr. ; 14 P. R. 1875 Cr. ; 11 P. R. 1883 Cr. Where the kidnapped girl goes with the accused on his false representation an offence under this section has been committed. 73 Ind. Cas. 510=24 Cr. L. J. 622=1923 Lah. 158. Abduction in itself constitutes no offence and only becomes an offence when certain criminal intents are proved. 75 Ind. Cas. 297=24 Cr. L. J. 921. Abduction itself is not an offence but becomes so when taken is connection with other factors which form the subject matter with other sections of Chapter 16 of the I. P. Code. 29 P. L. R. 444=109 Ind. Cas. 127=10 Lah. L. J. 325=29 P. L. R. 479. The offence of kidnapping from lawful guardianship is not a continuing offence. As soon as the minor is actually removed from the custody of his or her guardian, the offence is committed. The offence is not a continuing one as long as the minor is kept out of guardianship. A. I. R. 1931 All. 55.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imrisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for kidnapping.

Scope and object.—This section and section 366 are intended not only to protect the rights of parents and lawful guardians of minor, but also to protect the minors as well. So the willingness of the minor or of the temporary guardian does not protect the accused. 12 L. J. 133.

Lawful guardianship.—A *de facto* guardian of a minor, whose guardianship is not against the wishes of the *de jure* guardian, is a lawful guardian. 12 Cr. L. J. 239=10 Ind. Cas. 281. According to Mahomedan Law the occurance of puberty determines minority and the mother's right to custody. But for the purposes of this section regard must be had only to the definition of minority in s. 3 of the Majority Act. 37 M. 567. The guardianship of a husband is not terminated by a minor wife's running away from his house. 16 Ind. Cas. 768=13 Cr. L. J. 736. This section is applicable to married as well as to unmaried minor girls. 12 P. R. 1879 Cr. A mother can be convicted under this section where she takes the child out of the custody of the father. 9 Ind. Cas. 511 ; 18 C. W. N. 484. Removal of a ward by a teacher to a distant place is an offence under this section. 23 A. L. J. 10. When a person is kidnapped with the object of holding him to ransom an offence under section 363 or 365 has been committed. 91 Ind. Cas. 240. The consent of the minor does not excuse the accused. 27 Cr. L. J. 1018. *Kumhars* are not bound by strict Hindu Law, and as such a father cannot be convicted under this section for taking her minor daughter from her husband's honse. 24 P. W. R. 1914 Cr.=161 P. L. R. 1914=15 Cr. L. J. 639=25 Ind. Cas. 839. According to Hindu Law the husband's relations, if any exists within the degree of a *sapinda*, are the guardians of a minor widow in preference to her father and his relations. 27 P. R. 1915 Cr. The testimony of the kidnapped person, if satisfactory, legally suffices for a conviction for kidnapping. 7 W. R. Cr. 104. To constitute the offence of kidnapping, it must be shown that the person was abducted from lawful guardianship which is the guardianship of a person who is lawfully entrusted with the care or custody of a minor. 2 N. W. P. 286. The offence of kidnapping under s. 363 is not a continuing offence. 19 A. 109=A. W. N. 1896, 191 ; 64 Ind. Cas. 842=23 Cr. L. J. 58=24 O. C. 329. A minor girl left her parents' house with the intention of asking the accused to take her away and of going away with him if he consented, and the accused took the girl away as desired by her. *Held*, the question was whether the female minor, when she left her guardian's house, had given up the intention of returning home ; that, in this case, the girl, when she left her parents' house, had no such intention of not returning as to remove her from their guardianship, and that the accused was therefore guilty of the offence of kidnapping from lawful guardianship. U. B. R, 1909 3rd Qr. Penal Code 27=4 Ind. Cas 901=11 Cr. L. J. 81. When the mother from whose custody a Mahomedan minor girl was removed by the accused was proved to have married in a stranger family and consequently lost her right ef guardianship, *held*, that the conviction under s. 363, I. P. Code, could not be sustained. 1930 Cr. C. 1057=51 C. L. J. 476=128 Ind. Cas. 181=32 Cr. L. J. 90=A. I. R. 1930 Cal. 665. Where an act of restraint or confinement in an attempt to kidnap has been exercised in furtherance of the attempt and goes to form part of that offence, and it is not done with any intention or object which can be separated from the general intention to kidnap, it will constitute an integral part of that offence and should not form the subject of a separate conviction and sentence. 6 N. W. P. 293. Until a Mahomedan girl attains her puberty, her mother is entitled, under the Mahomedan Law to the guardianship of the girl in preference to her husband. So a mother cannot be convicted under this section for removing such a girl from the custody of her mother-in-law. 32 C. 444=2 Cr. L. J. 328 ; see also, 21 P. L. 1906=3 Cr. L. J. 296=60 P. R. 19=5 Cr.

"If a girl goes on a visit with or without the knowledge of the guardian, she is still in the legal keeping of her parent, and, further, it is not necessary that there should be any intention to make an unlawful use of the minor to constitute the offence of kidnapping." 1 S. L. R. 104 Cr.=8 Cr. L. J. 361 ; see also 1 L. B. R. 205 ; U. B. R. 1907, 3rd Qr. Penal Code 11=14 Bur. L. R. 262=7 Cr. L. 7, 210. A husband or those who aided him cannot be convicted of kidnapping for taking away his own wife. W. R, 1864 Cr. 12. Where a person carries away, without the consent of her lawful guardian, a girl to whom he had been betrothed by her father, after the father had changed his mind and broken off the marriage, he is guilty of kidnapping from lawful guardianship. 4 W. R. Cr. 7. When a girl below 18 years but above 16 years was kidnapped from husband, he can not be convicted under s. 363. 146 Ind. Cas. 248=57 B. 537=35 Bom. L. R. 886=A. I. R, 1933 Bom. 417 (F. B.).

Where persons are kidnapped with the object of holding them to ransom, the

kidnapper is guilty under s. 363 or s. 365 but not under s. 364 I. P. Code. 91 Ind. Cas. 240=27 Cr. L. J. 64. The offence of kidnapping from lawful guardianship is complete when the minor is actually taken from the lawful guardianship. It is not an offence continuing so long as he is kept out of such guardianship. 5 Pat. 536=27 Cr. L. J. 792 =95 Ind. Cas. 392=7 Pat. L. T. 812=A. I. R. 1926 P. 460. Although consent of the person kidnapped is no defence to a charge under s. 363, where the accused and the girl were neighbours and for this reason became fond of each other and when her marriage was about to take place the accused decided to take her away and she agreed, *held*, that it is not a bad case of kidnapping though technically it amounts to such and that the accused should not be punished severely. 96 Ind. Cas. 874=27 Cr. L. J. 1018=A. I. R. 1926 Lah. 677. One P. who was formerly a Christian changed her religion and became a convert to Hinduism. She left the house in which she was living during the absence of her husband who had gone to another place. When the latter came back he demanded his children but they were not handed over to him. *Held*, that on these facts there is no question of an offence under s. 363. 102 Ind. Cas. 209=28 Cr. L. J. 513=A. I. R. 1927 Lah. 496. Whether the offence of kidnapping is complete when the person has been taken out of the custody of the lawful guardian is a question of fact to be determined according to the circumstances of each case. Where he enticed the girl to come out of the *gachi* to the road and then to the motor car where R was sitting and R drove away with her in order to kidnap her. *Held*, that R was rightly convicted under s. 363 I. P, Code. 109 Ind. Cas. 436=28 Cr. L. J. 820=6 Pat. 471. The test of lawful guardianship is that the infant or minor should be in a position to apply to his guardian for protection. The law does not require that the minor should have been actually taken from the actual custody of the guardian. A. I. R. 1929 Sind. 249=1929 Cr. C. 543.

To constitute kidnapping the intention to prevent the kidnapped person from returning to his guardian is not necessary. 69 Ind. Cas. 444=23 Cr. L. J. 716. In the absence of the mother, the mother's mother is the guardian of the person of a Mahomedan minor girl who has not attained puberty. 37 C. L. J. 329=27 C. W. N. 531= 73 Ind. Cas. 936=24 Cr. L. J. 712=1923 Cal. 672. If a minor abandons her guardian with no intention of returning, she can not be held to continue in the guardian's keeping. 87 Ind. Cas. 513=26 Cr. L. J. 977. Removal of a boy by a temporary guardian without the consent of a permanent guardian is an offence under this section. 23 A. L. J. 10=86 Ind. Cas. 428=26 Cr. L. J. 796=A. I. R. 1925 All. 295. The offence of kidnapping from lawful guardianship is not a continuing offence. 131 Ind. Cas. 246 =1930 A. L. J. 1485=1931 Cr. C. 127=53 A. 140=32 Cr. L. J. 690=A. I. R. 1931 All. 55.

From British India.—Where the accused induced certain woman to leave British India for Ceylon, on the misrepresentation that they were to be married to his sons, and after arriving at Ceylon made them work as coolies on the estate. *Held* that the woman must be held to have been taken without their consent, and the accused were guilty of an offenne under this section. 6 Ind. Cas. 503=1910 M. W. N. 262=8 M. L. T. 91=11 Cr. L. J. 368. Where the attempt is made for kidnapping from British India, and the attempt fails, the abetment of such an offence is punishable under ss. 363 and 116 and not under ss. 363 and 109. 1 M. 173=1 Weir 353.

Cases.—Magistrates should not give themselves jurisdiction by trying under s. 363, cases which really fall under s. 366 I. P. Code. The form of a kidnapping which is punishable by s. 366 is a seriously aggravated form, which only Sessions Courts and District Magistrates in the exercise of their special powers, have jurisdiction to try. U. B. R. (1897-1901) Vol, I. 328. To establish kidnapping, there must be evidence that the minor was taken out of the keeping of the lawful guardianship without her consent. 14 Cr. L. J. 149=19 Ind. Cas. 149 (F. B.)=6 Bur. L. T. 21 Where a Hindu sold his wife, a girl of 16 years of age to S, a barber, with whom she was living, and, where the girl, while living with S, was persuaded by the accused to leave the house of S and go away with another man: *Held*, that S was the lawful guardian of the girl within the meaning of s. 361 and that, the accused was rightly convicted under s. 363, I. P. Code. 7 P. R. 1911 Cr.=154 P. L. R. 1911=10 Ind. Cas. 97=12 Cr. L. J. 211=31 P. W. R. 1911. When the accused were charged under s. 363 Indian Penal Code with having kidnapped a girl from the guardianship of her father and it appeared that the girl was over 16 at the time when she disappeared and that there was delay in making a report to the police. *Held* that the accused were not guilty of an offence under s. 363 of the Penal Code. 48 Ind. Cas. 351=19 Cr. L. J. 1011. Where a kidnapped child is left in the house of the accused and the accused gave informa-

tion of it to the guardian through another, he is not guilty. A. I. R. 1933 Lah. 392. =1933 Cr. C. 636=140 Ind. Cas. 42. The moment a minor girl is taken away from the custody of a temporary guardian the offence of kidnapping is complete. A I. R. 1931 Lah. 53=130 Ind. Cas. 782==32 Cr. L. J. 615. Where a girl of 15 was kidnapped by an accused of 21 years old a sentence of four years rigorous imprisonment was reduced to two years. 135 Ind, Cas. 677=1933 Cr. C. 247=73 Cr. L. J. 190=33 P. L. R. 485=A. I. R. 1932 Lah. 203.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first class.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

(*a*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Notes.—Where a person was abducted by the accused in order that he might be held to ransom, and where it did not follow as a matter of course that he was in danger of being murdered. *Held* that a conviction under this section cannot stand. 6 L. B. R. 160 ; 91 Ind. Cas. 240=27 Cr. L, J 64.

In a prosecution under this section. where there was no incriminating evidence whatsoever against the accused beyond the fact that he and the deceased left together and were last seen together, and that the one returned without the other. *Held*, that although circumstances lead to a high degree of suspicion against the accused, they cannot be said to be inconsistent with any reasonable theory other than that the accused lured him away for the purpose of having him murdered, or being exposed to the danger of being murdered and hence no conviction could be safely had. 9 Lah. L. J. 396=103 Ind. Cas. 836=28 Cr. L. J. 758=A. I. R. 1927 Lah. 658. In case of abduction of person in broad day light sentence of transportation for life held not too severe. 143 Ind. Cas. 55=10 O. W. N. 7=34 Cr. L. J. 498=A. I. R. 1933 Oudh. 148 ; see also A. I. R. 1933 Lah. 1035.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be linble to fine.

Notes.—To support a conviction under this section, it must be clearly proved that, at the time of the abduction, it was the intention of the accused to secretly and wrongfully confine the person. 18 C. L. J. 578=22 Ind. Cas. 187. See also 92 Ind. Cas. 213=1925 Lah. 614=27 Cr. L. J. 229 ; 7 L. L. J. 529=26 P. L. R. 733=1925 Lah. 614 ; 73 Ind. Cas. 510=24 Cr. L. J. 622. Where an accused is charged with rape and abduction, the abduction being an aggravating circumstance, two separate sentences should not be passed. 89 Ind. Cas. 912=26 Cr. L. J. 1040=196 Lah. 114 The will of the woman may ultimately be gained over, but this will not affect the offence, when the kidnapping or abduction is with the knowledge or intention which the section mentions. *Morgan and Macpherson.*

Where a person was abducted by the accused in order that he might be held to ransom, and where it did not follow as a matter of course that he was in danger of being murdered. *Held* conviction under s. 364 cannot stand, but a conviction under s. 365 I. P. Code was justifiable, as though the main object was to extort money. 6 L. B. R. 160=19 Ind. Cas. 167=14 Cr. L. J. 167=6 Bur. L. T. 77. The accused abducted B in order to put pressure upon her friends to restore a young girl whom

they had abducted. She was restored a few days after B was abducted and then B was also let go. It was not found that any harm was done to B. *Held* that under such circumstances heavy sentences of imprisonment on the accused were not necessary. 89 P. L. R. 1916=17 Cr. L. J. 472=36 Ind. Cas. 152. Where the appellant intended and actually did confine a girl wrongfully while he negotiated with her relations for the payment of a sum of Rs. 690 which was practically her ransom. *Held* this act therefore fell under s. 365 I. P. Code. 73 Ind. Cas. 510=24 Cr. L. J. 622=1923 Lah. 158. This section makes punishable the offence of abduction with intent to cause the person abducted to be secretly and wrongfully confined. 7 Lah. L. J. 520=26 P. L. R. 730=A. I. R. 195 Lah. 614. For a conviction under this section an intention to secretly confine abducted person is necessary. 92 Ind. Cas. 213=27 Cr. L. J. 229=A. I. R. 1925 Lah. 614. An offence under s. 365 consists of kidnapping or abducting any person with intent to cause that person to be secretly and wrongfully confined. 109 Ind. Cas. 677=29 Cr. L. J. 597=10 A. I. Cr. R. 277. There can certainly be no offence of kidnapping if a person of age is conveyed from one part of British India to another. 137 Ind. Cas. 290=33 Cr. L. J, 514=9 O. W. N. 243.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Kidnapping or abducting woman to compel her marriage &c.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intencourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

"And whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse wiih another person shall also be punishable as aforesaid."

Kidnaps.—A woman, marrying her minor daughter to another in the absence of her husband kidnaps the minor from the lawful guardianship of her husband. 8 P. R. 1878 Cr. Where two girls ran away from their houses and remained for nearly one or two days in the house of a woman who belonged to the caste of *Naiks* in *Kumaon*, and no report was made to the *Pradhan*, *held* that the offence under this section was csmplete. 34 A. 340=9 A. L. J. 307. A person kidnapping two girls should be awarded separate sentences. the offence of kidnapping being separate. 1 O. C. 4. No offence is committed when a girl is abducted from the custody of her maternal uncle with the consent of her mother. 16 Cr. L. J. 237=27 Ind. Cas. 909. In order to sustain a conviction under this section it must be proved that the girl was taken out of the custody of her lawful guardian. 16 W. R. 42. There are two ingredients of an offence under this section. First there must be kidnapping or abduction as defined in section 361 or section 362 and secondly the kidnapping or abduction must be done with the intent or knowldge or with the object that certain things will happen as specified in this section. 3 Lah. L. J. 574. An accused cannot be convicted under this section where the girl left the protection of her guardian of her own accord and lived with the accused. 13 A.L. J. 848=16 Cr. L. J. 663. A person kidnapping a girl of fifteen years of age out of British India with her consent, for the purpose of seducing her to illicit intercourse, is not guilty of an offence under s. 366 I. P. Code. 42 B. 391=20 Bom. L. R. 372=45 Ind. Cas. 506=19 Cr. L. J. 602. It is not necessary for a conviction under s. 366 I. P. Code. that the accused should know definitely who the guardian of the minor girl is whom he finds wandering about. 9 O. & A. L. R. 1102. In case of marriage "will" means will of girl and not of guardian. A. I. R. 1932 Cal. 442=32 Cr. L. J. 512=36 C. W. N. 49. Where the accuse1 is charged for both kidnapping and abduction, separate charges are necessary. 144 Ind. Cas. 93=34 Cr. L. J. 682=A. I. R. 1933 Cal. 563. Joint trial of accused charged with abduction alone and accused charged with both abduction and kidnapping is irreguler. 144 Ind. Cas. 93=34 Cr. L. J. 682=1933 Cr. L. 940=A. I R, 1933 Cal. 563. In charges of kidnapping and wrongful confinement, there was joint trial in the first place and separate trials were held

subsequently. A. I. R. 1932 Lah. 203. Prosecution must prove age of girl. A. I. R. 1931 Lah. 401=32 Cr. L. J. 1041 ; see also A. I. R. 1934 Sind. 119=28 S. L. R. 285=1934 Cr. C. 960. Where the Magistrate finds in a case under s. 363 I. P. Code, that there was *prima facie* sufficient evidence that the girl was enticed away ; the Magistrate should examine and decide whether an offence under s. 366 or some other cognate offence against a feamale over 16 was committed and should not remain content with finding that the girl was not proved to be under s. 16. 1924 Lah. 718. To sustain a conviction under this section there must be a finding as to the use of force or deceitful means. 88 Ind. Cas. 463=26 Cr. L. J. 1151=A. I. R. 1925 Oudh. 454. Where it was not unlikely that the girl herself eloped with some of the accused and on missing her, her parents got up the story to recover her and to bring her paramour into trouble. *Held* that a conviction under s. 366 was improper. 6 Lah. L. J. 622=A. I. R. 1925 Lah. 274. The mother of a Mahomedan minor girl handed her to the accused for marriage and the accused married her. The guardian for mairiage of the girl did not consent to the marriage. *Held*, that the accused was punishable under s. 366 I. P. Code. 84 Ind. Cas. 434=26 Cr. L. J. 290=A. I. R. 1925 Cal. 578. Where an abduction is not completed, the accused may be convicted of an offence of an abetment of abduction. 86 Ind. Cas. 1007=26 P. L. R. 119=26 Cr. L. J. 943=A. I. A. 1925 Lah. 512. In the case of an offence under s. 366 I. P. Code, the intention is a matter of inference from the citcumstances of the case and the subsequent conduct of the accused after the abduction has taken place. 110 Ind. Cas. 99=10 A. I. Cr. R. 429. In the absence of any element of forcing or seducing for the purpose of illicit intercourse, no offence under s. 366, Penal Code can he regarded as possible. 27 L. W. 683=109 Ind. Cas. 907=29 Cr. L. J. 635=A. I. R. 1928 Mad. 585=54 M. L. J. 456. The expression "seduced to illicit intercourse" means "induced to surrender or abandon on condition of surety from unlawful sexual intercourse". 38 C. W. N. 71 ; see also A. I. R, 1934 Sind. 164=1934 Cr. C. 1266 : A. I. R. 1934 Lah. 227 =1934 Cr. C. 458. Illicit intercourse does not cease to be one, merely because it is repeated. If the intention is to kidnap the girl in order to seduce her to illicit intercourse, the fact of previous intimacy with her is wholly immaterial. 27 A. L. J. 114=113 Ind. Cas. 765=30 Cr. L. J. 218=A. I. R. 1929 All, 82 ; but see A. I. R. 1934 Pat. 170=15 P. L. T. 229=35 Cr. L. J. 814 ; 38 C. W. N. 71. The words "seduced to illicit intercourse" do not refer to first act of seduction or surrender of chastity but they refer also to subsequent co-habitation as well. The object of the section is to punish not the seduction by itself but the kidnapping of the kidnapped. 1929 Cr. C. 379=A. I. R. 1929 Pat. 651 ; see also A. I. R. 1935 Bom. 189 ; A. I. R. 1930 Cal. 209=50 L. L. J. 593=1930 Cr. C. 209=125 Ind. Cas. 656 ; A. I. R. 1933 Cal. 718 ; but see A. I. R. 1932 All 409=1932 A. L. J. 488=54 A. 756=33 Cr. L. J. 669=138 Ind. Cas. 609. Act of seduction must be subsequent to kidnapping. A. I. R. 1932 All. 409. Proof of kidnapping or abduction from lawful guardianship is necessary. 34 Cr. L. J. 100=A. I. R. 1932 All. 580=1932 A. L. J. 776=141 Ind. Cas. 127 ; see also A. I. R. 1933 Oudh. 62=34 Cr. L. J. 377=1933 Cr. C. 102=9 O. W. N. 1049=142 Ind. Cas. 813. Where a grown up girl of 18 submits herself to be carried away and 'raped' the presumption is of consent. A. I. R. 1931 Lah. 401=1931 Cr. C. 641=32 P. L. R. 98=133 Ind. Cas. 560. For a conviction under this section it is not necessary that the accused should know definitely who the guardian of the minor girl is. 12 Mys. L. J. 133. In a charge under this section consent of the minor girl or of his temporary guardian is of no avail *Ibid.* Allowing a child to be in the custody of a servant or friend for a limited purpose or time does not determine the guardian's right to legal possession. Hence an offence under this section is committed when the minor is kidnapped with the consent of the servant or friend. 68 Ind. Cas. 620. Paternal relatives of a minor commit a technical offence under this section when they kidnap a minor girl from the custody of mother with the object of marrying her. 5 Lah. L. J. 377. To constitute an offence under this section the accused need not know who is the guardian of the minor. 81 Ind. Cas. 529=25 Cr. L. J. 1913. A person can not be convicted without a fresh charge for abduction where the original charge was for kidnapping. 31 C. W. N. 171.

Illicit intercourse.—A charge under this section, of abducting a woman with the intention of forcing or seducing her to illicit intercourse, can be sustained only by evidence to show the intent or to raise the presumption that illicit intercourse was likely to result from the abduction. 23 P. R. 1868.

The words "illicit intercourse" mean the sexual intercourse between a man and who are not husband and wife. The woman need not be a married one. 4 A. L. J. 482. Under the Buddhist law a man cannot marry a girl under sixteen years of age without her guardian's consent and hence an intercourse between the man and such a girl is "illicit intercourse" L. B. R. (1872-1892), 202. When it is proved that the accused took two minor girls from lawful guardianship with the object of seducing them to illicit intercourse, he is guilty of an offence under this section and the consent of the girl is of no avail. 49 C. 905. This section applies to the case of a married woman. 45 C. 641=24 C. W. N. 695.

Intent or knowledge.—For a conviction under this section a special intent or knowledge is necessary. 53 P. L. R. 1916 ; 28 Cr. L. J. 867=99 Ind. Cas. 121 ; 27 Cr. L. J. 456 ; 25 Ind. Cas. 297 : A. I. R. 1933 Rang. 98 (F. B.)=34 Cr. L. J. 696 : A. I. R. 1934 Pesh. 69 ; A. I. R. 1934 Lah. 227 =35 Cr. L. J. 1386 ; 67 Ind. Cas. 731 : 72 Ind. Cas. 533 ; 81 Ind. Cas. 529 : 102 Ind. Cas. 552. Intention can be inferred from conduct of the accused and circumstances of case. A. I. R. 1930 Lah. 52=31 Cr. L. J. 529 ; see also A. I. R. 1930 Lah. 163 ; 29 Cr. L. J. 643 ; A. I. R. 1933 Oudh. 45=39 Cr. L. J. 220 ; A. I. R. 1933 Rang. 98 (F. B.)

Charge of rape.—A charge of rape against the accused cannot be proved by the uncorroborated evidence of the prosecution. 17 P. W. R. 1916 Cr. : 54 P. L. R. 1916 ; 73 Ind. Cas. 513 ; 1928 Lah. 238 ; 1924 Lah. 669=75 Ind. Cas. 986 ; but see 1923 Lah. 332 ; 1923 Lah. 91.

Cases.—99 Ind. Cas. 98=28 Cr. L. J. 66 ; 97 Ind. Cas. 960 ; 26 Cr. L. J. 1021.

Not a continuing offence.—The offence of kidnapping is not a continuing offence. When it is once complete, abetment cannot be proved against persons who have taken a subsequent part in the proceedings. 75 Ind. Cas. 297 ; 64 Ind. Cas. 842=23 Cr. L. J. 58=24 O. C. 329 ; A. I. R. 1931 Lah. 53=1931 Cr. C. 117. Offence of kidnapping from lawful guardianship is not continuing offence but the offence under s. 366 is a continuing offence. A. I. R. 1931 All. 55=1930 A. L. J. 1485. Abduction is a continuing offence. Each fresh removal constitutes an offence. A. I. R. 1925 Oudh. 328=12 O. L. J. 27=26 Cr. L. J. 695=86 Ind. Cas. 71 ; see also A. I. R. 1924 Cal. 389=50 C. 1004=25 Cr. L. J. 1082=81 Ind. Cas. 906 : A. I. R. 1931 All. 55=1903 A. L. J. 1485.

Legislative changes.—The words within quotations at the end of the section have been inserted by Act XX of 1923.

Separate offences.—Convictions under this section and section 363 are not maintainable. 93 Ind. Cas. 248=27 Cr. L. J. 456. Separate sentences can be passed uuder s. 376 and this section. 75 Ind. Cas. 77 ; 99 Ind. Cas. 344. Separate sentences are not mantainable for abduction for actual rape and abduction with intent to rape. 92 Ind. Cas. 850=1926 Lah. 212=27 Cr. L. J. 288. Kidnapping and abduction are distinct offences. 31 C. W. N. 940=45 C. L. J. 561=28 Cr. L. J. 805=104 Ind. Cas. 235=1927 Cal. 644.

Cases.—Under the Budhist law, a man cannot contract a valid marriage with a minor without her parent's consent, and therefore, sexual intercourse without such consent is illicit intercourse within the meaning of s. 366, I. P. Code. U. B. R. (1897-1901). Vol I, 328. When a man kidnaps a minor girl from lawful guardianship and therefore co-habits with her without marriage, he has, subsequent to the kidnapping, seduced her to illicit intercourse, and he has kidnapped in order that she may be seduced to illicit intercourse, and he has committed an offence under s. 366, Penal Code, quite independently of any intention or consent on the part of the minor girl. I. U. B. R. 1902—1903, Penal Code, 15. Carrying off a woman by force is not an offence under s. 366, Penal Code, if there is no evidence that the intention was to marry her against her will or to enforce her to illicit intercourse or that it was known to be likely that any thing of the sort would result. 12 P. W. R. 1911 Cr.=193 P. L. R. 1911=12 Cr. L. J. 393=11 Ind. Cas. 577 ; see also 12 A. L. J. 265=15 Cr. L. J. 265. Removal of a minor Hindu girl by paternal guardian from the guardianship of a maternal relation for purposes of marriage in an offence under the section. Rat. Un. Cr. C. 820. Where there is no taking out of lawful guardianship no offence under this section has been committed. 15 Cr. L. J. 630=25 Ind. Cas. 638. The mere taking of a girl to an immigration recruiter is not necessarily the taking of the girl to his house with a knowledge that it was likely that she would be forced or sedued to illicit intercourse. 12 A. L. J. 91=15 Cr. L. J. 154=22 Ind. Cas. 730. Section 366 of the Penal Code is inapplicable where a girl at the time of kidnapping from

lawful guardianship intends to co-habit of her own free will with the kidnapper ; as no intention to seduce to illicit intercourse can be presumed under the circumstances, U. B. R. 1905 Penal Code, 17=2 Cr. L. J. 476. The act of taking is completed as soon as the minor is actually taken out of the custody of his or her guardian. 26 A. 196=A. W. N. 1903, 233=1 Cr. L. J. 561. The substantial offence under s. 366 is abduction or kidnapping and not seduction in the sense of loss of chastity for the first time. 1930 M. W. N. 905=129 Ind, Cas. 463=A. I. R. 1930 Mad. 980. A case under this section does not apply to the case of a girl over 12 and under 16 years of age, who goes with a lover of her own free will, for the purpose of co-habitation. I L. B. R. 297 (F. B.). The offence of kidnapping is not a continuing offence, but is complete directly the minor has been taken from the keeping of the lawful guardianship. A. W. N. 1883, 67 ; A. W. N. 1883, 164. Marriage is presumed in case of continual sexual intercourse. A. I. R. 1934 Sind. 119=1934 Cr. C. 960=28 S. L. R. 235. An offence under this section is committed by removal of minor daughter from father's custody by mother and accused to have girl married against his wish. A. I. R. 1934 Oudh. 89=11 O. W. N. 30=147 Ind. Cas. 670=35 Cr. L. J. 469. In case of kidnapping from lawful guardianship of husband, prosecution must prove marriage between woman and alleged husband. A. I. R. 1935 All. 566.

Section 366 is only an aggravated form of the offence created by s. 363 and where the girl kidnapped from lawful guardianship is under 16 years, the intention of the accused in kidnapping her is the material matter and not the consent or willingness or otherwise of the kidnapped girl. 20 S. L. R. 74=93 Ind. Cas. 248=27 Cr. L. J. 456=A. I. R. 1929 Sind. 151 ; see also 95 Ind. Cas. 931=27 Cr. L. J. 851=A. I. R. 1926 Lah. 547.

Separate sentences cannot be awarded for adducting a woman with intent to rape and for actually committing rape on her. 92 Ind. Cas. 850=27 Cr. L. J. 338=A. I. R. 1926 Lah. 212. An accused cannot be convicted under ss. 366, 376 and 377 only on the strength of the uncorroborated statement of the girl abducted. 9 Lah. L. J. 111=28 P. L. R. 235. Separate sentences under ss. 366 and 376 can be passed as they do not form part of the same transaction. 99 Ind. Cas. 344=28 Cr. L, J. 136=107 Ind. Cas. 388=29 Cr. L. J. 248 ; A. I. R. 1927 Lah. 88 ; 109 Ind. Cas. 213=29 Cr. L. J. 485. Kidnapping is an entirely different offence from abduction and where the Court finds the accused guilty under s. 366 I. P. Code, it is necessary to state the definite offence and where the accused is charged of both, separate charges should be framed. 45 C. L. J. 561=31 C. W. N. 940=104 Ind. Cas. 245=28 Cr. L. J. 805=A. I. R. 1927, Cal. 644 ; see also 31 C. W. N. 171=28 Cr. L. J. 201. If the effect of the inducement which is the cause of abduction continues till the time of the illicit intercourse, the girl is seduced to illicit intercourse. 101 Ind. Cas. 189=28 Cr. L. J. 413=A. I. R. 1927 Lah. 320. The fact that *Rakshasa* form is in vogue among the *gondas* and the subsequent consent by the girl for the marriage cannot prevent the previous act of taking away the girl by force, having sexual intercourse with her, and renewal of her bracelets for preventing the girl, going away from constituting the offences of wrongful confinement and robbery when they are committed and it does not even reduce their culpability, but under these circumstances there is no necessity for a heavy sentence. 103 Ind. Cas. 195=28 Cr. L. J. 659=A. I. R. 1929 Nag. 279. Seduction is not to be confined to the first connection with an unmarried girl. 98 Ind. Cas. 188=27 Cr. L. J. 1292=A. I. R. 1927 Sind. 97. In a case under s. 366, it is the duty of the prosecution to prove that the abduction took place with the intention mentioned in the section, but then the intention can also be inferred from the conduct of the accused and the circumstances of the case. Ordinarily it is not possible for the prosecution to establish the intention except by proving the conduct. A girl of about 14 years was forcibly abducted by the accused. *Held*, that no inference except of the intention such as is mentioned in s. 366 is possible. 31 P. L. R. 388=123 Ind. Cas. 528=31 Cr. L. J. 529=A. I. R. 1930 Lah. 52. The word "forced" in s. 366 can also be taken to be used in the ordinary dictionary sense as including forced by stress of circumstances. Also, though the word "seduction" is sometimes used to mean to induce a girl to part with her virtue for the first time the word as used in s. 366 should not be taken to have that narrow meaning but that even though a girl may have by the first act of seduction surrendered her chastity, subsequent seduction for further acts of illicit intercourse can also be taken to be included. 50 C. L. J. 593=1930 Cr. C. 209=A. I. R. 1930 Cal. 209. This section is an aggravated form of s. 363. The consent of the girl does not exonerate the seducer. 120 Ind. Cas. 433=31 Cr. L. J. 85=1930 Cr. C. 35=A. I. R. 1930 All. 19. It is practically impossible for the prosecution in cases of kidnapping

and abduction to establish affirmatively the then intention with which a woman is abducted. But it is a fair and justifiable presumption that when any woman is kidnapped or abducted it is undoubtedly with one or other of the intents specified in s. 366. 120 Ind. Cas. 606=131=1930 Cr. C. 171=A. I. R. 1930 Lah. 163. Seduction is a comprehensive expression and it does not exclude the possibility of deceitful means being used in order that seduction may be practised with effect. A. I. R. 1930 Cal. 432=1930 Cr. C. 741. Where the accused found the minor girl at a place away from the lawful guardianship of her mother and took her to another place in order to sell her and pocket the proceeds. *Held*, that the accused was liable to be convicted under s, 366 Indian Penal Code. 1930 Cr. C. 582=A. I. R. 1930 Oudh. 289=7 O. W. N. 499. Abduction is a continuing offence. A girl is abducted not only when she is first taken from any place but also when she is removed from one place to another. A. I. R. 1931 Lah. 55.

Procedure.—Cognizable—Warrant—Not-bailable—Non-compoundable—Triable by Court of Session.

Procuration of minor girl.

366A. Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Notes.—The intention or knowledge that the minor girl abducted was to be forced to illicit intercourse is the gist of the offence under s. 366 A. 28 P. L. R. 260=102 Ind Cas. 552=28 Cr. L. J. 584=8 A. I. Cr. 239. On each occasion when a woman is persuaded to indulge in illicit intercourse she is being tempted into sin and so "seduced" consequently, though a woman has lost her chastity and become a prostitute, she can be "seduced" again for the purpose of section 366A. of the Penal Code. 99 Ind. Cas. 98=28 Cr. L. J. 66=A. I. R. 1927 Sind. 109; see also 27 A. L. J. 800=118 Ind. Cas. 384=30 Cr. L. J. 904=A. I. R. 1929 All. 535. It is not the law that if the minor is a consenting party no offence is committed under s. 366A of the Penal Code. 119 Ind. Cas. 14=30 Cr. L. J. 985=A. I. R. 1929 All. 700. The word "induced" is used in its ordinary meaning of any words of inducement flowing from one person to the girl. A. I. R. 1930 All. 197=1930 Cr. C. 732. Where a married girl is unhappy with her husband and the father takes her from the husband's house and gives her as a wife to some body else, that can hardly be called trafficking in women but having regard to the provisions of s. 366A. the act of the father would come within those provisions. 1930 Cr. C. 732=A. I. R. 1930 All. 497. Persons selling girl with knowledge and intention that she would be subject to illcit intercourse are guilty. It is not necessary that accused should know that the girl is married. A. I. R. 1930 Lah. 463=1930 Cr. C. 531. Woman with whom illicit intercourse is committed need not be married woman. 138 Ind. Cas 597=33 P. L. R. 727=1932 Cr. C. 719=33 Cr. L. J. 673=A. I. R. 1932 Lah. 555 Person committing illicit intercourse with girl will not be permitted to plead that the *bona fide* believed her to be over prescribed age, if in fact she is below the age. 138 Ind. Cas. 597=33 P. L. R. 727=1932 Cr. C. 719=33 Cr. L. J. 673=A. I. R. 1932 Lah. 555. Where accused induces girl between 16 and 18 years without force or fraud to go from any place with intent to have illicit intercourse with himself is not guilty of any offence. A. I. R. 1933 Cal. 362=34 Cr. L. J. 341=37 C. W. N. 317..

Legislative Changes.—This section was added by Act 20 of 1923 in order to give effect to the international convention for the suppression of the traffic in women and children signed at Geneva on behalf of the Governor-General in Council on the 28th day of May 1922.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Sessions.

Importation of girl from foreign country.

366B. Whoever imports into British India from any country outside India any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person,

and whoever with such intent or knowledge imports into British India from any State in India any such girl who has with the like intent or knowledge been imported into India, whether by himself or by another person,

shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Legislative Changes.—Vide notes under s. 336 A.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Sessions.

Kidnapping or abducting in order to subject person to grievous hurt, slavery, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement a kidnapped or abducted person.

368. Whoever knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Scope.—This section refers to some other party who assists in concealing any person who had been kidnapped and does not refer to the kidnappers. 6 W. R. Cr. 17. Knowledge of kidnapping or abduction is essential. Knowledge means facts observed by himself or communicated by some body whose veracity is not doubted. A. I. R. 1932 Oudh. 28=1932 Cr. C. 60=8 O. W. N. 1325=136 Ind. Cas. 243. The withdrawal of a person from the actual observation of others by removal or otherwise is necessary to constitute the offence of wrongfully concealing a person kidnapped or abducted, the mere giving of false information about such person not being sufficient. 10 P. R 1874 Cr. See also 6 Bom. L. R. 785 ; 7 W. R. 56 ; 5 N. W. P. 133 ; 5 N. W. P. 189 ; 15 C. P. L. R. 185. To constitute the offence, the concealment or confinement must be by person who knows of the kidnapping or abduction, and must also be wrongful. A concealment of one who has escaped from slavery or who endeavours to avoid his kidnappers who are in pursuit of him is no offence. This mode of abetment by aid is punishable as the substantive offence which is abetted. *Morgan and Macpherson.* The mere circumstance of a kidnapped girl staying in the accused's house for a day or two does not warrant the conclusion that she was wrongfully concealed with the object of baffling any search that might be made for her. 5 N. W. P. 189 ; see also 5 N. W. P. 133 ; 15 C. P. L. R. 185 ; 7 W. R. Cr. 56. In a charge to a jury for an offence under s. 368, I. P. Code, a distinction should be drawn between evidence of knowledge and suspicion. 87 Ind. Cas. 845=26 Cr. L. J. 1021 ; A. I. R. 1926 Cal. 226. For a conviction under this section it must be proved that the accused concealed the girl or kept her in wrongful confinement. 27 Cr. L. J. 554=93 Ind. Cas. 1050.

This section refers to some other party who assists in concealing any person who had been kidnapped and does not refer to the kidnapper. 97 Ind. Cas. 960=27 Cr. L. J. 1200. Where a person was abducted at B but concealed at S, person concealing can be tried not only at S but also at B. A. I. R. 1933 Oudh. 45=1933 Cr. C. 85=34 Cr. C. 220=9 O. W. N. 1181=141 Ind. Cas. 741.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session. Presidency Magisrrate or Magistrate of the 1st. class. (Vide 152 Ind. Cas. 550 ; A. I. R. 1935 All. 637).

Kidnapping or abducting child under ten years with intent to steal from its person.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—Where kidnapping was with intent to steal, a conviction under this section is proper. 13 Cr. L. J. 249=14 Ind. Cas. 601 ; see also 16 Cr. L. J. 167=27 Ind. Cas. 551.

Separate Sentences.—The offence described in s. 363 includes that which is described in this section and as such should not be punished separately. 8 W. R. 35 Cr. ; see also 8 W. R. 84.

Procedure—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.—By this section the sale or disposal of any person "as a slave", that is, on the pretext of his being in a condition of slavery, is made an offence. The clause extends not only to those immediately concerned in the contract of sale or disposal, but extends to those who aid them by knowingly conveying or removing the person who is the subject of the bargain, or knowingly receiving or detaining such person as a slave. This section in general prohibits the traffic in all human beings, whether children of tender years or adults.—*Morgan and Macpherson.*

Slavery.—Where a person transferred to another his rights over a girl of 13 years for 25 years, whom he described as her *villati*, *held*, that both were guilty under this section. 7 M. 227=1 Weir 354 ; see also U. B. R. (1897-1901). Vol. I, 337. But where a girl is bought or sold for purposes of marriage, no offence is committed under this section. 20 P. R. 1884 ; 19 P. R. 1867. If knowing that a girl had been kidnapped, the accused wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences under ss. 368 and 370. 3 N. W. P. 146. This section is only directed against attempts to place persons in the position of slaves, or to treat them in a way that is inconsistent with the idea of the person so treated being free as to his property, service or conduct in any respect. 2 A. 723. Keeping a woman against her will as a slave is an offence under this section. 16 W. R. Cr. 73 ; The purchase of a girl in a foreign territory, knowing her to be a slave, is not in itself an offence punishable under the Penal Code, and to make the importing of her into British territory an offence, it is necessary that it should appear that the accused imported her as a slave. 26 P. R. 1882 Cr. Slavery in s. 370 I. P. Code, includes something very far short of slavery in its most extreme forms wherein the master has absolute and unlimited power over the life, fortune and liberty of the laws. 33 M. L. J. 430=22 M. L. T. 262=(1917) M. W. N. 894=6 L. W. 600. The performance of a *Gejjee* ceremony on a minor girl does not amount to her disposal within the meaning of s. 372 of the Penal Code, 1860. 22 Bom. L. R. 894=58 Ind. Cas. 145=21 Cr. L. J. 721.

Procedure.—Not-Cognizable—Warrant—Baliable—Not-Compoundable—Triable by Court of Session.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Scope.—This section is for punishment of the slave-trader, who is habitually engaged in the traffic of buying and selling human beings. This section extends to masters of vessels and other persons who habitually aid the traffic by importing, exporting, or removing the subjects of it.—*Morgan and Macpherson.*

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundadle—Triable by Court of Session.

Selling minor for purposes of prostitution, &c.

372. Whoever sells, lets to hire, or otherwise disposes of any "person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be,* employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—When a female under the age of eighteen years is sold, or let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities as constituting between them a *quasi*-marital relation.

Ingredients of offence.—The ingredients of an offence under this section are (1) that the minor sold or otherwise disposed of must be under the age of sixteen, (2) there must be a sale or other disposal, (3) it must be with the guilty intent described in the section. A. W. N. 1900, 133; 6 B. L. R. App. 34=14 W. R. Cr. 39; 35 M. L. J. 157=24 M. L. T. 77=19 Cr. L. J. 965=47 Ind. Cas. 865; A. I. R. 1934 All. 324=35 Cr. L. J. 571=1934 Cr. C. 408. In order to constitute an offence under this section there need not be a disposal tantamount to a transfer of possession or control over minor's person. 1 M. 164. The word "dispose of" has many meanings. It denotes *inter alia* "to bestow for an object or purpose, to make a change in the circumstances" it does not necessarily imply that there has been a transfer of possession nor do the terms "sell or hire" necessarily connote a present or immediate transfer of possession. Where a transfer of possession is contemplated, the offence is complete on proof of the sale or hiring without any proof of transfer of possession. 9 Weir 359 (F. B.). Where a minor daughter is dedicated in the service of a temple she becomes incapable of contracting a marriage. The change in the circumstances of the minor is a "disposal" within the terms of this section. *Ibid*; 15 M. 75=1 Weir 372; 1 M. 154; 16 B. 737; 6 B. H. C. R. Cr. 69; 15 M. 41; 15 M. 323; 1 Weir 364. Performance of a *Gejjee* ceremoney on a minor girl does not amount to her disposal within section 372. 21 Cr. L. J. 721=22 Bom. L. R. 894=58 Ind. Cas. 145. But where minor girls were being taught singing and dancing and were made to accompany their grandmother a *dasi* to the temple to take part in the ceremonies of the temple with a view to qualify them as *dasis*, *held*, that the facts proved did not amount to a disposal under this section. 1 Weir 364. But the dedication of minor girls to the service of a temple and their registration as dancing girls amounts to such a disposing and obtaining as this section contemplates. 1 Weir 356; 24 M. L. J. 211; 12 M. 373. Where there was no proof that the accused knew that the girl was a married woman or was likely to be employed for a purpose which was both unlawful and immoral, *held*, that he could not be convicted under s. 372, Penal Code. 13 P. R. 1904 Cr.=1 Cr. L. J. 949=114 P. L. R. 1904. Where the accused by falsely representing that a girl belonging to a low caste belonged to a higher caste, induced a member of a higer caste to take her in marriage and to pay money for her to the accused, in the full belief that the representations were true, *held* that the accused had not committed offences under ss. 372 and 373. 2 A. 694 (F. B.). The offence made punishable by s. 372 is complete when the person intending that a minor should be employed or used for the purpose of prostitution or for any unlawful or immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, intentionally, places the minor in a position calculated to bring about the result intended or known to be

* Substituted by Act XVIII of 1924.

likely. 7 Bom. L. R. 562=2 Cr. L. J. 500. Where the accused brought a young prostitute to a brothel at the request of the complainant for his supposed use for a single occasion, and where it was not contemplated that the girl should be sold or let out for a period of employment, or for the purpose of being employed by the complainant as a prostitute, or for the purpose of being disposed of by that person for that course of life. *Held* that the commission of an immoral act of sexual intercourse at an interview so brought about was not in the contemplation of s. 372, Penal Code. 21 C. 97. The performance of the ceremony of tying *Talimani* to a minor girl, worshipping a basin of water and distributing food does not come within the provisions of s. 372 of the Indian Penal Code. 27 Bom. L. R. 1022=89 Ind. Cas. 1050=26 Cr. L. J. 1482=A. I. R. 1925 Bom. 478. A mere direction or recommendation to a girl to live in a brothel, would not constitute a disposal within the meaning of section 372. The word "disposal" connotes some control by the person disposing, over the minor disposed of. Nor can it be a case of "selling or letting to hire of a minor" as there is no evidence of any passing of pecuniary consideration. 21 L. W. 472=86 Ind. Cas. 804=26 Cr. L. J. 868=48 M. L. J. 594=A. I. R. 1925 Mad. 716. It is not requisite for the purpose of s. 373 that the possession of the minor should be obtained from a third person. It is enough if it is established that the accused in fact obtained possession of the minor with the intent that the minor shall be used for purpose of prostitution. 11 Pat. L. T. 341=A. I. R. 1930 Pat. 219.

Prostitution.—In the absence of any special custom it is unlawful for a guardian to enter into a transaction by which a minor may be transferred to another as his concubine. 1 Weir. 373. This section declares as a matter of general law, that no person under the age of majority, shall be devoted to a life of prostitution, nor employed in, nor used for, any unlawful or immoral purpose, nor placed in a position in which it is likely that such person will be employed in, or used for any such purpose. This rule, which is obviously suggested by the highest considerations of justice and morality, must control the exercise of all private law, even in those cases in which the private law assumes to vindicate itself on the serious plea of religion. 1 Weir. 359. The word "unlawful" in this section must be *ejusdem generis* with immoral. Rat. Un. Cr. C. 340. The offence of selling or buying a minor for the purpose of prostitution is committed even when the minor, prior to such transaction, has been leading an immoral life. 8 Bom. L. R. 236=3 Cr. L. J. 334. It may be regarded as settled law that the dedication of a minor girl to a temple in order that she might serve the temple as a dancing girl amounts to the disposal of the minor for the purpose of prostitution, especially where there is evidence of the kind of life that girls so dedicated have led. 1911, 2 M. W. N. 479=12 Cr. L. J. 566. Prostitution cannot be treated as a profession by which a girl can earn her livelihood for the purpose of s. 488 Cr. P. Code. 1913 M. W. N. 695=14 M. L. T. 224=25 M. L. J. 349=14 Cr. L. J. 525=20 Ind. Cas. 1005=37 M. 565.

Disposes of.—The word "disposal" shows that the person disposing has some control over the minor. 48 M. L. J. 503=86 Ind. Cas. 804. A change in the circumstance of the minor is a disposal. 1 Weir 359 (F. B.)

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Buying minor for purposes of prostitution. &c.

373. Whoever buys, hires or otherwise obtains possession of any "person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be"* employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—Any prostitute, or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

* Substituted by Act 18 of 1924.

Explanation II.—'Illicit intercourse' has the same meaning as in section 372 *

Scope and object.—The mischief against which this section is directed, is a trafficking in the prostitution or other unlawful and immoral use of minors. It is not intended to make punishable the buying, hiring or otherwise obtaining possession for a single act of sexual intercourse with the person so obtaining possession. 1 Weir, 377=5 M. H. C. 473. Possession in this section indicates possession with a power of disposal. It is something more than such possession as is obtained for the purpose of single act of sexual intercourse. 58 B. 498=151 Ind. Cas. 877=35 Cr. L. J. 1437=36 Bom. L. R. 379=A. I. R. 1934 Bom. 200. Possession need not be obtained from a third party. Possession can be obtained by stealing a minor girl with requisite intention. *Ibid*; see also A. I. R. 1930 Pat. 219=11 P. L. T. 341=125 Ind. Cas. 154. A prostitute received into her house two girls, one of them being of mature age, and promised to give the elder good clothes and ornaments if she lived with her. *Held* that from these facts it might be reasonably inferred that the accused obtained possession of the girls with intent that one or both of them should be employed for the purpose of prostitution, or knowing it to be likely that they would be so employed, and that, therefore an offence under s. 373, had been committed. 1 A. L. J. 559=1 Cr. L. J. 972. To constitute the offence under ss. 372 and 373, it is neceseary that there should be a making over of possession of the minor girl either by sale or hire or by a similar arrangement. 35 M. L. J. 157=24 M. L. T. 77=47 Ind. Cas. 865=19 Cr. L. J. 965; see also 35 C. W. N. 316=33 Cr. L. J. 553=A. I. R. 1932 Cal. 417. It is not requisite for the purpose of s. 373 of the Indian Penal Code 1860, that the possession of the minor should be obtained from a third person. It is enough if it is established that the accused in fact obtained possession of the minor with the intent that the minor shall be used for the purpose of prostitution. 22 Bom. L. R. 1234=45 B. 529=59 Ind. Cas. 141=22 Cr. L. J. 29. It is necessary for the prosecution to prove in a case under s. 373, I. P. Code, that the girl is under the age of 16 years. 26 C. W. N. 972=36 C. L. J. 152=(1922) Cal. 505. Where a minor girl was brought from Kashmir to Bombay by accused No. 2 and put in the brothel of accused No. 1, held (1) that the offences under ss. 373 and 114 I. P. Code were committed in Bombay and not in Kashmir. 101 Ind. Cas. 593=28 Cr. L. J. 465=29 Bom. L. R. 490. Section 373 of the Penal Code must be read in conjunction with the previous section 372 which is its connterpart. And the questions whether a person under eighteen has been brought and sold, hired and let to hire, disposed of and possession obtained are all in each case questions of fact for the jury and not of law to the judge. The law does not specify the nature of the possession nor its duration nor intensity. It merefy specifies the object namely prostitution or illicit intercourse whether in each case the possession is such as to be consistent with the purpose or intention or knowledge of prostitution of illicit interccurse is the only proper test. 52 B. 403=112 Ind. Cas. 209=30 Bom. L. R. 613=29 Cr. L. J. 903=A. I. R. 1928 Bom. 336. If the accused is proved to have obtained possession of a female under the age of 18 years and is proved to be a person who occupies or manages a brothel, then he is presumed to have obtained possession of that girl with the intent that he shall use her for the purpose of prostitution. 30 P. L. R. 414=115 Ind. Cas. 65=30 Cr. L. J. 376; see also 35 C. L. J. 451=24 Cr. L. J. 104=71 Ind. Cas. 232. Proof of intention or knowledge must almost be entirely a matter of inference from circumstances. 24 Cr. L. J. 104=35 C. L. J. 45. Before an offence under this section can be established it must be proved (1) that a minor under sixteen years of age was bought, hired or otherwise obtained possession of by the accused, and (2) that the minor was bought, hired or otherwise obtained possession of by the accused with the intent that the same minor while under sixteen years of age shall be employed or used for the purpose of prostituion, or with the knowledge that it was likely that the said minor, while still under the age of sixteen, will be employed or used for an unlawful or an immoral purpose. The offence would be, and is complete as soon as the buying, etc., by the accused and the guilty knowledge or intent on his part are proved, though the person bought may not enter upon prostitution until years after she had attained maturity, or may never enter upon such profession at all. 18 A. 24; see also 23 M. 159. It is not essential to the offence, under this section, that the buying, hiring

* Substituted by Act 18 of 1924.

or otherwise obtaining the possession of, should be from a third person. The language of the section is quite applicable to an agreement or understanding come to with the minor, without intervention of a third person, and the vice against which the section is directed is not of less enormity in the latter case. But to bring a case within the section, it is essential to show that the possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having the possession, whether ostensibly, for a purpose or not. 5 M. H. C. 473=1 Weir 377. This section is not applicable where the accused solicits a girl merely to have sexual intercourse with her. 7 N. W. P. 295. The words "otherwise obtains possession of" must be read together with the preceding words, and the accused is not punishable under this section for mere enticement. 11 C. P. L. R. Cr. 6.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session—Presidency Magistrate or Magistrate of the first class.

Unlawful compulsory labour.

374. Whoever unlawfully compels any peron to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Notes.—Compulsory labour is by various laws now in force permitted. Under the General Exceptions of the Code nothing is an offence which is done by a person who is justified by law. Where there is no law to justify it, the compelling of a person by force, or by threats which reasonably cause him to apprehend hurt or injury, to labour against his free will is an offence—*Morgan and Macpherson* ; see also 19 C. 572 ; 5 W. R. Cr. 1. To make person work forcibly is not an offence under this section, where she was made over by her mother to the accused in consideration of certain amount of money. U. B. R. (1897-1901) 1. Vol. 337.

Procedure.—Not-Cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate.

Of Rape.

Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

First.—Against her will

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes, that he is another man to whom she is, or believes herself to be, lawfully married.

Fifthly.—With or without her consent, when she is under "fourteen" years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under "thirteen" years of age, is not rape.

Legislative changes.—Originally the word "ten" was used for the words "fourteen" and "thirteen" in the clause "fifthly." By Act 10 of 1891 the words were substituted by the word "twelve." Now the words "fourteen" and "thirteen" have been substituted by Act 29 of 1925.

Consent.—Sexual intercourse by a man with a woman without her free consent, *i. e.*, a consent obtained without putting her in fear of injury, amounts to rape. 1 W. R. Cr. 21. Where there is consent of the girl no rape has been committed. A. W. N. 1884, 91 ; 12 Cr. L. J. 584=12 Ind. Cas. 848 ; A. I. R. 1927 Lah. 858. The fact that the girl was *virgo intacta* up to the date of occurrence is very strong proof of non-consent. A. I. R. 1925 Lah. 613=26 Cr. L. J. 1488=89 Ind. Cas. 1056. In a

rape case the question of consent does not arrive where the girl is under fourteen years of age. 9 P. L. T. 186=29 Cr. L. J. 12.

Penetration.—To constitute rape penetration is sufficient. 19 P. R. 66 Cr. Valval penetration is sufficient for conviction. 1923 Lah. 536 ; see also 100 Ind. Cas. 116=A. I. R. 1927 Lah. 735 ; 36 P. L. R. 35=A. I. R. 1934 Lah. 797=1934 Cr. C. 1125.

Jurisdiction.—The offence of making a false charge of rape is triable exclusively by the Court of Session. Rat. Un. Cr. C. 953.

Exception.—18 C. 49.

Attempt.—A little boy of 12 years though physically incapable of committing the offence of rape can nevertheless be held guilty of an attempt to commit it. 42 Ind. Cas. 175 ; see also Rat. Un. Cr. C. 865. As regards attempt to rape, vide, 45 P. W. R. 1910 ; 1 Weir. 383 ; 103 Ind. Cas. 199=28 Cr. L. J. 663=1927 Lah. 580=28 Cr. L. J. 575 ; 100 Ind. Cas. 110=28 Cr. L. J. 244=A. I. R. 1927 Lah. 222 ; A. I. R. 1923 Lah. 536=88 Ind. Cas. 705 ; A. I. R. 1933 Lah. 100. Attempt to commit rape must be distinguished from preparation to commit rape and from indecent assault. A. I. R. 1925 Rang. 247=27 Cr. L. J. 916=96 Ind. Cas. 260.

The presumption of English law that a boy under 14 years of age is incapable of committing rape has no application in India. 37 A. 187=13 A. L. J. 254.

Wife.—Vide 18 C. 49.

Effect of amendment.—Notwithstanding any thing contained in this section sexual intercourse by a man with his own wife is not rape although the wife has not attained the age of thirteen years, if he was married to her before the 23rd September, 1925 and she had attained the age of twelve years on that date.—vide, s. 4 of Act 39 of 1925.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, "unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both."

Punishment of rape.

Legislative changes.—The words within quotations have been inserted by Act 29 of 1925.

Conviction.—Conviction for the offence of rape on the uncorroborated testimony of the complainant would be most dangerous. 1924 Lah. 669 ; 23 Cr. L. J. 475.

Sentence.—The sentence depends upon the atrocity of the crime. 52 Ind. Cas. 413 ; 82 Ind. Cas. 142.

Cases.—The statement of a grandmother as to the child's complaint to her, is entirely insufficient to support a conviction, especially, in the absence of any medical evidence, establishing that the injuries to the child could only have been caused by rape or an attempt to commit the same. U. B. R. 1906, Penal Code 31=4 Cr. L. J. 288. Where a charge of rape brought against the accused was found untrue, *held* that, in the absence of a complaint from the hushand the Court cannot, take cognizance of the offence of adultery. 14 Cr. L. J. 284=19 Ind. Cas. 716. Rape is an offence punishable with transportation for life or with imprisonment for a term which may extend to ten years. Rat. Un. Cr. C. 953. A little boy of 12 years though physically incapable of committing the offence of rape can nevertheless be held guilty of an attempt to commit it. 18 Cr. L. J. 1943=42 Ind. Cas. 175. An inference adverse to the accused in a case of rape should not be drawn from the fact that the complainant was very much ashamed and even committed suicide owing to the shame brought on her. The fact of the complainant's suicide should not be taken into consideration in giving sentence in case of rape because that is neither the natural nor probable consequence of the accused's act. 43 Ind. Cas. 443=19 Cr. L. J. 155. In cases of rape, it would be quite unsafe to convict individual merely on the accusation of the woman who had been raped. 67 Ind. Cas. 827=23 Cr. L. J. 475 ; 27 Cr. L. J. 1284=A. I. R. 1927 Rang. 67 ; see also 35 P. L. R. 638 ; A. I. R, 1933 Oudh. 163=34 Cr. L. J. 496=10 O. W. N. 107. In a case of rape a direction that age or consent of girl need not be considered is a misdirection even where there is no plea of consent. 37 C. W. N. 484=1933 Cr. C. 970=A. I. R. 1933 Cal. 606. Jury should

be warned as a matter of practice that complainant's evidence should not be accepted unless corroborated by independent evidence. A. I. R. 1933 Cal. 833. Where rape was committed on point of gun, sentence was enhanced from 3 to 5 years. A. I. R. 1932 Lah. 483=33 Cr. L. J. 564=33 P. L. R. 679 ; see also A. I. R. 1933 Sind. 87=39 Cr. L. J. 618. Police officer should ask the complainant to submit to medical examination. 17 N. L. J. 189. In cases of rape, the punishment depends on the atrocity of the crime, the conduct of the criminal, and the defenceless state of the female. It has nothing to do with her status or nationality. 25 Cr. L. J. 1214=82 Ind. Cas. 142=1925 Nag. 74. If a girl is *virgo intacta* that fact affords proof against there being consent to the act. 89 Ind. Cas. 1065=26 Cr. L. J. 1488=A. I. R. 1925 Lah. 613. Valval penetration is sufficient. 88 Ind. Cas. 705=26 Cr. L. J. 1185 =A. I. R. 1923 Lah. 536. An act which amounts to an attempt to commit rape does not lose that character merely because the offender does not display a determination to effect his object at all costs. A. I. R. 1925 Rang. 247=4 Bur. L. J. 83. Partial penetration not sufficient to cause any injury to the hyman constitutes rape within section 376 I. P. Code. 100 Ind. Cas. 113=28 Cr. L. J. 241. Where it is found that the girl upon whom rape has been committed was unchaste, a severe sentence should not be passed. 100 Ind. Cas. 128=28 Cr. L. J. 256 ; but see 100 Ind. Cas. 116=28. Cr. L. J. 244=A. I. R. 1927 Lah. 222. Where the evidence showed that the woman who was alleged to have been raped did in fact consent to the sexual intercourse, *held*, that a conviction under s. 376 I. P. Code was not sustainable under those circumstances. 9 Lah. L. J. 337. Where there is no mark of resistance on aggressor and no marks of injury on private parts of woman, a conviction on mere statement of woman is not proper. A. I. R. 1935 Lah. 8. In a charge of rape by a woman the mere fact that she did not offer herself for medical examination cannot weigh against her. A. I. R. 1935 Nag. 69.

Where the accused stepped across from his own roof to that of his neighbour at night caught hold of his daughter, got on the charpoy with her, untied the string of her *payjama* and was seen struggling with her when the respondents came up in answer to her daughter's cries, and he then ran away. *Held*, that he had been rightly convicted under ss. 376 and 511. 28 P. L. R. 575= 103 Ind. Cas. 199=28 Cr. L. J. 663=A. I. R. 1927 Lah. 580. When in a prosecution for the offence of rape, it was found that the woman made the first information report only one day after the occurrence even though the police station was near at hand. *Held*, that under those circumstances, a conviction was not sustainable. 9 Lah. L. J. 384. In the case of a girl aged 10 years no question of consent arises as regards the offence of rape. 106 Ind. Cas. 348=29 Cr. L. J. 12=9 Pat. L. T. 186. Where a person is charged with the offence of having committed rape the fact that the injured girl has not been infected with gonorrhoea from which the accused is suffering is by no means conclusive of the innocence of the accused. 106 Ind. Cas. 341=29 Cr. L. J. 12=9 Pat. L. T. 186. Crimes of violence upon women who are not in a position to defend themselves must be put down with a strong hand and it would be a very sad state of affairs, if criminals were to carry an impression that to criminally assault a woman or to rape her was not a very serious matter and that they could always satisfy their unholy passion if only they were prepared to undergo a comparatively short term of imprisonment. 30 P. L. R. 437=116 Ind. Cas. 883=30 Cr. L. J. 699=A. I. R. 1929 Lah. 584. Where in a prosecution for rape it appeared that the complainant was never examined by any medical witness and apart from the statement of the complainant herself there was no evidence that the penetration was actually effected, *held*, that the accused who were proved to have committed criminal assault upon her should be convicted under s. 354 and not under s. 376 I. P. Code. *Held* also, that in such a case the report of the Chemical Examiner regarding the presence of semen on the complainant's clothing was not sufficient to prove that the complainant was actually raped. 11 Lah. L. J. 391=30 P. L. R. 662. The punishment for an offence of rape should be proportioned to the greater or less atrocity of the crime, to the conduct of the Criminal and to the defenceless and unprotested state of the injured females ; and payment of money to the family should not be taken into consideration. 52 Ind. Cas. 423=20 Cr. L. J. 647. Uncorroborate testimoney of woman is not sufficient. Evidence of resistance is a good guide to determine consent of woman. A. I. R. 1924 Lah. 669=25 Cr. L. J. 74=75 Ind. Cas. 986 ; see also A. I. R. 1927 Lah. 836=28 P. L. R. 235=9 L. L. J. 111 ; but see A. I. R. 1923 Lah. 291=24 Cr. L. J. 877=75 Ind. Cas. 77 ; A. I. R. 1924 All. 411=46 A. 265=22 A. L. J. 162. Mere presence of semen on complainant's clothing is not sufficient to prove rape. A. I. R. 1930 Lah. 193=11 L. L. J. 391.

In a prosecution for offences under ss. 366, and 376, I. P. Code the question of the age of the girl abducted is very material. The fact that she was a consenting party to the abduction is entirely immaterial as regards the offence under s. 366. though it may have some bearing as regards the offence under s. 376. 51 C. L. J, 352—A. I. R. 1930 Cal. 437. Where in a charge of rape, girl, her mother and eye witnesses depose in favour of prosecution convictions was held proper even in the absence of injuries on medical examination if blood stains are found in *dhoti* of accused and cloth of girl. A. I. R. 1935 All. 590.

Procedure.—If the sexual intercourse was by a man on his own wife—Not-cognizible—Summons—Bailable—Not-compoundable—Triable by a Court of Session. In any other case—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Of Unnatural Offences.

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Consent.—To establish an offence under this section, the consent of the party upon whom the offence is committed is quite immaterial. *In re Mathuranath Ghose* 1 J. G. 43. A mere filthy and indecent assault, without proof of attempted or intended penetration would not amount to an offence under this section. 1 Weir. 383; A. W. N. 1884, 25. A conviction can be safely based on the uncorroborated testimony of the boy, if it is not otherwise doubtful. 42 P. R. 1914 Cr; but see 73 P. L. R. 1918. It is doubtful whether the act of having connection with a woman in her mouth would amount to an offence under this section. 1 Weir, 382.

A sentence of whipping is far more suitable for a juvenile offender convicted of bestiality than a sentence of imprisonment. 3 P. R. 1884 Cr.

Carnal intercourse.—*Coitus per os* is an offence. 26 Cr. L. J. 945=1925 Sind. 286. Evidence to support charge under section 377 must be convincing. A. I. R. 1926 Lah. 375=8 L. L. 180=27 Cr. L J. 593=27 P. L. R. 353=94 Ind Cas. 257; A. I. R. 1932 Sind. 143=33 Cr. L. J. 900. Stains of semen make important evidence in sodomy. A. I. R. 1930 Lah. 311=10 Lah. 794; 31 Cr. L. J. 343. The offence made punishable under s. 377 requires that penetration however little should be proved strictly. Thus an attempt to cmmit this offence should be an attempt to thrust the male organ into the anus of the passive agent. Some activity on the part of the accused in that particular direction ought to be proved strictly. A mere preparation for the operation should not necessarily be construed as an attempt. A. I. R. 1934 Sind. 206. Where the accused was proved to have had carnal intercourse by placing his penis inside the nostril of a bullock *held* that he was guilty of an offence under s. 377. A. I. R. 1934 Lah. 261.

Cases.—A charge under s. 377, I. P. Code, should allege, the time when, the place where and any known or unknown person whom, the particular act charged as an offence under s. 377 was committed. 6 A. 204.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Scope of the Chapter.—The offences defined in this chapter are made punishable on the ground that they are violations of the right of property. But the right of property is itself the creature of law. It is evident, that if the substantive law touching this right be imperfect or obscure, the penal law, which is auxiliary to that substantive law, and of which the object is to add a sanction to that substantive

law, must partake of the imperfection or obscurity. If it be a matter of doubt what things are the subject of a certain right, in whom the right resides, and to what that right extends, it must also be matter of doubt whether that right has or has not been violated. For example, A, without Z's permission, shoots snipes on Z's ground, and carries them away ; here if the law of civil rights grants the property in such birds to any person who can catch them, A has not, by killing them and carrying them away, invaded Z's right of property. If, on the other hand, the law of civil rights declares such birds the property of the person on whose lands they are, A has invaded Z's rights of property. If it be matter of doubt what the state of the civil law on the subject actually is, it must also be matter of doubt whether, A has wronged Z, or not.....As the substantive civil law varies, the penal law, which is added as a ground to the substantive civil law, must vary also—*Morgan and Macpherson.*

Of Theft.

378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Theft.

Explanation 1.—A thing, so long as it is attached to the earth, not being movable property, is not the subject of theft ; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thig, as well as by actually moving it.

Explanation 4.—A person who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either exprsss or implied.

Illustrations.

(*a*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z. shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and, if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain

the watch as a security, enters the shop openly, takes his watch by force out of Z's hand and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.

(*j*) If A owes money to Z for repairing the watch and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*) Again, if A having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(*m*) A, being on friendly terms with Z. goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asked charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o*) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Essentials of offence.—To constitute the offence of theft the prosecution must establish (a) that there was dishonest intention to take property, (b) that the property, was movable property, (c) that it was taken out of the possession of another, (d) that it was taken without the consent of that other, and (e) that there was removal of the property in order to accomplish the taking of it. 54 Ind. Cas. 992.

Intending dishonestly.—The intention is the gist of the offence. There must be an intention to take dishonestly. 3 W. R. Cr. 2 ; 63 P. L. R. 1903 ; 2 Bom. L. R. 752 ; 5 M. H. C. App. 37 ; 1 Weir. 411 ; 2 Pat. L. T. 583 ; 39 Ind. Cas. 1000 ; 38 Ind. Cas. 318 ; 29 C. W. N. 1011=26 Cr. L. J. 1505 ; 52 C. 1015 ; 28 Cr. L. J. 531. 26 Cr. L. J. 652=85 Ind. Cas. 940; 17 Cr. L. J. 295=14 A. L. J. 399=35 Ind. Cas. 167 ; 142 Ind. Cas. 624=14 P. L. T. 71=1933 Cr. C. 510=34 Cr. L. J. 407= A. I. R, 1933 Pat. 179 ; A. I. R. 1935 Sind. 115 ; 35 Cr. L. J. 761=58 C. L. J. 434. A charge of theft will lie even where there is no intention to assume the entire dominion over the property taken or to retain it permanently. Where a person removes another's property under a mistake of fact and in ignorance of the law, believing that he has a right to take such property, he is not guilty of theft, as his intention is innocent and not criminal. 15 B. 344 ; Rat. Un. Cr. 920 ; 1 Weir 411 ; 1 L. B. R. 334 ; 3 C. W. N. 332. But a mere assertion of a claim of right is not itself a sufficient plea. 4 Bom. L. R. 936 ; 7 B. L. R. App. 55=16 W. R. Cr. 18 ; 16 W. R. Cr. 78. 16 W. R. Cr. 75. The assertion must be of a *bonafide* claim of right ; 10 Bom. L. R. 166 ; 14 A. L. J. 399 ; 20 C. W. N. 1270 : 1922 Pat. 10=1922 P. 265 ; 44 M. L. J. 138 ; 4 Pat. L. T. 608 ; 1 P. L. T. 121 ; 28 C. L. J. 120 ; 16 Cr. L. J. 458 ; 16 C. L. J. 715 ; 23 C. W. N. 385 ; 2 Pat. L. T. 394 ; 31 Cr. L. J. 1222 ; 32 Bom. L. R. 1140=A. I. R. 1930 Bom. 488 ; A. I. R. 1928 Rang. 113 ; see also A. I. R. 1935 All. 214. *bona fide* claim of title depends on facts of each case. A. I. R. 1933 Oudh. 50=34 Cr. L. J. 547=9 O. W. N. 1196. Where the owner of a thing removes it from the possession of a person to whom it has been given for repairs he is not guilty under this section. 90 Ind. Cas. 289=29 C. W. N. 1011=26 Cr. L. J. 1505. 25 Cr. L. J. 809=81 Ind. Cas. 345 ; 4 Bom. L. R. 56 ; 28 M. 304 ; 14 C. W. N. 408 ; 7 W. R. Cr. 57 ; 15 W. R. Cr. 57 ; 43 P. W. R. 1913 Cr. 1924 Pat. 125 ; 1924 Rang. 72 ; 96 Ind. Cas. 879 ; 27 Cr. L. J. 343 ; 99 Ind. Cas. 104 ; 103 Ind. Cas. 840. *Bona fide* taking of property is not theft. A. I. R. 1935 Sind. 115. A *bona fide* claim cannot be inferred from the fact that the accused acted openly while cutting the timber not owned by him. 152 Ind. Cas. 477=1933 Cr. C. 1075=A. I. R. 1934 Pat. 491. Removal of property with no right to do so, by way of asserting right to

such property is theft. A. I. R. 1933 Lah. 481=34 Cr. L. J. 843=34 P. L. R. 276=1933 Cr. C. 737. Where in jungle in Dalbhum estate in Patna, raiyat pays *jungle kar* and takes forest produce without permission openly and not stealthily, there is no dishonest intention. A. I. R. 1931 Pat. 99=32 Cr. L. J. 617. Where a person committed theft of some bricks from an under-ground wall part of which was on his own premises, *held*, that there was no dishonest taking of the bricks, even if they were not the property of the accused. 21 P. R. 1890 Cr.

Movable property.—Movable property only and no other description of property can be the subject of theft. Movable things which are of small intrinsic value become very valuable when they show a title to property or constitute the evidence of legal right. By what is written upon it the material may become a title deed or mortgage deed, or a bond, bill of exchange, promissory note, etc. *Vide* 72 Ind. Cas. 526=24 Cr. L. J. 417 ; 83 Ind. Cas. 889 ; 89 Ind. Cas. 893. Water running freely from a river through a channel made and maintained by a person cannot be the subject of theft. 35 C. 437=12 C. W. N. 534=7 Cr. L. J. 36. A cancelled currency note can be a subject matter of theft. 83 Ind. Cas. 893. The cattle may be subject of theft. 4 Weir. 405 ; A, W. N. 1888, 97 ; 17 Cr. L. J. 239. "Fish in an enclosed tank belonging to a municipality are restrained of the natural liberty and liable to be taken at any time, according to the pleasure of the owner, and are, therefore, upon principle, and according to the better opinions, subjects of theft." 10 B. 193 ; U B. R. (1892-1896) Vol. I 234 ; 1 Weir. 384 ; 15 Cr. L. J. 77 ; 5 S. L. R. 122. But fish in a navigable river where no *jalkar* right exists are not subject of theft. 19 W. R. Cr. 47 ; 20 W. R. Cr. 15 ; 16 W. R. Cr. 78. 11 P. R. 1878 ; 5 M. 390 ; 1 Weir. 384 ; 15 C. 402 ; 15 C. 390 N. 15 C. 392 ; 24 M. 81. Fish in an enclosed tank can be subject of theft. 36 M. 472 ; 10 B. 193 ; 105 Ind. Cas. 826 ; 53 M. L. J. 759=1927 M. W, N. 788. Where fish are able to go in or out of private fishery, act of fishing, though followed by removal of fish does not amount to theft. 35 C. W. N. 455=A. I. R. 1931 Cal. 358 Valuable securities are movable properties and may be the subject of theft. Rat. Un. Cr. C. 43. Forcibly carrying away crops is an offence under this section. 8 W. R. Cr. 59 ; 43 Ind. Cas. 404 ; 105 Ind. Cas. 813=28 Cr. L. J. 989 ; 19 A. L. J. 961=67 Ind. Cas. 498. A human body, whether living or dead except human bodies or portions of such, or mummies, preserved in museums or scientific institutions, cannot be the subject of theft as defined in the Penal Code. 25 A, 129=A. W. N. 1902, 191. The prevailing view in England and America is that water in a pond or running in a channel is not the subject of larceny. 1912 M. W. N. 119. But water when conveyed in pipes and so reduced into possession can be the subject of theft. 45 A. 680=21 A. L. J. 654 ; see also 75 Ind. Cas. 159. A boat may be subject of theft and it does not cease to be movable property. 16 W. R. Cr. 63 ; 8 W. R. Cr. 32. Removal of clods of earth of petty value from public channel beds is not theft. 18 Cr. L. J. 632=39 Ind. Cas. 1000. Abstruction of currency note which had been held up by currency officer for destruction is theft, though process of destruction was partly done at the time of obstruction. A. I. R. 1925 Sind. 21=17 S. L. R. 260=26 Cr. L. J. 189=83 Ind. Cas. 896.

Possession.—"In theft, as it is here defined, the object of the offender always is, to take property which is in the possession of a person out of that person's possession. The Code does not admit a single exception to this rule. *Morgan and Macpherson.* Where in the presence of owner, a bullock follows a cow and disappears and is not found after search, the owner loses possession of it and there could be no offence of theft in respect of it. 18 Cr. L. J. 300=38 Ind. Cas. 332. There must be an independent finding as to who was in actual possession of the land and crops, in cases of theft of crops. 17 Cr. L. J. 81=31 Ind. Cas. 673. Where the crops were sown by the accused no offence is committed under this section by the removal of the same by the accused. 17 Cr. L. J. 75=32 Ind. Cas. 667 ; 13 A. L. J. 1058. Accused Nos. 2 and 3 having made default in the payment of land revenue, the Mamlatdar proceeded to their house and made a *panchnama* declaring their buffaloes to be under attachment. At the instigation of accused No. 1 the other accused unit and removed the buffaloes. *Held*, that the accused were rightly convicted of the offence of theft for the Mamlatdar was to be deemed to be in possession inasmuch as he had a statutory right to take possession. 43 B. 550=21 Bom. L. R. 251. There was an agreement between the accused and the complainant that the latter should advance money to him on the security of goods deposited by the former. The accused afterwards removed the goods placed as

as security from the godown. *Held*, that the removal was dishonest and amounted to an offence under this section. 1923 Cal. 594. Where the accused takes possession of his own property forcibly he cannot be convicted under this section. 42 M. L. J. 490. Where the crop which was in the physical possession of the accused was removed, *held* that the removal, even if disonest, could not constitute an offence under this section. 5 S. L. R. 130=12 Ind. Cas. 987=12 Cr. L. J. 611. Where a person removes a tree under an honest belief that it belongs to him, but where, in doing so, he betrays want of due care and attention, that is, good faith, in ascertaining the ownership of the same, he can be convicted of the offence of theft. 4 Bom. L. R. 936. Removal of crops sown by another is an offence under this section. 4 C. W. N. 199. If a person picks up some rubies lying beside a channel, into which water pumped from a ruby mine or pit was poured to be carried away, the accused commits the offence of criminal misappropriation and not theft, as it is difficult to see how the rubies could be in any one's possession, since they could be carried away to the river or elsewhere. U. B. R. (1892-1896) Vol. I, 236. In a case where three women wiped out certain pots, after discharging the earth oil they had contained, the only offence committed if at all an offence may be said to be committed, is theft. *Held*, that in such case s. 95 should apply. U. B. R. (1892-1896) Vol, I. P. 235. Removal of crops regarding which an agreement for purchase has been entered into does not constitute an offence under this section. 4 C. W. N. 345. Where judgment-debtors' nephews cut and remove crops attached only by beat of drums with consent of judgment-debtor, no theft is committed. A. I. R. 1831 All. 42=32 Cr. L. J. 437=1931 Cr. C. 208=129 Ind. Cas. 715. In case of rescue of attached property action should not be left to be taken by private complainant. 1933 M. W. N. 110=65 M. L. J. 732=A. I. R. 1933 Mad. 840. The making away with property lawfully possessed is not theft. but may be criminal breach of trust. I. W. R. Cr. 2. In the absence of an express agreement in the patta or elsewhere between the landlord and tenant in regard to trees, they must be taken to be the tenant's property and the tenant can not be convicted of theft of such trees. 1 Weir. 426. Where the prisoner, acting *bona fide*, in the interests of his employers and finding some fishermen on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers, *held*, that the prisoner was not guilty of theft, the taking not being criminal when the possession was charged. 6 W. R. Cr. 79. It is an offence under this section where a creditor takes property of the debtor in order to coerce payment. 32 Bom. L. R. 351=A. I. R. 1930 Bom. 167. Where a person is found in possession of stolen articles soon after the theft, the law presumes that such person must either be the theft, or the receiver of stolen goods. 7 O. W. N. 527=A. I. R. 1930 Oudh. 353. Where an amin in good faith and under the anthority of a warrant attached certain buffaloes belonging to the accused and the latter subsequently effected rescue of the cattle in the possession of amin. *Held*, that the offence under s. 379 I. P. Code had been constituted. 1930 M. W. N. 90. Where crops were sown by the complainant, the accused commits an offence under this section by removing them and the question of title of the complainant is not at all material in the case. 19 A. L. J. 961. Where a property has not been validly attached, the accused commits no offence in removing them. 59 Ind. Cas. 411. Where a creditor forcibly takes his debtor's goods out of his possession against his will in order to compel him to discharge his debt he is guilty of theft. 25 Cr. L J. 650 ; U. B. R. the 1897-1901) 339 ; 22 C. 1017 ; 18 A. 88 ; A. W. N. 1895, 233 ; 13 C. P. L. R. Cr. 185. Where the lands of a minor are in the possession of tenants who have sown crops thereon, if the guardian goes and takes forcible possession of the crops, he commits an offence under this section. 77 Ind. Cas. 237. The accused has committed no offence by removing bricks from a heap that had been lying untouched for 8 years. 3 Bur. L. J. 1957. A joint owner can be legally charged with theft in respect of joint property. A. W. N. 1881, 115 ; 7 M. 557=2 Weir. 456 ; 12 P. R. 1889 ; *contra* 10 A. L. J. 527 ; see also 26 M. 481 ; 19 M. W. N. 106, 483. The offence in such a case consists in conversion of joint possession into separate or exclusive possession. 11 M. 186=1 Weir. 408 ; 12 P. R. 1889 Cr. ; 1 Weir. 408 ; 1914 M. W. N. 483.

A tame peacock may be the subject of theft, although it may not be kept in confinement. A. W. N. 1891, 41 ; see also 27 M. 551, 1914 M. W. N. 368 ; 5 S. L. R. 122. The removal of animals grazing on open land where the owner has driven them amount to theft. 4 Bom. L. R. 626 ; Rat. Un. Cr. C. 43 ; 5 N. L. R. 14 ; U. B. R. (1892-1896) Vol. I. 228. Dishonest removal of salt

naturally formed in a creek, under the supervision of an officer belonging to the Government is theft. 10 B. H. C. R. 74 ; 4 M. 261=228 Weir. 412 ; 10 B. H. C. R. 74 N. But such removal is not theft where it was not proved that the swamp was so guarded by the Government as to enable the accused to known that it was the possession of the Government. 1 Weir. 412. An accused can be convicted for removing his own property where that property is in charge of a third person and for which the person is accountable. Rat. Un. Cr. C. 343. Where the complainant washed a carpet at the village tank and hung it up there to dry, the carpet was in the possession of the complainant. Rat. Un. Cr. C. 293. Even if a transaction be one of pledge between two parties, still, if the pawner takes away the property pledged dishonetly without the knowledge of the pawnee, it is theft. U. B. R. (1892-1896) Vol. I, 232. If the materials of a house are taken away dishonestly, the act is theft, even though the house is left uncared for. U. B. R. 1904. 1st Qr. Penal Code s. 7. No theft can be committed in respect of a property, where the owner has given up possession of it. 4 M. H. C. App. 30. An owner retaking property, which was illegally distrained, cannot be convicted of theft. 1 Weir. 422 ; 1 Weir. 421. Where the accused cut and removed certain crops under attachment in order to save them from being washed away, *held*, that the mere removal, without proof of dishonest intention would not constitute the offence. 1 Weir. 423. If a jointly owned animal is actually in possession of one co-owner, this circumstance alone would not be sufficient to bring the act of the accused within s. 378. The Act must be done dishonestly as defined in the code. 103 Ind. Cas. 847=28 Cr. L. J. 767=A. I. R. 1927 Lah. 650. If a person extracts one of the papers from the file in the possession of another which the person extracting has been allowed to inspect he is guilty of theft. 7 Lah. L. J. 118=86 Ind. Cas. 671=26 Cr. L. J. 847=26 P. L. R. 96. Edible bird's nests are not in the possession of any body until they are collected. 4 L. B. R. 275. Taking away cattle by one co-owner from the possession of the other not dishonestly is not an offence. 103 Ind. Cas. 847=1927 Lah. 650=28 Cr. L. J. 767.

Husband and wife.—There is not the same union of interest between a Muhammadan wife and her husband which exists between an English husband and wife, and she can be convicted of theft or abetment of theft of her husband's property. 6B. H. C. Cr. 6. The intent with which the husband's property is removed is a question of fact, and where a dishonest conversion is intended, it clearly amounts to theft. 17 M. 401. But the removal by a Hindu wife of her *stridhan* property from the possession of her husband does not amount to the offence of theft. 8 B. H. C. Cr. 11 ; Rat. Un. Cr. C. 44.

Master and servant.—Servant taking away master's goods for unpaid wages without his consent commits theft. 28 Cr. L. J. 531=A. I. R. 1927 All. 470=102 Ind. Cas. 339.

Without consent.—An essential ingredient of theft is the taking of the property out of the owner's possession and without the owner's consent. Where a debtor gave certain property to the creditor upon the understanding that a debt was due from him to the accused, but subseqently he found out that the debt was a "time-barred" debt, *held*, that the subsequent knowledge could not change the fact, that at the time when the consent was given, it was a full and unqualified consent, and that the accused should not therefore, have been convicted of theft for retaining possession of the property. 1 A. L. J. 508. Where a servant, with the consent, of his master, renders a person the assistance sought by him, in order to procure his punishment, the removal of the property by such person, with such assistance would not constitute the offence of theft, inasmuch as the owner has knowledge of the removal. 4 C. 366=3 C. L. R. 625.

Removal of property for taking.—Where crop was dishonestly cut and removed by the order of the accused, he himself being present ; *held* that the accused was guilty of an offence under this section. 43 Ind. Cas. 404=19 Cr. L. J. 404. The act of cutting the string by which a *pass* was fastened to a woman's neck and forcing the ends apart constutes a sufficient moving to bring the act within the purview of this section. 29 P. R. 1917 Cr.=37 P. W. R. 1917 Cr. In order to constitute theft, it is sufficient if property is removed against his wish, from the custody of a person, who has an apparent title, even a colour of right to such property. 27 C. 501=4 C. W. N. 480. Where there is no proof of taking the property found in the possession of the accused he must not be convicted of an offence under this section. Rat. Un. Cr. C. 143. Removal of property dishonestly, that is, with the intention of wrongfully

depriving the owner of the possession thereof for however short a period, is theft. Rat. Un Cr. C. 908. Where the intention of the accused is not to convert the property to his own use or to make it his property permanently, no offence under this section has been committed. 11 C. 635. Theft of silver anklet from a child calls for a deterrent sentence because it very often leads to murder. 1930 M. W. N. 173. In theft the original takings is without honesty and without the consent of the owner. In criminal breach of trust the original taking is with honesty and with the consent of the owner. In obtaining property by cheating the taking is dishonest but with the consent of the owner. In criminal misappropriation the taking is honest but without the consent of the owner. 106 Ind. Cas. 678=29 Cr. L. J. 86=A. I. R. 1928 Nag. 113. But in a latter case it was held that to constitute the offence of theft it is not necessary that the taking should be permanent or with intention to appropriate the thing taken, or there should be wrongful gain to some one in addition to the wrongful loss to the owner, but there must be an intention to take the thing dishonestly. 25 C. 416=2 C. W. N. 347 ; 1 Weir. 417 ; 1 Weir. 419 ; L. B. R. (1872-1892), 399 ; 1 P. R. 1887 ; 1 Bom. L. R. 515.

Explanation 1.—If the property be attached to the earth, the mere severing is not theft. To constitute theft of any kind, there must be, as is noticed in the definition and hereafter, a moving of that thing after severance. The severance as such, only puts the thing into that condition in which a theft can be committed of it. In many cases things attached to the earth may be severed from it without being moved and then, if there be no subsequent moving, there is no theft. If indeed the same act which effects the severance, also effects a moving of the things as in the case supposed in the illustration, that moving is sufficient ; but in many cases things attached to the earth may be severed from it without being moved : and then if there be no subsequent moving, there is no theft. *Morgan and Macpherson.* Where by the terms of the *kabuliat* it was provided that if the tenant cut any trees, he would pay to the landlord compensation at a certain rate and it was found that the tenant *mala fide* cut some trees in order to injure the landlord : *Held* that although the tenant was in the possession of the land he committed theft by severing the trees from the ground as they were in the possession of the landlord. 27 C. L. J. 228. Theft of the trees will be committed only when they were cut to remove them from the possession of the owner, and not when the cutting was merely to annoy him. 29 Ind. Cas. 672=16 Cr. L. J. 544. Where the trees are the property of the zamindar the tenant commits an offence under this section by cutting and removing them. 24 A. 53=17 A. L. J. 974 ; A. W. N. 1881, 73 ; see also 5 M. H. C. Aph. 36 ; 20 Bom. L. R. 572 ; 39 C. 758.

Earth, that is soil, and all the component parts of the soil inclusive of stones and minerals, severed from the earth, are movable property capable of being the subject of theft. Whoever, therefore severs such earth from the earth with the dishonest intention specified in this section can be said to commit theft. 13 B. 702.

Explanation.—(2).—The moving of a tree by the same act which effects its severance may constitute a theft. 1 Weir. 383=5 M. H. Cr. App. 36.

Summary procedure.—See 20 C. W. N. 1212.

Theft and similar offences.—Complainant must make out a *prima facie* case of any deterioration in value ; unless such was made out there was no offence under s. 426 but under s. 379. 23 Cr. L. J. 504=2 Pat. L. T. 394=68 Ind. Cas. 40. In theft original taking is without honesty and without consent of owner ; in criminal breach of trust it is with both. In cheating taking is dishonest but with consent of owner, and in criminal misappropriation it is honest but without his consent. A. I. R. 1928 Nag. 113=29 Cr. L. J. 86=106 Ind. Cas. 678 ; see also 18 Cr. L. J. 564=1 Pat. L. W. 416 =39 Ind. Cas. 804. Theft and robbery cannot be committed unless one acts with dishonest intention. A. I. R. 1933 All. 620=1933 Cr. C. 992=1933 A. L. J. 917. In order that theft may amount to robbery, hurt must be caused for commitng theft and must be quite separate and distinct from act of theft. A. I. R. 1933 Lah. 407. Dacoity does not become theft, even where there is no resistance and no violence. 1932 A. L. J. 1078=1933 Cr. C. 209=34 Cr. L. J. 448=55 A. 117=A. I. R. 1933 All. 114. Where property not belonging to the judgment-debtor was attached and handed over to other persons on giving security, the real owner is not guilty of theft if he rescues property from such person. A. I R. 1933 Mad. 840=65 M. L. J. 732=1933 M. Cr. C. 61=1933 M. W. N. 110. S. 39 of the Electicity Act creates an offence, and prosecution for theft of electric energy can be instituted only by one of the persons mentioned in s. 50 of that Act. 35 P. L. R. 758.

379. Whoever commits theft shall be puuished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for theft.

Cases.—Where it appeared that a landlord had jointly cultivated land with a non-occupancy tenant and had cut and removed the crops, *held*, that the landlord must be deemed to be a part owner and in possession and could not be convicted of theft. 10 A. L. J. 527=14 Cr. L. J. 3=18 Ind. Cas. 146. Whether the removal of fish from an irrigation tank amounts to theft depends upon the facts of each case. When the water is so low that the fish could not escape, the removal may be theft. 36 M. 472. The possession of a trustee is a sufficient possession within the definition of theft. L. B. R. (1872-1892), 410. A Criminal Court should not convict of theft any person who asserts a claim of right, unless it is in a position to say that the claim is a mere pretence. 9 C. W. N. 974=2 Cr. L. J. 836. In order to constitute larceny, there must be an intention to take entire dominion over the property, i. e., the taker must intend to appropriate the property to his own use but there may be theft without an intention to deprive the owner of the property permanently. 8 A. L. J. 1237. Where the tenant is accused of theft of paddy, reaped and stored up, his and the landlord's share not having been divided, a conviction for theft is bad. 15 Cr. L. J. 186. A tenant was ejected from his holding under the provisions of the Agra Tenancy Act. Formal possession was delivered to the zaminder but as he failed to tender the price of the standing crops, the tenant cut and removed them. *Held*, that the tenant was not guilty of theft. 14 A. L. J. 270. A son who appropriates to his own use any part of the family property he thinks fit, against the will of his father who is the manager of tho property, commits theft, and a sentence of fine only passed on him was held to be proper. 4 C. P. L. R. 174. In cases of thefts from a railway train, where the Magistrate is once satisfied that the accused has committed the offence, the sentence, should be of a deterrent nature. 14 Bom. L. R. 504. There canot be a *bonafide* assertion of right in answer to a charge of theft when the accused knew that he had no possession of the property and gathered a produce grown by the complainant. 16 Cr. L. J. 458 ; A. I. R. 1929 Pat. 502. Where the petitioner was convicted of abetment of theft of wood from a forest, and the defence of the petitioner was that he had a right to take wood from the forest in quession without a pass, he could not be convicted of theft or abetment thereof when it was not found as a matter of fact that he was not entitled to take wood from the forest. 18 C. W. N. 397. Where process is signed by Amin but does not bear seal of Court, the attachment is illegal. Hence removal of such property is not offence. A. I. R. 1935 All. 214.

An attempt to commit theft under this section is not punishable with whipping. L. B. R. (1872-1892.) 338. It is wholly illegal to punish a man for a grave offence, involving many totally different ingredients to a charge of theft, on a charge under this section. 16 Ind. Cas. 165. No offence under this section has been committed when the pledgee takes possession of the things pledged. I. C. P. L. R. Cr. 100. When the accused was found in possession of two freshly flayed skins of a goat and kid within 24 hours of theft and was charged under s. 379 of the Penal Code. *Held* that it was absolutely necessary for the prosecution to establish that the skins found on the accused were those of the goats recently stolen. 16 Cr. J. 440=29 Ind. Cas. 72. Where the accused took a child of about four years outside the village, stripped him of his ornaments, and then, when the child threatened to tell his mother, beat him, *held* that the offence did not amount to robbery as defined in s. 390 of the Penal Code, though there was nothing to prevent the Magistrate from convicting the accused seperately of theft and the causing of hurt under s. 235 para I. 6 C. P. L. R. 36 Cr. Removal of attached property from the custody of another after his death by the judgment-debtor is an offence under this section. 8 A. L. J. 656=11 Ind. Cas. 142 =12 Cr. L J. 374. Where a crop, raised by the accused, was duly and properly distrained for arrears of rent and was in possession of a person, in whose custody it had been placed to secure the landlord's claim, and the accused removed it, in order to defeat the claim, *held* that the accused was guilty of theft inasmuch as he dishonestly removed property over which a lien was created by operation of law. I Weir. 420. Removal by one single act of several articles constitutes one offence of theft only, though the articles may belong to different persons. Rat. Un. Cr. C. 927=Cr. Rg. 33 of 1897. Every repetition of theft is a grave offence when it indicates a habit-not cured by previous light punishment. Rat. Un. Cr. C. 296. A person who steals a fowl and then kills it cannot be punished separately for the offence of theft and mischief. 5 Bom. L. R. 460. Where a person steals a bullock and then kills it, he

can only be convicted of theft under s. 379 of the Indian Penal Code, and not of mischief also under s. 428 of the Code. Rat. Un. Cr. C. 129. Where one prisoner stole and the other received certain property, *held* that they committed different offences in the same transaction. 5 C. L. R 574. Person asserting right to property can be guilty of theft. 142 Ind. Cas. 584=1933 Cr. C. 218=34 Cr. L. J. 366=A. I. R. 1933 Sind. 90. Removing cattle from pound without paying fee amounts to theft. 129 Ind. Cas. 451=1931 Cr. C. 32=1930 M. W. N. 529=33 M. L. W. 205 =32 Cr. L. J. 354=A. I. R. 1931 Mad. 18.

In order to sustain a conviction of theft or dishonest receipt of stolen property, it is not sufficient that the property found in the prisoner's possession was like that stolen. There must be a finding to the effect that the property was stolen. Rat. Un. Cr. C. 227.

Persons, who cleared a piece of Government land, cutting down and appropriating the trees thereon without permission, were convicted of theft unders s. 379, I. P. Code, and of mischief under s. 425. *Held*, that the conviction was not illegal as the mischief preceded the theft, which under s. 379, Expl I, could not have been committed until the tree had been detached from the ground. 2 B. H. C. 392. The stealing of two bullocks belonging to two different persons at the same time, from the same custody, is only a single offence and should be punished only once. A. W. N. 1881. 154. Where the accused were entrusted with certain lands with the standing crops to be taken care of and they subsequently cut and disposed of the crops, they could be convicted under s. 379 I. P. Code of theft, if not under s. 405. 36 C. 758=10 Cr. L. J. 253=3 Ind. Cas. 189. The accused an employee under a steamer Company, whose business it was to check the tickets of passengers, asked to see the complainant's ticket, but, the complainant not having got one, the accused took possession of his umbrella as security that he might be compelled to pay his fare. *Held* that there being no suggestion that the accused intended either to get any wrongful gain to himself by compelling payment of the fare, or to cause any wrongful loss to the complainant who was bound to pay his fare a conviction for theft was wrong, 14 C. W. N. 936=7 Ind. Cas. 257=11 Cr. L. J. 444. Where question of title or right to possession of property stolen is not determined, a conviction under this section is bad. 8 M. L. T. 119=7 Ind. Cas. 416=11 Cr. L. J. 484. The fact that a person has cultivated a certain land, contrary to a departmental rule of the Board of Revenue, could not justify a taking of the crops out of his possession by a party who had no right to it. 1 Weir. 426. Where a matter, not identifiable, such as rice, is found in the possession of a man, who is not able to explain the possession, or gives an account of it, which he does not prove, he cannot be convicted of theft unless the whole evidence is such as to exclude a reasonable hypothesis of his innocence of the offence. 1 Weir. 427=7 M. H. C, App. 19. Salt is an article, the identification of which in bulk is difficult, if not impossible. Where a quantity of wet salt from a cart in the vicinity of the house of the accused was lost, and the accused was found the next morning in the act of drying certain wet salt, *held*, that the accused could not be convicted of theft without sufficient evidence to identify the salt. 1 Weir. 429.

Theft of cloth, spread out on the top of a house by scaling the wall, is neither house breaking nor theft in house, but is simple theft. 1 Weir. 435. If a person trespasses on land in the possession of another and sows paddy on it, that does not entitle him to ownership to the paddy grown thereon and, consequently, if a person in possession of the land reaps and removes paddy resulting from such trespasser's sowing, he does not thereby commit theft. 3 L. B. R. 199=4 Cr. L. J. 464. A person who steals a bullock and has been sentenced for theft cannot again be convicted of mischief for slaughtering it, since the common ingredient of both offences, viz., "wrongful loss" has already taken place in the theft. U. B. R. (1892-1896) Vol. 1, 241. Boat-thefts and cattle-thefts call ordinarily for a severe sentence, e. g., of two years' rigorous imprisonment, and a summary trial is not suitable for them. L. B. R. 1893-1900, 198. A removal of property in the assertion of a *bona fide* claim of right though unfounded in law is not theft. 7 Mys. L. J. 65 ; 44 C. 66 ; A. I. R. 1924 Pat. 125 ; 10 Pat. L. T. 57=115 Ind. Cas. 684=30 Cr. L. J. 511 ; 103 Ind. Cas. 840=28 Cr. L. J. 760=A. I. R. 1927 Pat. 385 ; 52 C. 1015 ; 22 L. W. 673 ; 91 Ind. Cas. 256 ; 96 Ind. Cas. 879 ; 48 A. 368 ; 1922 P. 12. Removal of a calf to prevent its sacrifice amounts to theft. 10 Pat. L. T. 483=115 Ind. Cas. 895=30 Cr. L. J. 546=A. I. R. 1929 Pat. 429. Where a Magistrate attached the crops in proceedings under s. 145 Cr. Pro. Code, and subsequently one of the parties, removed the crops. *Held*, that the persons were guilty of theft. 22 S. L. R. 151=105 Ind. Cas. 813=28 Cr. L. J. 989=A. I. R. 1928 Sind. 68. A person charged and

convicted under s. 379 I. P. Code cannot be given a sentence of less than seven days' rigorous imprisonment. 9 Pat. L. T. 572=106 Ind. Cas. 451=29 Cr. L. J. 35. Where a person removes property in the assetion of a *bona fide* claim of right there is no proof of the element of dishonesty to constitute the offence of theft. 105 Ind. Cas. 661=28 Cr. L. J. 949=A. I. R. 1927 Nag. 404. When cattle stealing is very rife in a locality, a severe sentence should be passed. 103 Ind. Cas. 137=28 Cr. L. J. 651. Section 379 of the penal Code is of most doubtful application in a case where the question of property is only in course of determination in a civil suit. 99 Ind. Cas. 104=28 Cr. L. J. 72=8 Pat. L. T. 79=A. I. R. 1927 Pat. 130. Where a servant takes away goods in lieu of wages no conviction should be made under this section. A. I. R. 1927 All. 470=28 Cr. L. J. 531=102 Ind. Cas. 339.

A servant who was assisting his master in removing the goods of another is guilty under this section if he has knowledge of the illegal removal. 90 Ind. Cas. 439=26 Cr. L. J. 1559. Temporary removal of correspendence wiih dishonest intention without consent of custodian is an offence under this section. 27 Bom. L. R. 1391. Owner cannot accuse person removing trees from tenant's possession of theft. A. I. R. 1931 Mad. 241. Act of fishing followed by removal does not amount to theft, A. I. R. 1931 Cal. 358. Preservation of jungle is irrelevant to a charge of theft. A. I. R. 1931 p. 99. Removing cattle from pound without paying fee amounts to theft. A. I. R. 1931 Mad. 18. When a person offers to take any gratification on account of helping a person to recover property stolen from him, and on receipt of the gratification points out where the stolen property is concealed, he may be properly convicted of theft in the absence any evidence to show that any one else had committed theft. L. B. R. (1872-1892) 449; see also L. B. R. (1872-1892), 461. Where the thief has restored the property the fact may well be taken into consideration in punishing him. L. B. R. (1893-1900), 226. A person who dishonestly misappropriates certain cattle commits the offence of theft and not criminal misappropriation. 7 C. P. L. R. Cr. 34. The possession of stolen property may be evidence of offences under this section. 6 Bom. L. R. 1093. In order to raise legitimately the presumption of theft from possession of stolen property, the possession must be exclusive and recent. A. I. R. 1929 S. 9. Fish confined to ponds which are caught by baling the water out can be subject of theft. A. I. R. 1928 Mad. 20. Removal of crops knowing them to be attached amounts to theft. A. I. R. 1928 S. 68. A person who steals a buffalo and subsequently kills it cannot be convicted both of theft and mischief. 14 C. P. L. R. Cr. 149. The law does not seem to contemplate that a thief should be more severely punished, because he renders the recovery of the stolen property impossible. L. B. R. (1893—1900), 633. The accused, being an inmate of his uncle's house, broke open a chest and took out money from it. *Held*, that he was not liable to be convicted under s. 457 but under s. 379. 6 N. W. P. 301. Whipping in addition to imprisonment cannot be awarded for theft. A. I. R. 1935 Rang. 64.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by any Magistrate.

Theft in dwelling house, &c.

380. Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or used for the custody of property, shall he punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Essential for the offence.—The essential point in the offence of theft in a buildiug is that the property should be under the protection of the building and the offence may be committed by the owner of the building or other person who has lawful access to the building. Hence, there is nothing in the above section to prevent a person from being convicted under this section for a theft committed by him in his own house. L. B. R. (1872-1892) 367. This is an aggravated form of the offence mentioned in s. 279 and the culpability is not diminished by the presence of the owner. Rat. Un. Cr. C. 56. Where the presumption of theft arising from recent possession of stolen property is correctly raised, the inference should, where the property was stolen from a dwelling house, be an offence under s. 380 and not merely under s. 379 of the Penal Code. A. W. N. 1882, 143. A person who removes cattle from a pound where they are secured without paying legitimate fee has the dishonest intention of saving himself the fee and is liable to be convicted under s. 24 of the Cattle Trespass Act as well as under s. 380 I. P. Code. 1930 M. W. N. 529=1931 Cr. C. 32=129 Ind. Cas. 451=32 L. W. 205=A. I. R. 1931 Mad. 18. Separate conse-

cutive sentences under ss. 380 and 457 I. P. Code cannot be passed. 123 Ind. Cas. 393=31 Cr. L. J. 492=A. I. R. 1930 Pat. 385. A cattle-shed has been held to be "a build ng used for the custody of property." Mad. H. C. R. Nov. 24, 1866. Theft by a boatman on board comes under this section. 8 W. R. Cr. 32. Theft by constables of property from the house they were employed to guard is punishable under this section. 3 W. R. 29. In order to convict a person under this section it need not be shown that the prisoner entered the building unlawfully. All that is necessary to constitute an offence of theft in a building is that the property should be under the protection of the building. 24 W. R. Cr. 49. A theft from a verandah, which is outside the house, is not theft in a building. 1 Weir. 435 But theft of property in a varandah may be theft within a building, when the verandah forms part of a building whieh is itself used as a human dwelling or for the custody of property. 1 P. R. 1881 Cr. But a railway carriage or a brake-van is not a building tent or vessel used as a human dwelling or for the custody of property. 1 Weir. 436 (1); 1 Weir. 436 (3). Where rice was stolen, when it was being carried in a boat, *held* that the accused was gulity under s. 379 and probably also under this section. 1 Weir. 436. Building means some structure intended for affording protection to the person dwelling inside it. 100 Ind. Cas. 120=28 Cr. L. J. 284; 5 M. L. J. 143; see also A. I. R. 1929 Sind. 17=22 S. L. R. 466=29 Cr. L. J. 875. A person cannot be convicted both under this section and section 457 when house-breaking is immediately followed by theft 96 Ind. Cas. 328=5 Pat. 464=27 Cr. L. J. 976=1926 Pat. 367. A first class Subordinate Magistrate has no jurisdiction to try an offence under s. 380. I, P. Code. 1 B. H. C. R. 88. The trustee or manager of a temple is in possession of the temple and its jewels, and if he has made away with the property, his offence is criminal breach of trust by an agent under s. 409 and not theft. 6 M. L. J. 14=26 M. 243 Note. Where the accused was seized while leaving a house, on an outcry being made by female inmates of the house just before sunset, with the jewels of that female, which were ordinarily kept in an earthen pot, *held*, that the accused was not guilty of house-breaking or house-trespass but was guilty of theft in a dwelling house. 10 P. R. 1886, Cr. An accused cannot be separately convicted under ss. 457 and 380 I. P. Code where both the offences formed one connected act of theft. A. W. N. 1883, 228. Recent possession is evidence of theft. 9 Ind. Cas. 288=12 Cr. L. J. 48=9 M. L. T. 291. A person who breaks open an iron safe and removes and appropriates its contents can be safely convicted of offences under ss. 380 and 461 of the Penal Code, though the offences form part of the same transaction. A. W. N. 1896, 194. Theft from the person in a dwelling-house is simple theft under s. 379 I. P. Code. Section 380 is intended to give greater security only to property deposited in a house, and not to property about the person of the party from whom it is stolen. 14 P. R. 1876 Cr. Causing disappearance of a document is an offence under this section. 16 Cr. L. J. 791=31 Ind. Cas. 647.

Theft by clerk or servant, of property in possession of master.

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.—Property is in the possession of the master or employer not only when it is in his actual manual possession but also when it is in the possession of a clerk or servant on his account. And a person employed temporarily, or on a particular occasion in the capacity of a clerk or servant, will it seems, come within the terms of his section, if the master buys goods and sends his servant to receive them and the servant dishonestly carries them away, he may, it seems, be punished under this section. The master has the possession of the goods, when they are received by the servant on account of the master and being thus in his possession, they are within the meaning of this Code, in the master's possession. *Morgan and Macpherson.* The mere fact of secret removal of an article does not prove dishonest intention. 5 Lah. 56=81 Ind. Cas 185; see also 41 C. 433.

Clerk or servant.—An unpaid apprentice is a clerk or servant but an unpaid boatman is not a servant. 157 P. L. R. 1905=50 P. R. 1905 Cr. 8 W, R. Cr. 32. The accused, the owner of a cart was engaged to cart tamarind fruits from a forest to the complainant's house. He took certain fruits from the cart on his way to the complainant's house. *Held*, that he was guilty under this section. 1 Weir 43. Where *barkandazes* were charged with having stolen a sum of money

shut up up in a box and placed in the police treasury buildings, over which they were placed in guard, *held*, that they should have been charged under this section. 2 W. R. 55 ; see also U. B. R. (1897-1901) Vol. 1. 75 ; 9 W. R. Cr. 37. Taking official papers out of custody for showing to a partys' vakil is theft by servant. 27 Bom. L. R. 1931=27 Cr. L. J. 689=A. I. R. 1926 Bom. 122=94 Ind. Cas. 881.

Object.—It should always be borne in mind that, in the absence of extenuating circumstances properly established, larcenies by servants from their masters are aggravated forms of offences by reason of the relation between the parties, and are intended by law to meet with more severe punishment than mere ordinary theft. A. W. N. 1887, 54. In the absence of evidence to the ownership of stolen property, conviction under this section cannot stand. 16 Cr. L. J. 640=30 Ind. Cas. 464.

Abetment.—*Vide* 64 Ind. Cas. 510.

Cases.—Where no objection was taken before the trying Magistrate for the joint trial of a person under s. 411 with a person charged under s. 381, Penal Code, and the evidence was that the former was handling the stolen property only a few hours after the theft, *held*, that the joint trial of him with the person charged with theft had occasioned a failure of justice. 28 C. 10. In the absence of evidence as to ownership of stolen property, a conviction under s. 381, cannot stand. 16 Cr. L. J. 640=30 Ind. Cas. 464.

Procedure.—Cognizable—Warrant—Not-bailable—Not-Compoundable—Triable by Court of Session,, Presidency Magistrates or Magistrate of the 1st or 2nd Class.

Trial under s, 381 by 3rd Class Magistrate is illegal. 2 Bur. L. J. 75=A. I. R. 1925 Rang. 12.

Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a*) A commits theft of property in Z's possession, and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(*b*) A picks Z's pocket having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Scope—Even though there is every reason to surmise that the accused were in a certain place for the purpose of committing theft this section requires that actual theft shall be committed. 1923 Lah. 512 ; 27 Ind. Cas. 434 ; 25 Cr. L. J. 386. A mere attempt to commit theft after such preparation for causing death or hurt etc. is not punishable under this section.—*Morgan and Macpherson.* 343. A sentence of whipping can be passed. Rat. Un. Cr. C. 527.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Extortion.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion".

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's fields unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

Theft or Extortion.—Extortion, like theft, belongs to that class of offences, into the definition of which the intention of causing wrongful gain enters. The dishonest intention to obtain property is common to both these offences ; but in theft, the object of the offender is to take property which is in the possession of a person out of that person's possession, and it is a part of the definition that the offender's intention should be to take "without that person's consent". The offence of extortion is distinguished from theft by this obvious circumstance that it is committed by the wrongful obtaining of a consent and not without consent. It is distinguishable from robbery by this feature that the property is obtained by means of such fear of injury as does not amount to the fear of instant death or personal hurt which is part of the offence of robbery.—*Morgan and Macpherson*, 343. Where a person through fear, offers no resistance to the carrying off of his property, but does not deliver any property either to the prisoners or to any one else, the offence committed is robbery and not extortion. 5 W. R. Cr. 9.

Extortion, what constitutes.—According to this definition, the offence consists in intentionally intimidating a person by threats or otherwise, and thereby causing a dishonest transfer or delivery of property from such person to any other person. *Morgan Macpherson*, 344. In order to constitute the offence of extortion it is not necessary that the threat should be used, and the property received by the one and the same person. It may be matter of arrangement that the threat should be used by some and property received by others ; and they would be all guilty of extortion. 2 B. H C.R. 395. Delivery by the person put in fear is essential in order to constitute the offence of extortion. 5 W. R. Cr. 19. In order to come within this section, threat must be tortuous, and giving rise to civil action. 5 M. H. C. App. 14 ; 1 Weir. 438 ; 1 Weir 440. In cases of extortion dishonety must be present. 1 Weir. 440 ; 1 Weir. 441.

Put any person in fear of any injury.—The wide interpretation of the word "injury" must be borne in mind ; (See section 44). Whether a person has in fact been put in fear of injury is a matter which a Court must decide. The age, sex and situation of the person threatened may properly be taken into consideration. It seems necessary to constitute the offence that the persons threatened should be actually put in fear ; upon the whole of the facts, however, if there is reason enough to say that similar circumstances would ordinarily excite fear in persons of the same age etc., as the person threatened, the Court will not too easily listen to the suggestions or evidence adduced to show that the passion of fear was not in truth aroused. Nor on the other hand, considering that the proof that he was put in fear will often mainly be the evidence of the person threatened, and that exaggerated if not false versions of the occurrence are not improbable, should the charge of extortion be considered as established without a cautious investigation—*Morgan and Macpherson*, 345. The tenor of a criminal charge is fear of injury within the meaning of this section. Extortion, may be equally committed whether the charge is false or true. 7 W. R. Cr. 28. The making use of oral or supposed influence by member of a certain establishment to induce other members of that establishment to give him money against their will, threatening in cass of refusal the loss of their situation, is extortion. 18 W. R. Cr. 17. Where there was no proof that any such fear of injury was caused as contemplated in this section, or that payment of money was induced thereby and it was shown that the accused might have demanded payment under *bonafide* claim of right *held*, that a conviction for extortion was not sustainable. 3 B. H. C. Cr. 45. The system of arrangement by which the villagers procure

exception from certain public duties by the contribution of a settled *quota* in money is purely voluntary, and perfectly legitimate bargain among the villagers, and no offence is committed by the accused accepting the *quota* of money in consideration of their discharging those duties on behalf of the villagers. U. B. R. (1897—1901) Vol. I, 340.

To any other.—The injury which excites fear may be threatened to the person put in fear or to any other person. Elsewhere the expression usually is in similar cases "any person in whom he is interested." The illustration (*d*) puts a threat to Z concerning Z's child. But from the generality of the expression it seems that no tie of relationship is requsite. If in fact the fear of injury is excited, it matters not that another person, be he who may, is the supposed object of such injury. And it is not apparently essential that there should be a well-founded ground for apprehending that injury will be sustained by any person. For if a person is put in fear and if this is done not by accident or without design but intentionally, that part of the definition is fulfilled.—*Morgan and Macpherson*, 345.

Thereby induces the person so put in fear to deliver.—The essential ingredient in extortion is, that the offender dishonestly induces the person put in fear to deliver property. The Court must see sufficient reason to believe that in consequence of the putting in fear and in accordance with the intention of the offender, a dishonest transfer of property has been brought about that the delivery has caused by the threats, of a person who had the intention of causing wrongful loss to the person put in fear, or wrongful gain to himself or to some other person. The delivery of the property may be direct from the person threatened to the offender or to another person by his direction, or it may be by placing the property in some place of deposit, or by otherwise putting it at the immediate disposal of the offender. The subjects of extortion are, it seems, the same as the subject of theft, although the word "movable" is not used in the definition.—*Morgan and Macpherson*, 345.

Valuable Security.—These words have been explained in section 30. It is clear that any document which is denoted by these words may be the subject of the offence of extortion, even if it should be deemed not to be movable property, and therefore not to be included in the definition of theft.—*Morgan and Macpherson*, 346.

Picketing.—Realising fines by picketing is an extortion under this section. 25 Cr. L. J. 60 ; 20 A. L. J. 877 ; 45 A. 137.

If all that a man does is to promise to do a thing which he is under no legal obligation to do and to say that it money is not paid to him he will not do the same, this does not constitute an offence under this section. 46 A. 81=81 Ind. Cas. 609=25 Cr. L. J. 961=21 A. L. J. 850 ; see also 75 Ind. Cas. 542=24 Cr. L. J. 958=4 Lah. 179.

A *nikah* khawn is not bound to read a *nikah* for a person unless he choses to do so and it is certainly no offence for him to demand any fee he takes for doing so. 4 Lah. 179. Promissory note executed by minor by force is valuable security. A. I. R. 1933. Pat. 601=1933 Cr. C. 1363.

Before a person can be said to put any person in fear of any injury of that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. 21 A. L. J. 850.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

Criticism.—Notwithstanding the circumstances that there is something approaching to bodily injury (putting in fear of injury) in extortion, the punishment which may be awarded is not greater than for theft. The theft of a thing, that is, the taking of it dishonestly without consent, will not usually be an offence of such baseness as the extortion of it, that is, the causing its delivery by a person who consents to deliver it because he is put in fear and dares not withhold his consent. Extortion would appear, except from thu wide range given to this offence by the expression "fear of injury" to be more grave offence and to deserve in its graver form a heavier punishment.—*Morgan and Macpherson*, 346.

Fear of injury.—The definition of extortion requires that the person should in fact be put in fear of injury and that the object (delivery of property etc.) should be accomplished. It must therefore be proved that the person was put in fear of

injury, whether an injury of body, mind, reputation or property, to himself or another ;—that the act by which this fear was excited was intentionally done by the accused person ; that the property was delivered to the accused, or according to his direction to any other person or put in any place by his orders ,—and that this was done "dishonestly", as to which a strong inference will arise on proof of former matter that a dishonest intention existed.—*Morgan and Macpherson*, 347. See also 15 A. L. J. 127 : 32 Ind. Cas. 971 ; 28 A. L. J. 877. Threat to omit to do some act which accused is not legally bound to do is no offence. But threat held out by accused that he would not release cattle belonging to complainant unless he was paid some money for their release does amount to extortion. A. I. R. 1924 All. 197=46 A. 81=21 A. L. J. 854=25 Cr. L. J. 961=81 Ind. Cas. 609. Where offences under ss. 161 and 384 Penal Code are committed under colour or in excess of a duty imposed or authority conferred by the act" they are not entitled to protection under s. 80 (3). A. I. R. 1932 Sind. 28=33 Cr. L. J. 298=25 S. L. R. 395. Conviction under C. 314 cannot be maintained when accused had no dishonest intention in removing property. 26 Pl. R. 97=26 Cr. L. J. 794=7 Lah. L. J. 12=86 Ind. Cas. 426.

Extortion and cheating.—Although there is a common feature between the offence of extortion and cheating yet they cannot be regarded as two aspects of one offence. A. I. R. 1928 Bom. 346=30 Bom. L. R. 967=29 Cr. L. J. 1082.

Robbery or extortion.—If it is doubtful whether a particular act of extortion amounts to robbery or not the offender may nevertheless be convicted upon a charge of extortion. For this and other section under the present head are not to be read, as if the words "unless the offence shall amount to robbery", or any like words were added. The definition of the overt offence, extortion includes all cases which are within the definition of the cognate higher offence, extortion amounting to robbery. The offence does not cease to be extortion or to be punishable as such under this division, because it is shown that the extortion is of the kind which may amount to robbery. If the case is doubtful, the proper course is to convict the offender of the crime which, without doubt, he has committed, namely extortion and to punish him for it. In such a case there is no necessity for resorting to the provision in section 72.—*Morgan and Macpherson*, 347.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate of 1st or 2nd Class.

Putting person in fear of injury in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—A distinction between the incohate and the consummated offence, is recognised. The attempt to commit extortion has proceeded so far towards completion that a person has been put in fear of injury, or that there has been an attempt to excite such fear ; but the offence is incomplete because there has been no delivery of property, etc. The Court must be satisfied that the putting to fear is with the intention of extorting a delivery of property.—*Morgan and Macpherson*, 348. For the purpose of this section, it is necessary that the accused should have put some person in fear of injury in order to extort some property from him. "Injury" includes only such harm as may be caused illegally to a person's mind, body, reputation or property. 44 Ind. Cas. 973=19 Cr. L. J. 445. Further it must be one which the accused could himself inflict or cause to be inflicted. 48 M. L. J. 190=28 Cr. L. J. 755 ; 86 Ind Cas. 339. This section does not expressly provide for the punishment of an attempt at extortion. 98 Ind. Cas. 60=27 Cr. L. J. 1213=A. I. R. 1927 Pat. 89. In order to constitute an offence under s. 385 it is not necessary that the threat should be of some conduct which might either constitute an offence in criminal law or which might be made the basis of a civil action for damages. 9 Pat. 725=A. I. R. 1930 Pat, 593.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st or 2nd class.

386. Whoever commit extortion by putting any person in fear of death or of grievous hurt to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Extortion by putting a person in fear of death or grievous hurt.

Scope.—Some of those things which come within the definition of "extortion" are distinguished by a description from the remainder, and a more severe punishment is provided for them. These are extortions by putting in fear of death or of grievous hurt. Such extortion is not robbery, unless the offender is at the time of committing it in the presence of the person put in fear and the fear is of instant death, etc.—*Morgan and Macphersan*, 348.

Procedure.—Not-cognizable——Warrant—Not-bailable—Not compoundable—Triable by Court of Session.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

Scope.—The attempt to commit the agravated extortion made punishable by the preceding section, is here punished. *Morgan and Macpherson.* 348. The feigning of an attempt to commit suicide in order to extort money is an offence under this section. 1 Ind. Jur, N. S. 423. Vide 6 L. B. R. 160=16 Ind. Cas. 167 ; 17 Ind. Cas. 800.

Procedure.—Not-Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and, if the offence be one punishable under aection 377 of this Code, may be punished with transportation for life.

Extortion by threat of accusation of an offence punishable with death or transportation, etc.

Scope.—Here as in s. 386, a heavier punishment is provided for extortion, when it is committed with certain circumstances of aggravation. The expression "in fear of an accusation" probably applies to threats of charging a person falsely before a judicial tribunal or some public authority with the commission of an offence.—*Morgan and Macpherson* 349.

Offence.—The word "offence"denotes a thing punishable under the Code, or under any special or local law as defined in ss. 41 and 42 of the Code, See s. 40 *supra.*

Procedure.—Not-Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

389. Whoever, in order to the committing of extortion, puts, or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Putting person in fear of accusation of offence in order to commit extortion.

Procedure.—Not-Cognizable—Warrant—Bailable—Not-Compoundable—Triable by Court of Session.

Of Robbery and Dacoity.

Robbery.

390. In all robbery there is either theft or extortion.

When theft is robbery.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b*) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

Robbery.—The offence of robbery is distinct from theft or extortion, but in every robbery, either the offence of theft or the offence of extortion will be committed. It must not be supposed that what is robbery cannot be, or ceases to be, extortion or theft. The line of separation is drawn not between the offence of robbery and the offence of extortion, but between extortion which is robbery and extortion which is not robbery. There is in like manner a line of separation, not between theft and robbery but between the theft which is robbery and the theft which is not robbery.—*Morgan and Macpherson.* 350. The Indian Law Commissioners observe that "in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or an extortion. A large proportion of robberies will be half theft and half extortion. A seizes Z, threatens to murder him, unless he delivers all his property and begings to pull off Z's ornaments, Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments and delivers them to A. Here such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right arm bracelet may have been obtained by theft, and left arm bracelet by extortion; that the Rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed something like this actually takes place, and it is probable that a few minutes later neither

the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime, nor is it at all necessary for the ends of justice that this should be ascertained. For though in general the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought therefore to be made known to the Courts, yet the consent which a person gives to the taking of the property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial."

It is not necessary that the extortion should follow immediately upon the restraint in order to constitute robbery, provided that there is fear or restraint at the time. 99 Ind. Cas. 596=25 L. W. 86=28 Cr. L. J. 164=A. I. R. 1927 Mad. 307. The essence of a charge of dacoity or robbery is the *animus ferandi*. 1929 M. W. N. 185. "Restraint" implies abridgment of the liberty of a person against his will. Where he is deprived of his will power by sleep or otherwise he cannot while in that condition be subject to any restraint. 29 P. L. R 90=109 Ind. Cas. 682=29 Cr. L. J. 602=A. I. R. 1928 Lah. 445.

When theft is robbery.—Theft aggravated by actual or attempted violence, as by causing fear of violence, is robbery. Whether this aggravation proceeds the commission of the theft or accompanies it, or follows, it, if the end in view be theft, the offender has committed the kind of theft which is robbery. But the definition requires violence (actual or attempted) or a causing of fear of present instant death or violence.—*Morgan and Macpherson*, 351 ; 1 Weir 442. And the violence or fear whether it is offered or caused to him whose property is stolen or to another, must immediately be connected with the theft. If A is carrying away stolen property from the place of theft and meets upon the road and hurts a police officer or private person who suspects and desires to detain him, this does not make his offence of theft a robbery ; but he commits a distinct offence, *Morgan and Macpherson*, 351. Dishonest intention is the main ingredient in a robbery. 5 M. H. C. App. 39 : see also A. I. R. 1933 All. 620=1933 Cr. C. 992=1933 A. L. J. 917. Grievous hurt when inflicted during theft, makes it robbery. 6 W. R. Cr. 85. Theft becomes robbery, when in the course of committing it, there is an intention and an attempt to cause hurt. 5 W. R. Cr. 45. In order that theft may amount to robbery hurt must be caused for committing theft and must be quite separate and distinct from act of theft. A. I. R. 1933 Lah. 407. Thief attacking pursurers after having stolen property is not guilty of robbery. 19 Cr L. J. 27=42 Ind. Cas. 987. In case of murder during retreat after dacoity, all members of a gang is liable for punishment. 12 Cr' L. J· 687=2 Lah. 275=63 Ind Cas. 623. Theft is robbery under various conditions which do not involve the causing of hurt. The theft may be robbery, because in committing the theft, the offender attempts to cause hurt, or causes wrongful restraint, or fear of death, hurt or wrongful restraint. 1 L. B. R. 232. To constitute the offence of robbery it is necessary that death or hurt or wrongful restraint or fear of such instant evils should be caused by the offenders not only in order to committing of the theft or in carrying away property obtained by the theft but also for that end. "For that end" does not mean "in those circumstances". 38 Ind. Cas. 730 ; see also 12 P. R. 1896 Cr. ; 1 Weir 446.

When extortion is robbery.—Extortion aggravated by causing fear of instant death, etc. is robbery. The definition requires, and the expression "instant death" etc., implies,, the presence of the person who is put in fear. The explanation and the illustrations (c) and (d) mark the distinction thus made between the extortion which is robbery and the extortion which is not robbery.—*Morgan and Macpherson*, 352. It is necessary to convict accused of robbery, that hurt or wrongful restraint should have been caused for effecting theft. 1930 M. W. N. 1142.

391. When five or more persons conjointly commit, or attempt to commit a robbery, or, where the whole number of persons, conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

Dacoity.

Dacoity.—This word "dacoity" (gang robbery) in used in the Bengal and Madras Regulations, and is retained in the Code for the purpose of denoting not only actual gang robbery, but the attempting to rob when such an attempting is made or aided by a gang.—*Morgan and Macpherson*, 352. In a case of dacoity, the Judge should direct the jury to convict only if they find that all the prisoners had

the intention of causing wrongful loss to the prosecutior or wrongful gain to themselves. W. R. 1864 Cr. The offence of robbery cannot be converted into dacoity, where there is simple allegation but not adequate proof on the part of the prosecution that five or more persons have taken part in committing or attempting to commit the crime. 26 P. W. R. 1915 Cr.=15 Cr. L. J. 634=30 Ind. Cas. 458. Where there were six robbers of whom three were acquitted, and the rest were convicted of dacoity under s. 391, I. P. Code, and where the Sessions Judge nowhere, in his charge to the jury directed their attention to the evidence as to the number of the robbers so as to show that there were five or more offenders and that the offence amounted to dacoity, *held* that the conviction under s. 391 was not sustainable and the same case altered into one for robbery under s. 392. 7 M. L. T. 340=5 Ind. Cas. 797=11 Cr. L. J. 249=1910 M. W. N. 52.

The definition of dacoity in this section is so wide as to extend to what would have been treated as cases of plunder under the old law. 3 W. R. Cr. 60. However erroneous a claim of right may be, if in fact the conduct of the accused was solely induced hy a *bonafide* belief in such claim, a charge of robbery cannot be maintained. 1 Weir. 443=3 M. H. C. 264. Three known persons were charged with dacoity along with two other unknown men. The jury aquitted one of the three and convicted the other two of the offence of dacoity. *Held*, that it was quite open to the jury, while holding that one of the accused who was supposed to have been known to the witnesses had not been properly identified, to find that the total number of dacoits was five. 1927 M. W. N. 853=53 M. L. J. 732. Where three out of six men were acquitted, a conviction under this section is not maintainable. 39 A. 848; 28 Cr. L. J. 547; 11 Cr. L. J 249. In a dacoity, theft must have been perpetrated by actual violence or threatened violence. 10 Bom. L. R. 632; see also 38 Ind. Cas. 730; 18 Cr. L. J. 346; 6 C. W. N. 72; 5 C. W. 762. Where a conviction of dacoity is based on the application of s. 34 or 149 I. P. Code, and there was no charge that the assembly as a whole had for its common object the committing of dacoity, the conviction is bad. 1924 M. W. N. 238=77 Ind. Cas. 444=25 Cr. L. J. 396=46 M. L. J. 311. Accused need not know or have personal grievance against their victims, before committing offence. A. I. R. 1929 Mad. 135. Evidence of identification must be looked at with caution. A. I. R. 1932 Oudh. 317=33 Cr. L. J. 920=7 Luck. 511.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years,

Punishment for robbery.

Punishment.—Under this section a sentence of imprisonment is quite essential and hence a mere sentence of fine is illegal. 44 A. 538=20 A. L. J. 388. In cases of robbery the legislature has provided three different degrees of punishment which may be inflicted under this section. The punishment may be extended to fourteen years' imprisonment under s. 394 to transportation for life and under s. 397 the imprisonment cannot be for less than seven years. This section is a general section and the two other sections specify the same offence under aggravated circumstances. 1 Weir, 448. Where the accused committed house-breaking in the house of the complainant and abstrcted from it a *chamber* and when the complainant attempted to catch him and recover his property, the accused in order to carry away this property caused him hurt. *Held* that the accused committed offence under ss. 457, 392 and 394. 21 L. W. 37=86 Ind. Cas. 715=26 Cr. L. J. 859=A. I. R. 1925. Mad. 466. A person who is setting up *bona fide* assertion of claim of right in defence to a charge of robbery will have to prove that he had no dishonest intention in acting as he did. 83 Ind. Cas. 899. A person who commits robbery being armed with as word for which he had no licence, can be convicted of robbery and of carrying arms without a licence and sentenced separately. A. W. N. 1896, 181. It is not open to a Court to base a conviction under s. 392, on insufficient evidence coupled with the mere fact that accused in his statement admitted to have taken the property from the complainant for some other purpose, which was not believed by the Court. 30 Cr. L. J. 1135=A. I. R. 1929 Sind. 255. Where the accused an ex-convict has been charged with an offence under s. 392, read with s. 75, the sentence of seven years' rigorous imprisonment inflicted upon him is by no means too severe. 35 Cr. L. J. 566=11 O. W. N. 202=A. I. R. 1934 Oudh. 122.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

393. Whoever attempts to commit robbery shall he punished with rigoreus imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Attempt to commit robbery.

Scope.—A present intention to robb combined with an act in execution of such intention which falls short of the offence intended is an attempt to rob. The attempt should be proved by some act which is a commencement of the execution of the purpose, or which in the judgment of the court sufficiently manifests the intention of the accused. If the proof should show not merely an attempt to rob, but that the offence of robbery has been committed, or if it is uncertain whether the offence is robbery or only an attempt to rob, the accused may nevertheless be convicted under this section,—*Morgan and Macpherson,* 354. In a charge and finding under s. 398, the substantive s. 398 should be mentioned as well as the supplementing section 398. Charges under ss. 393, 394 and 397 cannot be joined unless they form part of the same transaction. A. I. R. 1933 Lah. 512=1933 Cr. C. 771=34 P. L. R. 498=34 Cr. L. J. 402.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Majistrate of the first class.

394. If any person, in committing, or in attempting, to commit robbery, voluntarily causes hurt, such person and any other person jointly concerned in committing, or attempting to commit, such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

Scope.—The offence of robbery or of attempting robbery is aggravated by hurt. The guilty act of one is imputed to all who are joined with him, provided the act is done in committing the offence of robbery. Violence or hurt entirely unconnected whit that offence or used to gratify a personal spite or passion is not contemplated ; as if one of the robbers should commit murder or rape, while the others are occupied with plundering or searching for property. To support this charge, there should be proof of the robbery or attempt, and of the hurt ; that the hurt was caused voluntarily, that is, not accidentally but intentionally or knowingly, may fairly by presumed in the absence of any circumstances to show that it was accidental.—*Morgan and Macpherson.*

Jurisdiction.—A Magistrate, having jurisdiction to try a prisoner for an offence under this section has not his jurisdiction taken away by the mere fact that the prisoner might also have been charged under s, 397. 1 Weir 449.

Doubt.—If there is an element of doubt as to the indentification of the accused in a robbery, the accused should be given the benefit of the doubt and the conviction and sentence should be quashed and set aside. U. B. R. (1892—1896) Vol, 1, 245 ; see also A. I. R. 1935 All. 549.

An offence under this section cannot be said to be a minor offence so far as dacoity is concerned. A. I. R. 1928 Mad. 207. A sentence of whipping can be passed where the robber has himself caused hurt. 1928 Rang. 112. Where in a robbery two persons out of four-armed with weapons committed murder, each is guilty of murder. A. I. R. 1926 Lah. 63=26 Cr. L. J. 1406=89 Ind. Cas. 718. Consecutive sentences under ss. 394 and 397 are illegal. A. I. R. 1926 Lah. 47=26 Cr. L. J. 1350 =89 Ind. Cas. 390.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

395. Whoever commits dacoity shall be punished with transportation for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for dacoity.

Proof.—It will be borne in mind that this offence as defined does not always involve robbery. The proof should be of a robbery or attempt to rob by five or more

persons who are either joint actors, or some of whom actually commit the robbery etc., while the others are abettors, being present but not actually participating in the commission of robbery or the attempt to rob—*Morgan and Macpherson* 355. An offence under this section can be committed if the number of persons concerned in the robbery is not less than five. 6 Lah. 24=26 P. L. R. 139=88 Ind. Cas. 513=26 Cr. L. J. 1153.

Recent possession of dacoited property.—The recent possession of property stolen at dacoity even when there is no evidence identifying him as one present at the dacoity will, in the absence of any evidence to the contrary give rise to the presumption that the accused participated in it. 1 O. C. 1. See also A. W. N. 1898, 203 ; Rat. Un. Cr. C. 312.

Punishment.—Under this section, a sentence of transportation for life can be passed, or, by applying s. 59, a sentence of transportation from seven to ten years can also be passed ; but a term of transportation, between ten years and life, does not seem to be legal 4 Cr. L. J. 385. Where dacoity is committed with cruelty additional sentence of whipping is appropriate. A. I. R. 1921 All. 408=22 Cr. L. J. 397=19 A. L. J. 610=61 Ind. Cas. 525 ; see also 21 Cr. L. J. 515=56 Ind. Cas. 771.

Section 398.—Where the accused are charged and convicted of an offence punishable under this section they cannot be punished under s. 398—Rat. Un. Cr. C. 921.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

Cases—Where the sole evidence against a person charged with an offence under section 395, Penal Code, consisted of the fact that the accused had pointed out the place where some remains of the stolen property were found : *Held* that the above circumstantial evidence was not sufficient to show that the accused had committed the offence in as much as it did not exclude other thieves compatible with his innocence. 15 Cr. L. J. 404=23 Ind. Cas. 1004. Where Hindus acting under a religious motive attacked a party of Muhammadans driving cattle in a public road, and take forcible possession of the cattle, they are guilty of dacoity under s. 395. 15 A. 299= A. W. N. 1893, 142. In cases of dacoity the Judge should explain to the jury with sufficient clearness that, unless they are satisfied that there were five or more persons committing the robbery or that the persons present and aiding in the commission of the robbery numbered five or more persons, there could be no dacoity. 1 Weir 446 =2 Weir 519. A body of men who attack and plunder a house by the mere fact of the proprietors family having been able to make their escape a few minutes before the robbers forced an entrance are not taken out of the purview of section 395. 7 W. R. Cr. 35. The presumption where persons are found within six hours of the commission of a dacoity with some of the plundered property in their possession is that they are participators in the dacoity and not merely receivers. 3 W. R. Cr. 10 ; 5 W. R. Cr. 66. Less than five persons cannot be convicted of dacoity unless it is proved that at least five persons took part in it. 15 A. L. J. 205=18 Cr. L. J. 491=39 All. 348=39 Ind. Cas. 331 ; see also A. I. R. 1922 Mad. 195=24 Cr. L. J. 269=71 Ind. Cas. 877 ; A. I. R. 1927 Lah. 519=28 Cr. L. J. 547. Where five are charged with dacoity but one is acquitted, others can be convicted. A. I. R. 1928 Mad. 144=53 M. L. J. 732=29 Cr. L. J. 5=106 Ind. Cas. 341. Association with dacoits is no proof of participation. 19 Cr. L. J. 79=14 N. L. R. 192=43 Ind. Cas. 111. But persons supplying food to dacoits can be guilty of abetment. A. I. R. 1934 Rang. 30=1934 Cr. C. 243=35 Cr. L. J. 863 ; see also A. I. R. 1931 Oudh. 74=31 Cr. L. J. 1017. Conviction cannot be sustained where there is want of requisite criminal intention for charge under s. 395. 146 Ind. Cas. 295. Dacoity does not become theft even where there is no resistance and no violence. 1932 A. L. J. 1071=1933 Cr. C. 209= A. I. R. 1933 All. 114.

Where no stolen property was found in the possession of the accused and it was also admitted on behalf of the prosecution that their names were not entered in the first information report and it further appeared that no identification proceedings in respect of them were conducted in jail by any magistrate and that they were convicted solely on the testimony of two complainants. *Held*, that the conviction under s. 325, I. P. Code should be set aside. 112 Ind. Cas. 109. In cases of offence under s. 395 I. P. Code Judge should explain to jury what is necessary to constitute robbery. A. I. R. 1924 Oudh. 367=11 O. L. J. 356=81 Ind. Cas. 597. Case against and for each accused should be dealt with in detail. 2 Bur. L. J. 199=25 Cr. L. J.

205=76 Ind. Cas. 573. Evidence of identification should be taken cautiously. 18 Cr. L. J. 456=4 O. L. J. 83=39 Ind. Cas. 296 ; see also A. I. R. 1923 Lah. 161 ; 81 Ind. Cas. 949 ; 9 O. & A. L. R. 561.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transporation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

Scope.—In enacting this section it is the intention of the Legislature that the sentence of death should sometimes be inflicted on person convicted of taking part in a dacoity, in the course of which a murder is committed, even though there is nothing to show that he himself committed the murder or that he abetted it within the meaning of s. 107, or that he even knew that it was likely to be committed in prosecution of the common objects of his comrades. 4 C. P. L. R. 1 Cr. Murder committed by dacoits, when they were engaged in carrying off the stolen property, is murder is committed while they were engaged in committing dacoity and is therefore, punishable under this section. 17 M. L. J. 118=5 Cr. L. J. 201 ; see also 2 Lah. 275=63 Ind. Cas. 623 ; 76 Ind. Cas. 1039=25 Cr. L. J. 319. The first essence of an offence under this section is that the dacoity is the joint act of the persons concerned, and the second essence is that the murder is committed in the course of the commission of the dacoity in question. The essence of the offence of robbery referred to in ss. 395 and 396 is that the offender for the purpose of committing theft, or carrying away or attempting to carry away properties obtained by theft, voluntarily causes or attempts to cause to any person death, hurt or wrongful restraint, or fear of instant death, of instant hurt. or of instant wrongful restraint. 5 C. W. N. 72 ; see also L. B. R. (1872-1892) 441 ; L. B. R. (1872-1892), 502 ; 16 A. 437 ; 17 A. 86 ; P. L. R. (1900) 44 Cr. ; L. B. R. (1893-1900), 194 ; 25 Cr. L. J. 700 ; 25 Cr. L. J. 319 (1) 1923 Lah. 329 (1) ; 1 Lah. L. J. 252 ; 1 Weir 447. Separate charges under s. 395 and s. 302 are unnecessary. A. I. R. 1925 Lah. 337=6 Lah. 24=26 Cr. L. J. 1153=26 P. L. R. 139=88 Ind. Cas. 513 ; but see 143 Ind. Cas. 14=36 C. W. N. 880=A. I. R. 1933 Cal. 294 (S. B.). Reason should be given for not imposing death penalty. A. I. R. 1933 Rang. 61=34 Cr. L. J. 699=1933 Cr. C. 456. To make unlawful assembly responsible for murder, it is sufficient to show that member of such assembly knew that murder would be likely to be commited in prosecution of common object 137 Ind. Cas. 196= 1932 Cr. C. 485=33 Cr L. J. 460=34 P. L. R. 449=A. I. R. 1932 Lah. 367 ; see also A. I. R. 1933 Lah. 977 ; 148 Ind. Cas. 1064=35 Cr. L. J. 863=A. I. R. 1934 Rang. 30. Where, after the commission of a dacoity, in which however the dacoits being interrupted by the villagers, did not get any plunder, and were attempting to escape and one or more of them in order to faciltiate the escape attacked and killed one of the pursuing party, it was held that this section did not apply, but only the person or persons, actually taking part in the killing were liable therefor. A. W. N. 1906, 47= 3 Cr. L. J. 294. Where in committing a dacoity the accused stuffed a cloth into the deceased's mouth in order to silence him and not with any idea of killing him, *held*, they must be convicted under ss. 304 and 395 and not under ss. 302 and 395. 30 Ind. Cas. 438. In a trial under this section it is not necessary for the prosecution to prove that the murder was committed jointly by all the accused and therefore the charge sheet need not contain a statement to that effect, 91 Ind. Cas. 233=26 Cr. L. J. 57=A. I. R. 1926 Oudh. 245. In construing this section it is necessary to go back to the definition of dacoity in s. 391. 12 O. L. J. 421=89 Ind. Cas. 452. This section applies where murder is committed while retreating fot facilitating escape. A. I. R. 1926 Lah. 142. Under s. 396 I. P. Code a larger discretion is vested in the Ccurt with regard to the sentence that would be the case if the offence charged were under s. 302. 31 Bom. L. R. 565=A. I. R. 1929 Bom. 327. Where it is fully established that a dacoity was committed by a party of five persons one of whom committed a murder and the identity of four of them is established beyond question, the fifth remaining unidentified the four accused are equally guilty under s. 396, though it is not possible to trace and identify one of the culprits. 120 Ind. Cas. 490=1930 Cr. C. 295=31. Cr. L. J. 112=A I. R. 1930 Lah. 263. This section applies where murder is committed for facilitating escape. A. I. R. 1935 Oudh. 190. Where dacoity is of a ferocious nature and obstructors were killed and women were violated a sentence of 8 years' rigorous imprisonment is inadequate.

Transportation for life must be ordered. A. I. R. 1933 All. 31=1932 A. L. J. 1125=1933 Cr. C. 42=55A. 91=34 Cr. L. J. 489. A sentence of 14 years' transportation in respect of a charge under s. 396 I. P. Code is illegal and ought not to be imposed. 35 Cr. C. J. 1066=150 Ind. Cas. 509=11 O. W. N. 831=A. I. R. 1934 Oudh. 354.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session.

Robbery or dacoity, with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished, shall not be less than seven years.

Scope.—This section applies only to the case of a person, who, in committing robbery and dacoity, actually used any deadly weapon, or causes grievous hurt. It is not applicable to the case of persons, who are associated with him in committing robbery or dacoity, and who do not use any deadly weapon or cause grievous hurt. 1 Weir 450=2 Wier 515. A robber cannot be convicted under this section merely because one of his associates carried a deadly weapon. 20 Ind. Cas. 416 ; 16 C. P. L. R. 97 ; 22 M. L. J. 186 ; 28 A. 404 ; 1 Weir 450 3 L. B. R. 121 ; 28 A. 404. Note. Where no robbery or dacoity has been committed an accused cannot be convicted under this section. 23 A. 78.=A. W. N. 1900, 202 ; 2. W. R. Cr. 49. This section applies to a person who himself uses a deadly weapon or causes grievous hurt and when there is no proof that the accused personally used any deadly weapon or caused any grevious hurt, he cannot be convicted under this section. 28 Cr. L. J. 520=102 Ind. Cas. 216=4 O. W. N. 459 ; see also 26 Cr. L. J. 1144 : 47 A 69. It is only the offender who actually uses the deadly weapon that can be convicted under s. 397. 99 Ind. Cas. 412. This section can only be used in connection with the appropriate robbery or dacoity section. 98 Ind. Cas. 181=27 Cr. L. J. 1285=5 Bur. L. J. 103. The word "uses" should be construed with a wide sense so as to include not merely cutting, stabbing, etc., but also carrying the weapon the purpose of overawing the person robbed. 205 L. R. 46=92 Ind. Cas. 750. Where several persons together commit robbery but only one of them carries and uses a revolver he alone can be convicted under this section. 97 Ind. Cas. 362=27 Cr. L. J. 1098. A conviction on a charge of dacoity merely under this section has no meaning, as the section does not contain any substantive offence but merely prescribes the minimum punishment which can be passed if robbery or dacoity is attended with certain circumstances. 49 A. 59=85 Ind. Cas. 714=26 Cr. L. J. 570. This section applies and not s. 398. Where dacoity has been committed and dacoits used weapons. A. I. R. 1925 Nag. 136. This section creates no substantive offence. 1928 Bom. 521. Section 34 has no application in the construction of s. 398. *Ibid.* In order to render s. 307 I. P. Code, applicable it must be established that the offender did such and such an act constituting the offence. 108 Ind. Cas. 688=29 Cr. L. J. 449.

Uses.—The word "uses" in this section must be construed in a wide sense, so as to include not merely cutting, stabbing, shooting (as the case may be) but also carrying the weapon for the purpose of overawing the person robbed. 6 L. B. R. 41=13 Cr. L. J. 267 ; see also 35 P. L. R. 555=1934 Cr. C. 808=A. I. R. 1934 Lah. 522 ; A. I. R. 1931 All. 367=32 Cr L. J. 567 ; A. I. R. 1933 Lah. 35=34 Cr. L. J. 45 ; A. I. R. 1932 Oudh. 103. A. I. R. 1029 Sind. 150.

Deadly weapon.—A stick is a deadly weapon. 82 Ind. Cas. 45. A *dhang*, is not a deadly weapon. 99 Ind Cas. 49=28 Cr. L. J. 17.

Such offender.—The words "such offender" in this section mean any offender who uses a deadly weapon and no other. 3 L. B. R. 121=3 Cr. L. J. 954 ; 62 Ind. Cas. 865 ; 72 Ind. Cas. 517 ; 51 C, 266 ; 7 Mys. L. J. 169 ; 81 Ind. Cas. 800 ; 52 B. 168.

Joint-liability.—Section 397 does not provide for joint-liability as s. 149 does. A. I. R. 1935 All. 132 ; but see A. I. R. 1933 Lah. 104=68 Ind. Cas. 817.

Sentence.—Under s. 397 a lesser sentence must be enhanced to seven years' rigorous imprisonment. 29 Cr. L. J. 35=9 P. L. T. 572=106 Ind. Cas. 451. The highest punishment under s. 397 can be inflicted only on the offender who actually uses a deadly weapon. 13 Bur. L. T. 158=22 Cr. L. J. 593=10 L. B. R. 269=62 Ind. Cas. 865 ; see also A. I. R. 1933 Nag. 252=1933 Cr. C. 936. Section 34 has no application to provisions of s. 397. 130 Ind. Cas. 267=1931 Cr. C. 145=33 Cr. L. J. 476=A. I. R. 1931 Pat. 49.

Procedure.—Not-cognizable——Warrant—Not-bailable——Not-compoundable—Triable by Court of Session.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

Scope.—To support a conviction under this section, it is necessary to prove that at the robbery the accused was armed with a deadly weapon, and not merely that one of the robbers who was with the accused at the time carried one. Rat Un. Cr. C. 797 ; Rat. Un. Cr. C. 921 ; 11 Ind. Cas. 1004 ; 23 A. 78 ; 6 L. B. R. 41 ; 1923 Lah. 66. Section 398 I. P. Code does not create any substantive offence. It only regulates the measure of punishment when certain facts are found to exist in the commission of the substantive offence which is robbery. 30 Bom. L. R. 88=52 B. 168 ; A. I. R. 1923 Lah. 66. This section does not apply to a case in which robbery has been actually committed. 139 Ind. Cas. 742=33 Cr. L. J. 926=7 Luck. 543=A. I. R. 1932 Oudh. 103. Section 34 has no application in construction of s. 398. A. I. R. 1928. Bom. 52=29 Cr. L. J 383=30 Bom. L. R. 88=52 B. 168. A man cannot be convicted of abetting an offence under s. 398. A. I. R. 1926 Rang. 207=5 Bur. L. J. 103=25 Cr. L. J. 1285=98 Ind. Cas. 181.

Procedure.—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Making preparation to commit dacoity.

Scope.—In order to commit the offence of preparation, it is not necessary that the prisoners should have done an overt act towards the commission of the dacoity. What the law contemplates is that they should have done some act to get ready for a dacoity, and the collection of men from different village, coupled with the collection of arms, sufficiently proves the required preparation. The mere assemblage to commit dacoity does not amount to preparation, but when it is found, that the members of the gang had taken, into their possession instruments of house-breaking and arms for the offensive and defensive purposes and they actually proceeded to a place near the scene of contemplated dacoity, an offence under this section has been completed. 6 P. R. 1916 Cr.=34 Ind. Cas. 1000. The offences of commission of dacoity, preparation for it and assemblage for the same purpose, have this in common, that they presume an intention or agreement to commit dacoity by five or more persons. A mere assembly without further preparation is not a preparation within the meaning of this section, for if it were, s. 402 would be redundant. 41 C. 350=18 C. W. N. 498. See also, 71 Ind. Cas. 360 ; 81 Ind. Cas. 168 ; 22 A. L. J. 1028. The mere "assemblage" to commit dacoity does not amount to "preparation" within the meaning of s 392, Penal Code. 9 Lah. 550=109 Ind. Cas. 593=29 Cr L. J. 577=A. I. R. 1928 Lah. 193 ; 6 P. R. 1916 Cr.=17 Cr. L. J. 280=34 Ind. Cas. 1000. Where a number of persons assembled at the scene whereat dacoity was contemplated and one of them armed himself with a gun in order to prevent any arrest being made ; *held*, that there was sufficient material to constitute an offence under this section. 97 Ind. Cas. 745=27 Cr. L. J. 1161=8 Lah. L. J. 460. Mere proposals for committing dacoity do not make persons liable under s. 399 or s. 402. 17 Cr. L. J. 97=32 Ind. Cas. 833. Act of persons hiding near a village armed with gun, constitutes preparation for committing dacoity. 8 L. L. J. 406=27 P. L. R. 752=27 Cr. L. J. 1161=97 Ind. Cas. 745. The onus is on the prosecution under s. 399 to show there was intent to commit dacoity. 16 Cr. L. J. 745=17 Bom. L. R. 906=31 Ind. Cas. 345. Where persons from long distances come in company with dacoits the inference is that they belonged to party of dacoits. A. I. R. 1933 Oudh. 53=1933 Cr. C. 93=34 Cr. L. J. 101.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a gang of dacoits.

What constitutes offence.—In order to sustain a conviction under this section, evidence must be forthcoming that there was a gang of persons, that they were associated together and that such association was for the purpose of habitually committing dacoity and robbery. 1 C. W. N. 146 ; 27 C. 139=4 C. W. N. 97. The associating and purpose of association may be proved by direct evidence, *viz.* that the accused met, and determined to join together for the purpose of habitually committing dacoity. In the absence of direct evidence, the associating and purpose of association may be established by proof of facts from which they may be reasonably inferred. 32 M. 179 ; 83 Ind. Cas. 683. For an offence under this section something more than a casual association is necessary. The section involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with in band, the common purpose of which is the habitual commission of dacoity. 63 Ind. Cas. 455.

Scope.—To support a conviction under this section it is necessary to prove (1) that a gang of dacoits existed and (2) that the accused belonged to that gang. It is not sufficient to prove that the accused repeatedly gave shelter and assistance to the dacoits. 1 Bom. L. R. 156 ; A. W. N. 1886, 65 ; 18 P. L. R. 1910 Cr.=6 Ind. Cas. 492 ; 23 W. R. Cr. 18. There are many points which have to be considered in determining what is an adequate sentence to pass upon an accused convicted of an offence falling under s. 400 I. P. Code. Among these may be noted the following :—(*i*) how long has the accused belonged to the gang; (*ii*) what dacoities have been committed by the gang since the accused joined it ; (*iii*) in how many of these dacoities did the accused actually take part ; (*iv*) what are the character of the dacoities in which the accused actually took part. Whether they were accompanied with murder, culpable homicide, grievous hurt, torture, or with any acts of a specially brutal character, or were they only dacoities of ordinary character. L. B. R. (1872-1892) 441. The term "belong" in this section implies something more than the idea of casual association ; it involves the notion of continuity and indicates more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with a band, the common purpose of which is the habitual commsision of dacoity. 1930 Cr. C. 1079=A. I. R. 1930 Oudh. 455 ; 110 Ind. Cas. 440=19 Cr. L. J. 705=47 C. L. J. 471. 7 Ind. Cas. 1012. It is not necessary for a conviction under this section that the person convicted must have taken part in any dacoity. *Ibid.* The evidence as to prior criminal proceedings against the accused which resulted is one acquittal cannot be relied on where the accused is again charged for the same offence but that same can be relied on where the latter proceeding relates to a totally different offence. 5 O. W. N. 760= 112 Ind. Cas. 337=A. I. R. 1928 Oudh. 430. Evidence respecting commission of offence and proceedings under s. 110 Cr. Pro. Code are admissible. A. I. R. 1925 Cal. 872=52 C. 525=26 Cr. L. J. 1037=42 C. L. J. 501=87 Ind. Cas. 925. Where the the accused is charged under s. 400 I. P. Code evidence of previous conviction is admissible as evidence to prove *habit* and association. A. I. R. 1930 Oudh. 455=128 Ind. Cas. 739. The offence contemplated in this section is one of a very special character and entirely the creature of statute and should therefore be strictly construed. Association for the habitual pursuit of dacoity is the gist of the offence. Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime, it must be established, for the purpose of conviction under the section, that the accused belong to a gang whose business is the habitual commission of dacoity. The special conspiracy must be proved. 16 C. W. N. 69 ; see also 65 P.L.R. 1911 ; 17 Ind. Cas. 1006 ; 1 Bom. L. R. 15 ; 1 C. W. N. 146 ; L. B. R. (1872-1892), 441. The mere fact that some women are the mistresses of dacoits does not render them liable also as dacoits. Rat. Un. Cr. C. 863. A conviction can had under this section even when no actual commission of dacoity

is proved. The element of the offence is association with the knowledge that it is formed for the purpose of committing dacoities habitually. Hence where sentence is already passed for the offence of committing dacoity there is no bar to the passing of a sentence under this section. 27 O. C. 385=89 Ind. Cas. 836=A. I. R. 1925 Oudh. 374 ; see also 23 A. L. J. 18=86 Ind. Cas. 282 ; 52 C. 595=42 C. L. J. 501 ; 26 Cr. L. J. 123. The essence of the section is the agreement habitually to commit dacoity not the actual commission of dacoities. Existence of such an agreement and the participation of any person in that agreement may be inferred from the circumstances. 1928. Cal. 309 ; A. I. R. 1921 All. 32=19 A. L. J. 725=22 Cr. L. J. 663=63 Ind. Cas. 455.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Punishment for belonging to gang of thieves.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs, or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Scope.—To sustain a conviction on a charge under this section, there must be proof that association was for the purpose of habitual theft. The habit should be proved by an aggregate of acts. 9 P. R. 1880 Cr. It is not sufficient to prove that the accused is simply a member of a robber tribe ; it should also be shown that he actually consorted with persons who were themselves associated for the purpose of habitually committing theft or robbery. 37 P. R. 1869 Cr. There must be evidence that the accused were members of a gang associated for the purpose of habitually committing theft, before there should be a conviction of an offence under this section. 4 C. W. N. 97. Previous convictions under s. 110 Cr. Pro. Code are relevant. A. I. R. 1930 Sind. 211=126 Ind. Cas. 468. Previous convictions and proceedings under s 110 Cr. Pro. Code are admissible for proving habit though not of general bad character. Such evidence is not excluded by s. 54 Evidence Act. A. I. R. 1930 Sind. 211=126 Ind. Cas. 468 ; but see 31 C. L. J. 192=21 Cr. L. J. 386=47 C. 154. But reports of existence of gang of cattle lifter and frequency of thefts in particular area, made to police are inadmissible being hearsay. *Ibid.* Evidence of frequent commission of or complicity in thefts or robberies is enough evidence for conviction. 31 C. L. J. 192=47 C. 154=55 Ind. Css. 994. Mere fact that accused was found to have received stolen property from gang is not sufficient to convict them under s. 401. Being member of gang associated for purpose of committing burglaries is different from actually taking part in them. Generally concurrent sentences should be given though consecutive sentences are illegal. A. I. R. 1932 Lah. 298=136 Ind. Cas. 27=33 Cr. L. J. 251=33 P. L. R. 602. It is not necessary for a conviction under this section that the person convicted must have taken part in any one theft or robbery. 118 Ind. Cas. 423=30 Cr. L. J. 922=A. I. R. 1929 Oudh. 321. In determining to what extent in any particular case the punishment should approach to or recede from the maximum limit prescribed by the section, the trying Magistrate has to take into account several factors, *inter alia* the antecedents of the prisoner, whether such antecedents speak well or ill of him, such as his character and state of life whether good or bad including previous convictions if any. 24 S. L. R. 252=A. I. R. 1930 Sind. 211. This section ought not to be resorted to when the persons sought to be brought within its four corners might have been made responsible, for distinct and individual offences ; nor is it intended to affect them unless an association for the actual commission or theft of robberry is clearly made out. A. W. N. 1816, 16 ; see also A. W. N. 1886, 15 ; Rat. Un. Cr. C. 418 ; 5 C. P. L. R. Cr. 24 ; 33 P. R. 1886 ; 3 P. R. 1915 ; 15 C. W. N. 462 ; 14 Bom. L. R. 373 ; 10 Ind. Cas. 23 ; 36 P. W. R. 1912 Cr. ; 1 Cr. L. J. 690 ; 1 Weir 452. To sustain a conviction under this section it is necessary to prove (1) that there existed a gang of persons ; (2) that those persons were associated for the purpose of committing theft or robbery ; (3) that theft or robbery was committed habitually ; (4) that the accused was a member of such a gang. 13 P. R. 1914 Cr. ; 110 P. L. R. 1916 ; 47 C. 154 ; 1923 Lah. 666 ; 73 Ind. Cas. 815 ; 26 Bom. L. R. 1223. As regards value of approver's evidence to prove an offence under this section, vide, 87 Ind. Cas. 846=26 Cr. L. J. 1024. The object of this section is to punish the persons who organise thieving expeditions and form a party to commit theft. 28 Cr. L. J.

179=28 P. L. R. 19=99 Ind. Cas. 851. "To belong" means to be one of the gang. A. I. R. 1927 Lah. 524=28 P. L. R. 19=28 Cr. L. J. 179.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first class.

Assembling for purpose of committing dacoity.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Scope.—A mere assembly without further preparation is not a preparation under s. 349. This section applies to the case of mere assembly without proof of other preparation. 18 C. W. N. 498. See also 23 A. 124. The members of an unlawful assembly were held to be guilty of an offence under this section, on their own admission that they not only knew that the assembly was an assembly for committing dacoity, but also that all the members (including themselves) composing it lived on the proceeds of dacoity, and had no other means of living. 7 W. R. Cr. 61. But an assemblage of 5 or more persons for the purpose of concerting plans for committing a dacoity yet remote or contingent or for discussing the possibility of committing it is not within the meaning of this section, which postulates a determination to commit a dacoity. 22 Ind. Cas 833 ; 32 Ind. Cas. 343. Proof of being member of the gang is enough. Proof of the actual part taken by each is not necessary. 34 Ind. Cas. 1000 ; see also 84 Ind. Cas. 860=A. I. R. 1925 All. 62=22 A. L. J. 1028=26 Cr. L. J. 380 ; 106 Ind. Cas 350=A. I. R. 1928 Lah. 144=29 Cr. L. J. 14. So accused belonging to different villages found together in a lonely place armed for committing dacoity can be convicted under this section. 27 Cr. L. J. 605=94 Ind. Cas. 269.

Procedure.—Cognizable—Warrant—Not-bailable—Not-Compoundable—Triable by Court of Session.

Of Criminal Misappropriation of Property.

Dishonest misappropriation of property.

403. Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(*a*) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not gulity of theft ; but if, A after discovering his mistake dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit he is guilty of an offence under this section.

(*c*) A and B being joint-owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds Government promissory note belonging to Z, bearing a blank endorsement. A knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation II.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly,

and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustration.

(*a*) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b*) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty o fan offence under this section.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of offence under this section.

Gist of offence.—To constitute the offence under this section, there must be misappropriation of movable property and the misappropriation must be dishonest. In order to be dishonest, the property must be misappropriated or converted "with the intention of causing wrongful gain to one person or a wrongful loss to another" *i. e.* with the intention of causing gain by unlawful means of property to which the person gaining it is not legally entitled, or the loss by unlawful means of property to which the person losing it is legally entitled. Where there is no intention to cause wrongful gain or wrongful loss of property and merely an intention to deprive the owner temporarily of the use of the property, dishonestly is not made out. 27 P. R. 1887, Cr. Criminal misappropriation takes place when the possession has been innocently come by, but where by a subsequent change of intention, or from the knowledge of some new fact with which the party was not peeviously acquainted, the retaining becomes wrongful and fraudulent. 15 C. 388. Where money is paid by mistake, and the person receiving it either at the time he received the money or at any time subsequently before its refund, discovers the mistake made by the complainant, but determines to appropriate the money, he is guilty of misappropriation. 2 N. W. P. 475. Where a Railway Claim Inspector whose duty was to investigate claims and to report what arrangements he could make with persons making claims against the railway sold certain goods to a claimant but never credited the price to the Railway; *held*, that he was guilty of the offence of criminal misappropriation under s. 403 and not an offence under s. 408. 28 Cr. L. J. 161=99 Ind. Cas. 593=8 Lah. L. J. 515. Proof as to some of the money mentioned in the charge being misappropriated is sufficient even though exact amount is uncertain. 1928 Bom. 148. Mere retention of money is not an offence. 1928 Bom. 205=30 Bom. L. R. 624=29 Cr. L. J. 922. In a case of alleged misappropriation, it is not enough for the prosecution to show that the accused received certain sums of money and failed to account for them, unless and until the prosecution can point to state of facts which led inevitably to the conclusion that the accused was guilty, the prosecution has failed to discharge the onus which lies on him. 61 C. 168; see also A. I. R. 1933 P. C. 7=64 M. L. J. 290=1933 Cr. C. 130=143 Ind. Cas. 224=34 Cr. L. J. 550. (P. C.)

Theft and misappropriation distinguished,—In theft the object of the offender always is to take property which is in the possession of a person out of that person's possession ; and the offence is complete as soon as the offender moved the property in order to a dishonest taking of it. In the offence of criminal misappropriation, there is not necessarily an invasion of the possession of another person by an attempt to take from him that which he possesses. The offender is already in possession of the property and is either lawfully in possession of it, becaase he has found it or is a joint owner of it, or his possession, if not strictly, lawful, is not punishable as an offence because he has acquired it under some mistaken notion of right in himself or of consent given by another (See the illustrations to section 403). The offence consists not in wrongfully obtaining possession, but in the misappropriation, either permanently or for a time, of property which is already without wrong in the possession of the offender. The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention which in theft is sufficiently manifested by a moving of the property must in the other offence be carried into action by an actual misappropriation or conversion.—*Morgan and Macpherson.* 359. In both the cases the property is movable property. Where property, lost by the owner, is found in the possession of the accused, the offence committed by the accused is not theft but criminal misappropriation as the property was not taken from the possession of the owner. 1 L. B. R. 123. An easy method of differentiating between the offence of theft, cheating with delivery of property, criminal misappropriation and criminal breach of trust is to find out whether the original taking was honest or dishonest and whether it was with the consent of the owner or without it. In theft the original taking is without honesty and without the consent of the owner, and in criminal breach of trust it is with both. In obtaining property by cheating the taking is dishonest but with the consent of the owner, and in criminal misappropriation it is honest but without the consent of the owner. A. I. R. 1928 Nag. 113.

Dishonestly.—Where there is no dishonest intention an offence is not made out. Cr. Rg. 1st May, 1872. In a case of criminal misappropriation, the Court should consider the question, whether the money was kept with a dishonest intention, or only on a wrong opinion that the prisoner was justified in keeping it. In the latter case, the act of the accused would not constitute the offence of criminal misappropriation. Rat. Un. Cr. C. 702. A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted or which he has dominion over, is guilty of an offence under this section. 6 Bom. L. R. 553 ; 1 P. L. T. 197 ; 10 P. R. 1903 Cr. ; A. I. R. 1925 Cal. 154=25 Cr. L. J. 669=81 Ind. Cas. 157. So also the retaining of money by servants for his wages would constitute an offence. 11 W. R. Cr. 51. No offence under this section is made out until it is established that there is dishonest misappropriation. A. W. N. 1881. 80. See also, 10 W. Cr. 23 ; 17 W. R. Cr. 11. Joint property may be the subject of criminal misappropriation. A. W. N. 1881, 89 ; 1 J. G. 31. In a case of criminal misappropriation, the element of dishonesty on the part of the accused has to be proved beyond doubt. 1923 Cal. 57 ; see also A. I. R. 1934 Cal. 454=1934 Cr. C. 620=35 Cr. L. J. 886=149 Ind. Cas. 36 ; A. I. R. 1923 Mad. 364=17 M. L. W. 157=44 M. L. J. 128 ; A. I. R. 1922 Cal. 57=24 Cr. L. J. 348=72 Ind. Cas. 348. A person finding a property of which from the nature of it there must be owner, must take reasonable care of it and endeavour to find out the owner. 67 Ind. Cas. 497. Where the accused acted *bona fide* in retaining property belonging to the complainant no offence under this section is committed. 44 M. L. J. 128. Where the reversioner of a mortgagor sold some of the bricks of the mortgaged property, that had tumbled down and appropriated the price, *held* that accused could not be convicted either under this section or under s. 426, in the absence of a finding of dishonest misappropriation or of substantial deterioration of the property. 6 C. W. N. 34. The managing member of a joint Hindu family may be liable to a charge of misappropriation, if after a division of the property has taken place, and the share of each member of the family has been ascertained, it is found that the manager has wrongfully applied to his own use the share that belongs to one of the other co-parceners. 1 Weir. 453. The accused found two logs of wood drifting in a river and took possession of them. They were left in front of his house for nine months. *Held* that he committed no offence under this section. 1 Weir 455. The mere picking up of money, and retaining it, or making it over to another, could not necessarily constitute the offence. 5 C. P. L. R. 47 Cr. See also 28 P. L. B. 1905 ; 11 P. R. 1908 Cr.

Misappropriates and converts.—The essential ingredient for an offence under this section is proof of dishonest misappropriation of the property or conversion to one's own use. 47 Ind. Cas. 667; 40 A. 190 Misappropriation means setting apart the thing appropriated to the wrong person or for wrong use and that dishonestly. 16 Cr. L. J. 1915=31 Ind. Cas. 651. An offence under this section is committed where money is converted to his own use. A. I. R. 1935 Oudh. 4. It is not criminal misappropriation for one of several co-owners to take property belonging to them all unless it is also found that he appropriated it to his sole use. 25 Cr. L. J. 669 (1). Any use of temple property by the priest otherwise than for the idol or temple amounts to misappropriation. Rat. Un. Cr. C. 919. In a case of criminal misappropriation, the Court should consider the question, whether the money was kept with a dishonest intention, or only on a wrong opinion that the prisoner was justified in keeping it. In the latter case, the act of the accused would not constitute the offence of criminal misappropriation. Rat. Un. Cr. C. 700; 6 Bom. L. R. 94 Where agent or servant applies the money collected on behalf of his master to his own use he commits an offence under this section. 3 N. W. P. 30. A person who is proved to have dishonestly misappropriated cannot be convicted of retaining it under s 411. 3 L. B. R. 254. An offence under this section has been committed when a person tries to dispose of another's missing bullock. 119 Ind. Cas. 863= 30 Cr. L. J. 1133=A. I. R. 1929 A. 917=1929 Cr. C. 645. Where a licencee makes an entry in receipts contrary to rules fixed, he does not commit an offence under this section. 1930 Cr. C. 468=A. I. R. 1930 Lah. 408. The appropriation by the finder of a spanner of no appreciable value the owner of which the finder had no reasonable means of discovering, falls under illustration (a) of s. 403. 32 Bom. L. R. 356=A. I. R. 1930 Bom. 176, Where the accused is charged for an offence under s. 403 I. P. Code it is not incumbent upon the prosecution to establish that a definite sum has been misappropriated. 52 B. 280 =30 Bom. L. R. 325=108 Ind. Cas. 505. Appropriation of money paid by mistake is an offence under this section. 2 N. W. P. 425. A and B. met at Benares station. A got a ticket for Ajudhia and B for Benares Cantonment. A showed her ticket to B to see if it was all right. A instead of returning the same ticket, substituted his own, *Held* that the offence was one of misappropriation under this section. A W. N. 1995, 9. A person who found coin from land bought by him cannot be convicted under this section. Rat. Un. Cr. C. 8. This section, is in no way restricted to appropriating property to one's own ose. If a trustee repudiates the trust and asserts that he is holding on behalf of a parson other than the one who entrusted it to him; he is as much guilty of misappropriation as if he had put up his own claim. 92 Ind. Cas. 585=48 A. 288=27 Cr. L. J. 297.

Movable property.—A bull set at large by a Hindu at the time of performing funeral ceremonies in accordance with Hindu religious usage is not property "capable of being misappropriated" 8 A. 51. A bull dedicated to an idol and allowed to roam at large is not *free bastia* and therefore *re nullius*. 11 M. 145; see also 23 Cr. L. J. 401=67 Ind. Cas. 497. The offence consists in the dishonest misappropriation or conversion of movable property, and before a conviction can be recorded, it must be proved that the article forming the object of the charge was movable property. 18 B. 212. Standing crops are immovable property. When a judgment-debtor cuts the crops under attachment and removes them he commits an offence under this section. 22 M. 151. Where a bullock followed a cow and owner lost possession of same, bullock cannot be subject of theft but of misappropriation. 18 Cr. L. J. 300=38 Ind. Cas. 332=10 Bur. L. T. 261.

Explanation 1.—The offence under this section consists in the dishonest misappropriation or conversion either permanently or for a time, of property which is already without wrong in the possession of the offender. 12 M. 49. Where the brother of a girl, who picked up a gold necklace, got possession of the necklace from the latter on the representation that it belonged to an acquaintance of his, but later on delivered it to the police, although repeating to the police, representations made to his sister, which were found to be untrue to the knowledge of the accused, *held*, that he was guilty under section. 24 R, 1886 Cr.

Charge.—In a case in which the accused in charged under this section, the charge should specify the person to whom the property belonged. 14 W. R. Cr. 13. Several causes of misappropriation constitute separate offences. 15 W. R. Cr. 5. Sessions Judge can convert conviction from s. 405 to s. 403, A. I. R. 1935 Oudh. 14.

Proof.—The fact of misappropriation can be proved by direct as well as by circumstantial evidence. 34 C. L. J. 200. Where a police constable of seventeen years' standing caught a stray sheep intended for sacrifice and on his transfer from the thana to which he was attached to another thana took it with him there, *held* that it was sufficient evidence of dishonesty and that he was guilty of an offence under this section. 17 A. L. J. 145.

Completion of the offence.—Under this section the offence is complete the moment the accused receives or retains the money with a dishonest motive of appropriating it or converting it into his own use. 1921 Pat. 31=56 Ind. Cas. 775.

Cases.—It is a possible view that an accused is guilty of criminal breach of trust between the misappropriation and the repayment, but Courts should be slow when repayment is at once made on demand to assume guilt in accused person. Criminal liability is not the same as civil liability. 97 Ind. Cas. 1041=27 Cr. L. J. 1217. It cannot be laid down as an absolute rule applicable to all cases that if a man cannot move a thing away, he cannot dishonestly convert it to his own use. 92 Ind. Cas. 747=27 Cr. L. J. 331=50 M. L. J. 94. Where a Sub-Inspector of Police who came across a stray bullock advertised for the owner but as no one turned up had it sold after 20 days, he is not guilty of any offence under this section. 91 Ind. Cas. 37=23 A. L. J. 128. Where it is proved that a certain sum of money for which a Hindu father was accountable was not accounted for him and in a scheme sent he was ordered to pay the amount it will not amount to misappropriation. 1926 M. W. N. 194 =23 L. W. 714=94 Ind. Cas. 634=50 M. L. J. 353. Where a Post master opens a V. P. article addressed to himself and extracts a railway receipt from it without paying for it for six days and makes a false entry in P. O. books, he is guilty of criminal misappropriation. A. I. R. 1928 Lah. 92=29 P. L. R. 151=29 Cr. L. J. 236. Where a Post-master opened a V. P. article addressed to himself and extracted a railway receipt from it without paying for it for six days and made false entries in the P. O. books it amounts to technical misappropriation under s. 403. A. I. R. 1928 Lah. 92=8 Lah. 662=29 P. L. R. 151=19 Cr. L. J. 508=109 Ind. Cas. 236; see also 68 Ind. Cas. 157=A. I. R. 1923 Nag. 146=23 Cr. L. J. 557. In case of receiving money to be handed over at another place with dishonest motive offence is committed at the place of receipt. Failure to hand over is not an ingredient of the offence nor is it a consequence. A. I. R. 1921 Pat. 85=1921 P. H. C. C. 31.

Procedure.—Not-Cognizable—Warrant—Bailable—Compoundable with permission of the Court—Triable by any Magistrate.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender, at the time of such person's decease, was employed by him as clerk or servant, the imprisonment may extend to seven years.

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Scope.—This section is intended only to punish servants and strangers who could possibly have no right to or interest in, the effects of a dead man, and who misappropriated such effects, but not to punish near relations who take possession of and deal with the effects under a claim of independent ownership or as heir to the deceased. 25 Ind. Cas. 514. It is not necessary for a conviction under this section that the accused should misappropriate it to his own use. 12 W. R. Cr. 39; 11 W. R. Cr. 1. Under this section all the elements are required to constitute the

offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive. 12 W. R. Cr. 39. This section does not apply to immovable property. 6 B. H. C. Cr. 33. This section relates to a description of property peculiarly needing protection. The offence consists in pillaging of movable property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it. The proof should be that the property belonged to or was in the possession of the deceased person at the time of his death, and that it has since been misappropriated or converted to his own use by a person who knew or had reason to know that it belonged to the deceased.—*Morgan and Macpherson.* This section is expressly limited to movable property alone and criminal misappropriation or conversion is easily possible of the movable property where the materials which have been secured from the building are removed. L. R. 6 All. 200 Cr.=A. I. R. 1925 All. 673=24 A. L. J. 153=27 Cr. L. J. 17.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or 2nd class.

Of Criminal Breach of Trust.

Distinguishing feature of the offences.—This offence like the offence of criminal misapropriation is characterised by an actual fraudulent appropriation of property. There is not originally a wrongful taking or moving as in theft, but the offence consists in wrongful appropriation of propety, consequent upon a a possession which is lawful. The offence is distinguishable from criminal misappropriation because the subject of it is not property, which by some casualty or otherwise, but withot criminal means, comes into the offender's possession ; but the property, which is entrusted to the offender by the owner or by other's lawful authority and which the offender holds subject to some duty or obligation to apply it according to the trust—*Morgan and Macpherson.*

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfuly suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(*a*) A, being executor to the will of a deceased person dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b*) A is a warehouse keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c*) A residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with direction to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d*) But if A, in the last illustration, not dishonestly, but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys sbares in the Bank of Bengal, for Z instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e*) A, a revenue-officer, is entrusted with public money, and is either directed by law or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Scope.—The offence, as here defined, appears to include any dishonest misappropriation by persons in whom confidence is placed as to the custody or application of particular property whether it be by legal authority or private contract or consent. Persons as clerks, agents, servants or otherwise, under whatsoever name, have a confidence reposed in them by their employers and are, whether in the ordinary course of their employment or only occasionally entrusted with property and persons whose employment does not extend beyond the particular occasion on which they are so entrusted, seem to be within this section. Those who are technically, called trustees, if they commit a breach of trust are responsible as criminals for acts done by them dishonestly for their own gain to the despoiling of the persons for whom they are in trust, or for acts causing wrongful gain to themselves or wrongful loss to such persons. Sections 407-409 make special provisions for various cases in which property is entrusted to agents or contractors who commits this offence.

This definition includes those who are entrusted in any manner with property, as ware house-keepers, etc., are entrusted only with the possession or custody of property. Persons who are empowered to take or deliver possession of property whether such power is derived from the owner or from any other person, and persons who are entrusted with any dominion over property are also included. Property which is bulky or which cannot, for other reasons be delivered from hand to hand, is usually represented by some writing or other thing. Thus the key of the warehouse or place where goods are lodged, the bill of lading, delivery order, or other document however called, which is used in the ordinary course or business to show the possession or control of property and which enables the holder to transfer or receive or otherwise deal with it, are made to represent the property itself. A person entrusted with such a document or thing has a dominion over the property thereby represented.—*Morgan and Macpherson*, 365. Evidences of trust and dishonest misappropriation are sufficient to constitute an offence under this section. 1 Weir 460 ; 16 W. R. Cr. 39 ; 9 A. 666 ; 3 W. R. Cr. 44 ; 1914 M. W. N. 894=16 M. L. T. 505=15 Cr. L. J, 688. The value of property is immaterial. 27 A. 28 ; A. W. N. 1881, 82. Negligence or other misconduct causing the loss of the entrusted property may make the person entrusted civilly responsible, but will not make him guilty of this offence. There must be the intention to cause wrongful gain or wrongful loss to constitute a criminal breach of trust.—*Morgan and Macpherson.* See also 106 Ind. Cas. 682. This section does not apply to partners. 145 Ind. Cas. 416=37 C. W. N. 982=1933 Cr. C. 953=34 Cr. L. J. 958=A. I. R. 1933 Cal. 582 but see. 35 Bom. L. R. 1518. This section does not enforce case of a person taking on hire. A. I. R. 1932 All. 324=33 Cr. L. J. 866=1932 A. L. J. 213.

Property.—The property referred to in this section must, as in s. 403, be movable property and criminal breach of trust cannot be committed in respect of immovable property. 23 C. 272 ; A. I. R. 1930 Rang. 158=8 Rang 13, Cancelled cheques are property. 27 A. 28=1 Cr. L. J. 603. No criminal breach of trust can be committed in respect of immovable property. A. I. R. 1926 Lah. 428=27 Cr. L. J. 760=95 Ind. Cas. 280

Entrusted—Moneys due to a customer from a banker are simply due to a customer as debts and are fully at the disposal of the banker. The latter is not, therefore, guilty of criminal breach of trust in using them for his own purpose. 32 P. R. 1901 Cr. Failure to account for money by the person to whom it has been entrusted may constitute the offence of criminal breach of trust, under this section. U. B. R, 1909, 1st Qr. Penal Code. Where the accused, to whom silver had been entrusted for making an ornament, introduced copper, *held* that an offence under this section has been committed. 4 B. H. C. Cr. 16. In a case under this section trust is essential. 75 Ind. Cas. 89 ; 72 Ind. Cas. 172 ; 1923 Lah. 321 ; 25 C. W. N. 838 ; 1928 Sind. 106. Trustment need not be in furtherance of a lawful object. A. I. R. 1927 Nag.=10 N. L. J. 79=28 Cr. L. J. 506=23 N. L. R. 106=101 Ind. Cas. 890. Where property attached is given for safe custody, deliberate refusal to produce it is repudiation of trust and accused is guilty of criminal breach of trust. A. I. R. 1934 Lah. 31. Advances made to brokers on pronote creates no trust. 6 L. B. R. 62=17 Ind. Cas. 834=13 Cr. L. J. 888 (F. B.) ; see also 14 Cr. L.

J. 145=19 Ind. Cas 145=7 L. B. R. 16=6 Bur. L.T. 209 (F.B.) ; 15 Cr. L. J. 452=24 Ind. Cas. 332=7 Bur. L. T. 139 (F. B.)=15 Cr. L. J. 452 ; 6 L. B. R. 46=13 Cr. L. J. 269=14 Ind. Cas. 653. An auctioneer cannot be said to be liable for criminal breach of trust if he does not punctually carry out every term in the agreement *e. g.* if he did not hold the sale on the agreed date, or if there was delay in payment. 41 C. 844=15 Cr. L. J. 683=26 Ind. Cas. 131. The word "entrusted" in this section is used in its legal and not in its figurative or popular sense. The section makes no distinction between different kinds of movable property. 108 Ind. Cas. 663=29 Cr. L. J. 431=A. I. R. 1928 Sind. 106 ; see also. 30 Bom. L. R. 1270=A. I. R. 1928 Bom. 521. Where there is no dispute as to title and property entrusted for a particular purpose is converted to the use of the holder the offence of criminal breach of trust is clearly made out. 3 Luck 494=112 Ind. Cas. 103=29 Cr. L. J. 983=A. I. R. 1928 Oudh. 277.

Dishonestly.—The word "dishonestly" means the doing of an act with the intention of causing wrongful loss or wrongful gain, and wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. For either in wrongful loss or gain, the property must be lost to the owner or the owner must be wrongfully kept out of it. 1 Weir. 416=3 M. H. C. App. 6. Great caution ought to be used in drawing the inference of dishonesty from a breach of duty imposed by civil law. 1 Weir 461=6 M. H. C. App. 28. In an offence under this section the dishonest intent is an essential ingredient. 30 P. R. 1879 Cr. ; 50 M. L. J. 94=27 Cr. L. J. 331=A. I. R. 1926 Mad. 99=92 Ind. Cas. 747 ; A. I. R. 1933 Lah. 235. A taking under a colour of right under a *bonafide* claim would not be an offence however much the claim turns out to be unfounded. 1933 M. W. N. 246 ; see also 38 C. W. N. 474=35 Cr. L. J. 537=A. I. R. 1934 425. Loss not essential for an offence under this section. Intention to cause wrougful loss is enough. A. I. R. 1924 Lah. 353=69 Ind. Cas. 631. Too narrow interpretation of the word "dishonest" should not be placed leading to substantial injustice. A. I. R. 1933 Pat. 554. Mere retention of money is not an offence under this section. 2 C. P. L. R. 161 ; 1 Weir 462 ; 17 M. L. J. 413 ; 16 Cr. L. J. 543. In a case of criminal breach of trust the overt act of the accused showing his dishonesty is essentially necessary to be proved to establish the offence and till the time arrives when the act is done it cannot be said with certainty that the offence was committed. *Lanter v. The King*, 1913 A. C. 221 ; see also 41 C. L. J. 80=29 C. W. N. 492=86 Ind. Cas. 213=26 Cr. L. J. 725=A. I. R. 1925 Cal. 613. A public servant who being entrusted with Government funds for the purpose of constructing a building obtains the materials free of cost, from some body and appropriates a certain amount to himself as their price, is guilty of criminal breach of trust. 4 Pat. 488=6 P. L. T. 154=86 Ind. Cas. 459=26 Cr. L. J. 811. In order to establish a charge of dishonest misappropriation or criminal breach of trust it is not necessary that the accused should have actually taken tangible property such as cash from the possession of another and transferred it to his own possession. A. I. R. 1926 Lah. 385. Where an agreement is a wager and void under the contract law, a person cannot be convicted under the 2nd part of this section for dishonest use and disposal of entrusted property in violation of express or implied contract if based on such agreement. 100 Ind. Cas. 989=28 Cr. L. J. 381=A. I. R. 1927 Mad. 425. But in such a case he may be convicted under 1st part of this section. *Ibid* The trust contemplated by this section and section 406 need not be in furtherance of a lawful object. 23 N. L. R. 106=101 Ind. Cas. 899=28 Cr. L. J. 505=A. I. R. 1927 Nag. 225. Where goods are entrusted to acused for selling and obtaining money which he was to hold for complainant subject to certain deduction the accused was entrusted with the money received. 1928 Bom. 521.

Dishonest misappropriation might sometimes be inferred from the circumstances without direct evidence : 2 Cr. L. J. 478. A matter which is *ex-facie.* a civil dispute should not be entertained by the criminal court unless the prosecution is able to prove clearly and beyond doubt that the accused acted dishonestly and with a view to enrich himself clandestinely at the expense of those with whom he was working and with whom he was bound by a fiduciary relationship. 55 Ind. Cas. 469. It is not a criminal offence in every case for a pleader to retain fee the legal recovery of which is time-barred. 6 N. L. J. 119.

Disposal of property in violation of any direction of law etc.—A person, who pledges what is pledged to him, may be guilty of criminal breach of trust. There are two elements to constitute the offence, (1) the disposal in violation

of any direction of law or contract, express or implied describing the mode in which the trust ought to be discharged, (2) and such disposal must be made dishonestly. Great caution ought to be used in drawing the inference of dishonesty from a breach of duty imposed by civil law. 1 Weir 461=6 M. H. C. R. App. 28 ; 1 Weir 464 ; U. B. R. (1897—1901) Vol. I. 345 ; 17 Bom. L. R. 670.

Cases.—This section does not cover misappropriation by person of sale proceeds of property *i. e.* furniture entrusted to him. 41 C. 844=15 Cr. L. J. 683=26 Ind. Cas. 131. Where a master settles his account with a tradesman for a specific sum and he sends his servant with the money, and the servant after making the payment asks the tradesman for a present, then if the servant takes the present and keeps it, he is not guilty of stealing because he has no intention to steal. 8 A. 120=A. W. N. 1887. A refusal by the accused to give up land alleged to have been mortgaged to them, the mortgage being denied, could not be treated as a misappropriation of the documents of title amounting to criminal breach of trust under section 405 I. P. Code. 2 B. H. C. 127. To convict an accused under this section not merely a civil breach of trust, but also a fraudulent intent or a wilful violation of trust with fraudulent design should be proved. Rat. Un. Cr. C. 484.Return of deposit to brother of depositor with best intention and absence of moral turpitude does not amount to criminal breach of trust. 117 Ind. Cas. 157=30 Cr. L. J. 735=A. I. R. 1929 Sind. 119. This section is couched in broad terms and covers any person who is in any manner entrusted with any property. 7. O. W. N. 663=126 Ind. Cas. 395=A. L. R. 1930 Oudh. 401. Under this section the property entrusted or part of it must be actually misapplied where the fraudulent intention of the accused did not result in actual misappropriation. A. I. R. 1934 Cal. 843=A. L. R. 1934 Lah. 419=1934 Cr. C. 1184. Joinder of charges more than three is illegal. 146 Ind. Cas. 176=1933 Cr. C. 1172=A. I. R. 1933 Rang. 325. The property in respect of which criminal breach of trust can be committed must be the property of some person other than the accused or the beneficial interest or ownership of it must be in some person and the offender must hold such property in trust for such other person or in some other way for his benefit. 1930 M. W. N. 790=1931 Cr. C. 331=A. I. R. 1931 Mad. 235. Mere delay in payment of money entrusted to a person where there is no particular obligation to pay it at a certain day, does not amount to and does not furnish by itself a sufficient proof of misappropriation so as to make him guilty of the offence of criminal breach of trust. A. I. R. 1930 Mad. 507=58 M. L. J. 649. Loss to the principal or anybody else is by no means a necessary ingredient of the offence. 321 Bom. L. R. 1195=A. I. R, 1930 Bom. 490 (F. B).

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for criminal breach of trust.

Agreement.—An agreement allowing a person who had committed criminal breach of trust, to refund the property misappropriated cannot operate to bar a subsequent prosecution for the offence of criminal breach of trust. 1 Weir. 462.

Partnership.—In a partnership, it is open to a partner to spend the money he receives and account for it in dealing with the partnership, and such a partner is plainly entitled to be called upon for an account of the expenditure of the money which he has received. In a case where it was not satisfactorily made out that this was not done, and it would not be made out in the absence of a proper demand for an account, it was held that no dishonest conversion could be found, which would justify the conviction of a partner under this section. 35 C. 1108 ; see also 145 Ind. Cas. 416=37 C. W. N. 982=1933 Cr. C. 953=34 Cr. L. J. 958=A. I. R. 1933 Cal. 582 ; but see A. I. R. 1932 Bom. 57=1932 Cr. C. 81=33 Bom. L. R. 1518=136 Ind. Cas. 493.

Burden of proof.—Where in a charge of criminal breach of trust, the accused pleads payment to the proper person, the burden of proving non-payment is on the prosecution and not on the accused. Rat. Un. Cr. C. 872 ; see also 28 S. L. R. 84=A. I. R. 1934 Sind. 22=1934 Cr. C. 220. The prosecution must prove that trust has been created in respect of the property. 85 Ind. Cas. 839 ; 25 C. W. N. 838=65 Ind. Cas. 1004.

Evidence.—The evidence in support of a charge of criminal breach of trust must show, (1) that the accused person was, in some mannar entrusted with the property or with a domain over it. The offence consists in the betrayal of some trust

or confidence reposed in the offender. Dealings concerning property between independent persons in the course of which debts or claims by one against the other arise are not subject of this offence. There can be no criminal misappropriation unless some trust or confidence exists.

(2) It must be proved that the accused has dishonestly misappropriated or disposed of the property in violation of his duty. As to the proof of the criminal misappropriation in cases where money has been misappropriated, it will often be of the following kind either the offender has wilfully made false entires in his books or else he has denied or wilfully omitted to acknowledge the receipt of the money. A person who keeps the accounts, or otherwise duly acknowledges the receipt of money, cannot ordinarily be supposed to intend to commit a criminal breach of trust. On the other hand the mere fact of his making an entry in the books of account will not protect him. The fact of not paying over money or not accounting for it, will not probably of itself be thought sufficient to justify a conviction, even though the accused person sets up a frivolous excuse or advances a claim wholly unfounded. But the absconding of the accused, coupled with a refusal to account or a false account, furnishes strong evidence of a criminal misappropriation of the money. If the evidence in support of the charge leaves it doubtful whether the offence which has been committed is theft or criminal breach of trust, the Court may nevertheless proceed to judgment and award punishment (see section 72)—*Morgan and Macpherson.*

Where money was paid to a person for a particular purpose and in the case of the purpose failing, it was appropriated towards a debt due to him, there is no offence of criminal breach of trust. 92 Ind. Cas. 895=27 Cr. L. J. 383. Where money is advanced in respect of a contract, and there is no entrustment in fiduciary form, any dispute arising out of the breach of contract is one of civil nature and capable of settelement not in the criminal but in the civil courts. 96 Ind. Cas. 501= 27 Cr. L. J. 949.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Cases.—To make out a case of criminal breach of trust, it is not sufficient to show that the money has been returned. It must also be shown that the accused disposed of it in some way other than that in which he was bound to apply it, and that he did so dishonestly. U. B. R. (1897-1901) Vol. I, 345. The mere retention of money did not necessarily raise a presumption of dishonest misappropriation to one's own use, but such dishonest misappropriation might sometimes be inferred from circustances without direct evidence. U. B. R. 1905, Penal Code, 19=2 Cr. L. J. 478. No person on the pretence of being an heir to a deceased, can take the law into his own hands by taking forcibly his property from the person in actual possession and dealing with it as he likes. 41 P. W. R. 1910 Cr.=6 Ind. Cas 490= 11 P. L. R. 1910=11 Cr. L. J. 364. An accused cannot be convicted under this section for non-fulfilment of promise to let vaccinator take lymph from child, even when she has received annas two from the vaccinator. Rat. Un. Cr. C. 557. Failure to pay in a wagering transaction is not an offence under this section. L. B. R. (1872-1892), 130. The complainant gave money to the accused on condition that he would purchase a motor car, sell it and return her the money with half the profits. *Held*, that the accused was not guilty of criminal breach of trust. 15 C. L. J. 284=23 Ind. Cas. 492=12 A. L. J. 730. An accused commits an offence under this section, if he pledges a motor car, which he has purchased in hire-purchase system and while the hire purchase agreement is in force. 17 Bom. L. R. 670=3 Bom. Cr. C. 84 ; see also 15 Cr. L. J. 425= 24 Ind. Css. 161.

Where it is the duty of a Municipal water works, he has dominion over the water belonging to the employers. If he deliberately misapporpriates such water for his own use or for the use of his tenants for which he pays no tax and gives no information to his employers, he is guilty of the offence of criminal breach of trust. 11 A. L. J. 369=14 Cr. L. J. 415=35 A. 361=20 Ind. Cas. 239. The loan of a chattel does not constitute the borrower a person entrusted with the chattel or with dominion over it within the meaning of section 406, for the borrower is not a trustee but has a beneficiary interest given him in thing lent. 6 Bom. L. R. 1093. The fact that the complainant entrusted the accused with his flocks in order to evade the payment on the execution of a decree, which might be issued, is not a legal defence which will justify the accused in selling the animals and appropriating the sale pro-

ceeds to his own use. I Weir. 463. The Shroff of a Battery holds the position of a cashier with reference to the custody of Government monies entrusted to him, and his failure to produce cash for the entire balance due out of the amount so entrusted amounts to a criminal breach of trust. 19 P.R. 1908=Cr. The holder of the stakes of a wager who appropriates them or converts them to his own use without the consent of the depositor or the winner of the wager, is liable to conviction under s 406, Penal Code. 2 L. B. R. 216. Although temporary retention of money may in certain cases be sufficient to constitue an offence under s. 406 of the I. P. Code, yet it is incumbent on the prosecution to prove that the retention was a dishonest one. 11 Pat. L. T. 319= 121 Ind. Cas. 321=31 Cr. L. J. 249=A. I. R. 1930 Pat. 209. The essential thing to be proved in case of criminal breach of trust is whether the accused was actuated by dishonest intention or not. As the question of intention is not a matter of direct proof, the Courts have from time to time laid down certain broad tests which would generally afford useful guidance in deciding whether in a particular case the accused had or had not *mens rea* for the crime. *Ibid.*

In a prosecution under s. 406 I. P. Code, the prosecution must prove that a trust had been created in respect of the property and that the accused had violated that trust. 85 Ind. Cas. 839=A. I. R. 1923 Lah. 321. In the absence of a contract to the contrary, it is open to a pledgee to make a sub-pledge of the property pledged and if he does so, he does not commit an offence under s. 406 I. P. Code. 9 O. L. J. 421= 1922 Oudh. 280. An offence under this section is committed when goods taken from a person for approval is sold before payment of price. 51 C. 796=25 Cr. L. J. 1235 =82 Ind. Cas. 163=1924 Cal. 816. Where goods have been delivered to a person in pursuance of a contract of sale and accepted, all that remains is to ascertain the money due to the vender the rate being already fixed by the contract. There is no question of any entrustment or of a trust. Consequently the mere fact that the purchaser subsequently denies receipt of the goods does not make him guilty of the offence of criminal breach of trust or misappropriation. 72 Ind. Cas. 172=24 Cr. L. J. 332. Where an estate is entrusted to an Administrator by the Court in the exercise of its intestate jurisdiction, a complainant charging him with criminal breach of trust under s. 406. I. P. Code, in respect of the goods entrusted to him cannot be entertained without the sanction of the Court appointing him. 33 C. L. J. 252=22 Cr. L. J. 295=60 Ind. Cas. 791. Person intermeddling with estate of deceased person or doing any other act which belongs to office of executor where there is no rightful executor or administrator in existence is made accountable not on basis of entrustment but on basis of that not being entrusted he has no business to intermeddle. Application of the latter doctrine in no way depends upon absence of bad faith in person intermeddling and such person cannot be held guilty under s. 406 and charge under s. 406 on such facts amount to misdirection. 132 Ind. Cas, 145=35 C. W. N. 425=1931 Cr. C. 248=32 Cr. L. J. 830=58 C. 105 I.=A. I. R. 193 Cal. 184 (F. B.)

In a case of criminal breach of trust if the prosecution could not prove how the accused came by the money, they did not establish one of the first essentials of the offence charged that he was entrusted with the money. 25 C. W. N. 838. The gist of the offence under this section is the dishonest misappropriation or the conversion by one to his own use of the property of another which has been entrusted to him. 52 Ind. Cas. 480=20 Cr. L. J. 654. A chairman of a Co-operative Society is not a public servant as such criminal breach of trust by him is not punishable under section 409 I. P. Code, but under section 406. 36 Bom. L. R. 1133.

Where the accused were entrusted by a Court officer with certain movable property attached in exection of a decree, but at the time of sale they did not produce the property and evaded the service of notice, *held* that they could not be guilty of criminal breach of trust inasmuch as they did not misappropriate the property or convert it to their own use or dispose of it in any manner contrary to the terms of the trust. 16 A. L. J. 600=47 Ind. Cas. 875=19 Cr. L. J. 975. No offence under this section is committed when he mortgage, after payment of mortgage money does not return the bond. 22 C. W. N. 1005. Property in respect of which criminal breach of trust can be committed must be property of some person other than accused. A. I. R. 1931 Mad. 235.

Criminal breach of trust by carrier, etc.

407. Whoever, being entrusted with property as a carrier, wharfinger, or warehouse keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either descrip-

tion for a term which may extend to seven years, and shall also be liable to fine.

Scope.—Those who receive property under a contract express or implied to carry it or keep it in safe custody are by this section made punishable for a criminal breach of duty with respect to such property. Carriers by water who run their boats or vessels ashore, intending to misappropriate the cargo, are punishable under s. 439 *Morgan and Macpherson*, 368. Where property is entrusted to a person as a carrier, it is necessary to show at least, in order to convict him of criminal breach of trust, that some of the property could not be accounted for by him. 9 Bom. L. R. 229.

Procedure—Cagnizable—Warrant—Not-bailable Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Criminal breach of trust by a clerk or servant.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.—A clerk or servant who takes his master's property is punishable for theft. (See section 381). The present provision seems to apply to cases in which there is some special trust, as where the clerk or servant is entrusted with his master's property that he may sell or dispose of it, or where he is appointed to collect money and to pay it over to his employer. The criminal misappropriation by such person of the particular property entrusted to him, is an offence here made punishable in the same manner as the taking of master's property by a servant when the property taken is not in his possession or charge in the time of his service or employment, as the theft by a menial servant of money or other property from his master's house.—*Morgan and Macpherson*, 369. Uuder this section the intention of the accused to misappropriate is sufficient to convict him. 26 Cr. L. J. 1149. Presumption of criminal misappropriation can be raised against servant failing to properly account for property entrusted to him. 26 Cr. L. J. 267=84 Ind. Cas. 331. A working partner who has not contributed anything to the partnership business is a "servant" or "clerk." 28 S. L. R. 84=1934 Cr. C. 220=A. I. R. 1934 Sind. 22. Where waterproof is supplied to Railway servant on condition that in case of damage or loss, it will be renewed at the cost of such servant the contract is one of bailment Where the servant pawns it he is guilty under s 408, 148 Ind. Cas. 814=35 Cr. L. J. 788= A. I. R 1934 Rang. 41. But definite finding of definite sum traced to the accused is necessary. 85 Ind. Cas. 372=26 Cr. L. J. 532=A. I. R. 1925 Cal. 260. An offence under this section is committed, even where the act of the accused was to cause wrongful loss to the complainant for a time only. 8 Bom. L. R. 951=5 Cr. L. J. 5 ; Vide. 22 M. L. J. 112 ; 24 C. 193 ; 9 Cr L. J. 257 ; 7 A. L. J. 319 ; 31 C. 928 ; 24 Ind. Cas. 161 ; 9 P. L. R. 1902 ; 14 Bom. L. R. 306 ; 7 A. L. J. 225 ; 16 C. W. N. 1155; 40 C. 318 ; 16 Bom. L. R. 80 ; 42 A. 552 ; 51 Ind. Cas. 673 ; 2 Rang. 476 ; 29 C. W. N. 54 ; 40 Ind. Cas. 303 ; 40 A. 565 ; 565 Ind. Cas. 1000 ; 96 Ind. Cas. 388 ; 1928 Bom. 557 ; 1928 Lah. 926.

Cases.—In order to sustain a conviction for the abetment of criminal breach of trust by a servant, it must be proved that the accused knew that, in respect of such transaction, the servant was acting dishonestly and was committing a breach of trust, and that the accused abetted the servant in doing it. 4 C. W. N. 309. Where a person, entrusted with some blocks of wood engraving for the purpose of having a catalogue printed for the complainant, allowed his brother to use the block to print his catalogue, *held* that such act constituted criminal breach of trust. 6 C. W. N. 203. Where a village officer delayed for four or five months, in remitting the *kist* amount to the treasury, *held*, that the officer was guilty of an offence under s. 408. 1 Weir 464. Where a servant committed criminal breach of trust, *held*, that the circumstance the employer had taken a bond for the amounts misappropriated, would not prevent the prosecution or conviction of the accused for the offence. 1 Weir 465. On a Court Inspector having no authority to delegate to a constable the custody, etc., of Government money, delegating to him the said functions, taking no doubt private security for his safeguarding, and on the constable dishonestly converting the money to his own use, *held* that the case fell under s. 408, Penal Code, notwithstanding subsequent restoration by the constable. 8 W. R. Cr. 1. In a case of criminal breach

of trust under s. 408, a count based upon a general deficiency was struck out of the indictment by the presiding Judge after consultation with the Chief Justice. 24 C. 193. A servant received from his employers a firm in Calcutta, some bags of waste paper with an order to take them to their yard and there to burn and destroy the papers. The servant instead of destroying them brought some of them to Bowbazar in Calcutta, *held* that the act committed by the accused did not amount to an offence under s 408. 29 C. 489. Where a clerk of a Co-operative Bank received moneys from some of the members of the bank with instructions to pay the said sums to another affiliated bank, but, instead of so paying the amount to the said bank, became a member of the society and took a loan from the society which would cover these amounts, *held* that he could not be convicted of an offence under s. 408 I. P. Code, simply because he disobeyed the instructions of the members, as there was no evidence of an intention to misappropriate the amount to his own use. 117 Ind. Cas. 632=30 Cr. L. J. 812=A. I. R. 1929 Pat. 506. Mere retention of money or mere failure to return it does not necessarily raise a presumption of dishonest misappropriation. The mere fact that the payment was delayed is no ground for imputing a criminal intention. Though the ingredients of the offence of criminal breach of trust are somewhat broadly stated there can be no doubt that the section was intended to punish an offence of which dishonesty is the essence. A. I. R. 1930 Oudh. 321=7 O. W. N. 556=1930 Cr. C. 725. Where servant receives sums for master and neither pays them to him nor accounts for them he is guilty of misappropriation. 136 Ind. Cas. 810=33 Cr. L. J. 343=1932 Cr. C. 222=9 O. W. N. 216=6 Luck. 435=A. I. R. 1932 Oudh. 145. Where prosecution is out-come of dispute regarding liabilities of partners, conviction under section 408 cannot be sustained. A. I. R. 1931 Pat. 159=1931 Cr. C. 399= 130 Ind. Cas. 833. Cheque is property. A. I. R. 1930 All. 449=1930 A. L. J. 849= 125 Ind. Cas. 589. It is not necessary for the accused to show exactly what has become of the missing property he was entrusted with. It is sufficient it can give a credible account of its disappearance. 35 Cr. L. J. 849=A. R. 1934 Rang. 42. Charges of falsification and embezzlement can be linked together. A. I. R. 1931 Pat. 349=12 P. L. T. 696=32 Cr. L. J. 1026=133 Ind. Cas. 460.

Where in a trial for one offence under s. 908 I. P. Code with regard to a gross sum said to have been misappropriated within a year and composed of items more than three in number, the Judge instead of inviting verdict in respect of charge under s. 408, asked the jury to give their verdict in respect of the charges as laid against the accused on the several items and the jury returned a verdict of guilty as regards some of its items only and not guilty as regards others and the Judge convicted the accused under s. 408. *Held* that though the form in which verdict was asked for and expressed was wrong, proper form being simply to ask jury their verdict in respect of an offence under s. 408, the defect was one of form and did not prejudicially affect the accused. 34 C. W. 901=A. I. R. 1930 Cal. 717=1930 Cr. C. 1117. The accused who was a clerk was entrusted as such by his master with a certain sum of money which it was his his duty to apply in a particular manner. He misappropriated the moneys and failed to apply them as directed and he was charged under s. 408, I. P. Code, in respect of a specific sum. *Held*, that the accused was rightly convicted for the offence of criminal breach of trust. 30 Bom. L. R. 1530=A. I. R. 1928 Bom. 557; see also 36 Bom. L. R. 1120. Loss to one person owing to misappropriation by another is not essential ingredient of "criminal misappropriation." A. I. R. 1931 Rang. 164=32 Cr. L. J, 1120=1931 Cr. C. 660=9 Rang. 338. Section 179, Criminal Procedure Code has no application to offence Committed under s. 408. *Ibid.*

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Criminal breach of trust by public servant, or by banker, merchant, or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope—The criminal breach of trust which is here punishable is committed only when the banker, merchant, etc, is entrusted in the way of his business with pro-

perty or with documents which give him dominion over property, and not otherwise. It seems that the property must be entrusted to him in such manner that he becomes subject, by contract, express or implied, or by force of low, to a certain duty in regard to it. A factor or agent who sells the goods of his employer and receives the money on his behalf, if he commits a criminal breach of trust by dishonestly misappropriating his principal's money will be punishable under this section. But the relation between a banker and his customer is not necessarily of the same fiduciary kind. The money which the customer places in his banker's custody becomes the banker's money; he may employ it as he pleases and he commits no breach of trust even if he puts it in jeopardy; only he is of course answerable for the repayment of the amount which he has received. It seems that a banker would be criminally liable under the present section only in case he under-took some particular duty (in the way of his business) in relation to the property entrusted to him; as if he received Government Paper or other securities into his custody, undertaking to keep them safely, and to receive interest, etc.—*Morgan and Macpherson*, 369; 16 A. 88. For a conviction under this section all the elements laid down as constituting the offence must be strictly proved and if the charge is that a worthless property has been substituted for a valuable one, it must be positively shown that there was some valuable property in the package when it came under the control of the accused. 41 C. L. J. 87=86 Ind. Cas. 38=26 Cr. L. J. 662=29 C. W. N. 260=A. I. R. 1925 Cal. 501. To make out an offence under this section a criminal intention is necessary and this is a matter of inference from the facts proved. But it cannot be sustained in respect to the acts from an agent. 87 Ind. Cas. 962=26 Cr. L. J. 1042=A. I. R. 1925 Oudh. 675. If the property under the control of the public servant disappears and his connection with the conspiracy is proved, conviction will follow, even when there is not the slightest evidence of any money having been received by him. 28 O. C. 230=88 Ind. Cas. 830=26 Cr. L. J. 1217. When a post master recived a V. P. letter and handed over the same to the addressee without getting payment on or before 20-10-25 and then altered his account so as make it appear that he only handed it over again on 24-10-25, *held*, that he was guilty of criminal breach of trust and falsification of accounts in the absence of proof by him of the absence of dishonest intention. 102 Ind. Cas. 488=28 Cr. L. J. 552=52 M. L. J. 703. Where it was found that the accused was a tax-daroga and cashier of the Municipality tbat the amounts which he is said to have embezzled were received by him and that he failed to account for them, *held*, that all the elements constituting an offence under this section were present. 45 C. L. J. 207=28 Cr. L. J. 469=A. I. R. 1927 Cal. 409. A conversion is none the less a conversion because no cash passes. 11 Lah. L. J. 384=118 Ind. Cas. 650=30 Cr. L. J. 954.

General deficiency.—A person accused under this section might be legally convicted of the offence defined in that section in respect of a general deficiency in the accounts. 18 A. 116; 17 A. 153.

Dishonest—When a person misappropriates to his own use property that does not belong to him, the misappropriation is dishonest even though he intended to restore it at some future time. L. B. R. (1827-1892), 505. The prosecution is not bound to prove the actual mode of misappropriation, 8 Ind. Cas. 687.

Public servant.—A naib nazir is a public servant. 2 N. W. P. 298. A police servant is a public servant. U. B. R. (1892-1896) Vol. 1, 253.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Cases.—The prosecution is not bound to prove tbe actual mode of misappropriation of the money. 8 Ind. Cas. 687=8 A. L. J. 88=11 Cr. L. J. 699 Where it was alleged that the first accused who was employed by a firm to sell cerain bags and make over the sale proceeds to a creditor of the firm, sold the bags, and that he and the second accused together misappropriated the money with a view to cause wrongful loss to the firm and gain to themselves. *Held* that the allegations, if proved, would make the two accused guilty of the offences of criminal breach of trust and criminal misappropriation and that the complaint ought to have been dismissed. 9 M. L. T. 332=12 Cr. L. J. 123=9 Ind. Cas. 726=1911 M. W, N. 125. Where the managing director of a bank misrepresented to the share holders as to the real state of the bank and induced them to declare a dividend of 6 per cent instead of 3 p. c. he is guilty under this section. 23 P. W. R. 1915 Cr.=167 P. L. R. 1915=16 Cr. L. J. 477=29 Ind. Cas. 105. Where a clerk entrusted with the document in a record room, gave a document in his custody stealthily to a person entitled to it,

he commits an offence under this section as the Government by this action is deprived of its fees. 27 A. 260. Where the accused, a revenue patel, who received from Government small sums of money to be paid over as temple allowances, took formal receipts from the person to whom those payments were to be made, and forwarded those receipts to the authorities in due course, but the money was not paid over to the person entitled to receive it, as they were willing to trust him ; *held* that the accused had fulfilled the trust reposed in him hy the Government, and that he was not guilty of an offence under this section. 10 B. 256. A *kanungo* appointed to collect rents for the *Maharajah of Benares* and tecceiving his salary through the Government is punishable under s. 409 of the Penal Code for criminal breach of trust. A. W. N. 1884, 105. Section 409 does not require that property in respect of which criminal breach of trust had been committed, is to be the property of the Government but only requires that it shall be entrusted to a public servant in his capacity as such. 2 C. L. R. 515 ; see also 8 Cr. L. J. 160=1 S. L. R. 38 Cr. Where unclaimed rice lying at the Kidderpore Docks was advertised for sale, but before sale it was condemned as being in a rotten condition and was handed over to the Superintendent of the Health Department of the Calcutta Corporation : *Held*, that the latter had not committed the offence of criminal breach of trust by selling the property and retaining the sale proceeds, instead of destroying it. 2 C. W. N. 216. The owner of an estate, on assuming management thereof, is competent to prosecute a servant of the Court of Wards for criminal breach of trust committed during the management of the estate by the Court. 5 C. W. N. 248. A government servant cannot be convicted under this section for taking advances from cash in his custody where there is a long standing practice to that effect. 39 P. L. R. 1902. Offence of misappropriation in respect of several items may be joined with chage of falsification which is one of series of acts. A. I. R. 1935 Cal. 312. But where six items of money were embezzled by six different persons they constitute six different offences and one single trial after framing of one single charge is a defect which cannot be cured by S. 537. Cr. Pro. Code. A. I. R. 1935 Oudh. 273.

The accused a petty officer in the Salt Department, was empowered to sell salt at reduced prices to fish curers (ticket-holders). The charge against him was that he really bought salt for himself at reduced rates, entering the sales in the Government books as if made to ticket holders, thus defrauding Government of the difference in the price of the salt. *Held*, that the officer was guilty of the offence of criminal breach of trust by a public servant. 1 Weir 467.

Where a branch firm employed purchasing agents who, in their turn, employed the accused as their servant, and where the purchasing agents were charged with criminal breach of trust as agents under s. 409, and servant for criminal breach of trust as servant, *held* that the servant could not be convicted of the offence as he was not the servant of the firm, the purchasing agents having taken the whole responsibility, as no specific amount had been proved to have been embezzled by him and as he has not been proved to have abetted the purchasing agents. 2 P. R. 1906 Cr.=9 P. L R' 1902. Where a village shroff, whose duty it was among other things, to assist in collecting the revenue, received grain from certain ryots and, in return, granted receipts for the public revenue, as if for money received, *held* that the shroff could not be convicted of criminal breach of trust of the grain so received in as much as the accused were not authorised to receive the public revenue in kind, and as the party who so delivered the grain did not thereby discharge himself from liability to revenue. 1 Weir 465=4 M. H. C. App. 32 ; see also 1 Weir 466. In a case of criminal breach of trust where the accused pleads that he has accounted to the complainant aad paid the balance of the money, the burden of proving non-accounts and non-payment is on the prosecution and not on the accused. Rat. Un' Cr. C. 869.

Under the provisions of s. 497 a Magistrate has no power to grant bail in cases failing under s. 409 Penal Code. 1930 Cr. C. 1151=A. I. R. 1930 Rang. 835. Payment of amount alleged to have been embezzled is no evidence of the offence A. I. R. 1930 Oudh. 324=7 O. W. N. 564. An offence under this section cannot be committed in respect of immovable property. 8 Rang. 13=1930 Cr. C. 590= A. I. R. 1930 Rang. 158. In the case of temporary misappropriation of funds of society by its secretary with the knowledge of its members is only a technical offence and benefit of doubt should be given to the accused. 12 Lah. L. J. 165=129 Ind. Cas. 286=32 Cr. L. J. 274=A. I. R. 1930 Lah. 1045. A person who is the manager of the firm cannot be held criminally liable for breach of trust where there is no personal entrustment of goods to him out to the firm in respect of

which the offence was alleged to have been committed. A. I. R. 1930 Rang. 332=1930 Cr. C. 1168. Entrustment of goods creates trust on sale proceeds also. A. I. R. 1932 Sind. 169=34 Cr. L. J. 51=1932 Cr. C. 733=140 Ind. Cas. 647. Prosecution must prove from misappropriation. Onus never shifts. 1933 Cr. C. 1375=A. I. R. 1933 Cal. 800. Accused is guilty in case of shortage of goods and falsification of accounts by accused. 143 Ind. Cas. 318=1933 A. L. J. 479=1933 Cr. C. 629=34 Cr. L. J. 574=A. I. R. 1933 Cal. 356. Public servant is responsible for proper expenditure of money not having dominion over it. A. I. R. 1933 Oudh. 387=10 O. W. N. 807=1933 Cr. C. 1088. Where accused is charged with criminal under section 409 and plea of *bona fide* payment to wrong persons under misapprehension is taken, evidence of other transactions of conversion of money to personal use is not admissible. 142 Ind. Cas. 274=1933 Cr. C. 197=34 Cr. L. J. 294=A. I' R. 1933 Cal. 136. In case of offence by an agent, agent can be tried at place to which he is bound to make remittance. 139 Ind. Cas. 159=33 Cr, L. J. 711=1932 Cr. C. 403=1932 A. L. J. 269 ; see also A. I. R. 1933 Lah. 559=34 Cr. L. J. 902=1933 Cr. C. 817.

Where there is absence of intention to misappropriate money belonging to principal, an agent cannot be prosecuted for criminal breach of trust. A. I. R. 1930 Pat. 221=1930 Cr. C. 429. Where money drawn by the Principal of a school for payment of bill due to a particular firm was under his order appropriated towards the payment of another bill due to the same firm, held, that it may be a serious irregularity in the eyes of the Audit Officer but that it did not amount to an offence under s. 409 I. P. Code. A. I. R. 1930 Oudh. 324=7 O. W. N. 564. The law always regards criminal breach of trust by person in charge of public moneys as one of a specially serious nature. 106 Ind. Cas. 337=29 Cr. L. J. 1. In cases of criminal misappropriation the onus lies on the prosecution to prove not only that money was paid to the accused in trust but also that he did not apply it for the purpoee for which it was given. A. I. R. 1928 Lah. 382. Section 409 of the Penal Code can not be construed as involving that any head of an office who is negligent in seeing that the rules about remitting money to the treasury are observed, is *ipso facto* guilty of the offence of criminal breach of trust. 30 Bom L. 624=111 Ind. Cas. 730=29 Cr. L. J. 922. Where the offence of embezzlement was *ex hypothesi* complete long before anything done subsequently to help the real offender to conceal the embezzlement it might be punishable under some other section but does not amount to abetment of the offence under s. 409. A. I. R. 1928 Lah. 382. A Kabuliyat provided that a *moujadar* should realise rent and pay the same to the Government and that on failure to do so the Government should realise the same from the *moujadar* or his surety according to the law prescribed for the realisation of arrears of rent. The moujadar collected certain amounts but did not remit the same to the treasury with the result that he was prosecuted under s. 409 I. P. Code. *Held* that the position of the *moujadar* was that of a lessee that the sums should be realised as arrears of rent and that the criminal prosecution was not maintainable. 47 C. L. J. 442=110 Ind. Cas. 97=29 Cr. L. J. 641=A. I. R. 1928 Pat. 43. A public servant can be convicted under s. 409 without the slightest evidence of any money having been received by him. If property under his control disappears and his connection with the conspiracy is proved conviction will follow. 88 Ind. Cas. 830=20 Cr. L. J. 1217. Where lamborder having collected part of land revenue deposited it with a banker, as tahsildar did not accept only a part, after a fixed date, there is no embezzlement and section 409 does not apply. 131 Ind. Cas. 910=32 Cr. L. J. 811=A. I. R. 1931 Lah. 468. On a charge nnder s. 409 prosecution need not prove in what manner the money alleged to have been misappropriated has actually been spent by the accused. 59 C. L. J. 306=38 C. W. N. 467=35 Cr. L. J. 1279=A. I. R. 1934 Cal. 532. This section does not include an intention to misappropriate at some futnre date. A. I. R. 1934 Lah. 843=1934 Cr. C. 1183=A. I. R. 1934 Lah. 419=152 Ind. Cas. 615. A servant acting within the scope of his employment cannot in order to defraud his master set up breach of his master's regulation in his own favour : 35 P. L. R. 649= 1934 Cr. C. 1003=A. I. R. 1934 Lah. 677.

The accused was employed as agent for collection of taxes by the Union Committee. He was to take 10 per cent. of the collection as remuneration and to hand over the balance to his master or to pay the money into the treasury, no period being fixed for the letter purpose. He was convicted on a charge under s. 406 I. P. Code for having failed to acount for a certain sum of money collected by him. *Held*, that as the accused was entitled to deduct his remuneration from the collections and as no period was fixed for payment into the treasury a charge of criminal breach o trust

could only be maintained after an adjustment of accounts. 56 Ind. Cas. 669=21 Cr. L. J. 509. The accused who was a sub-Post Master was asked to make payments for some cash certificate. The value of cash certificate was Rs. 82-2-6 and this amount was paid by the Government for payment to the certificate-holders. The accused paid them Rs. 7-3-6 each and himself appropriated the balance. *Held*, that the accused was guilty of criminal breach of trust within s. 409 I. P. Code. 82 A 204=11 A. L. J. 93=55 Ind. Cas. 476=21 Cr. L. J. 316. In a case of criminal breach of trust by Manager, Court of Wards, prosecution does not lie without sanction of Court of Wards. A. I. R. 1931 Pat. 85. If accused is not entrusted with public funds, he cannot be convicted. A. I. R. 1931 Mad. 439. Receiving commission by a Vice-Chairman of a Municipality for ordering goods to the Municipality is not an offence under this section. 97 Ind Cas. 64= 27 Cr. L. J. 1088=A. I. R. 1926 Rang. 171. Non-payment of money collected by an Amin for a long time after collection is an offence under this section. 23 L. W. 718=95 Ind. Cas. 943=A. I. R. 1926 Mad. 727; see also 27 Cr. L. J. 589 =A. I. R. 1926 Oudh, 398. A sentence of imprisonment is obligatory under the law for an offence under s. 409. 94 Ind. Cas. 130=27 Cr. L. J. 562=A. I. R. 1926 Lah. 350. Endorsement by owner in favour of Bank of a war-bond does not pass property in Bond to Bank, so the Bank is guilty under this section if it deals with bond contrary to instructions of endorser. A. I. R. 1926 Lah. 385. Where the owner of a sewing machine gives it to an agent to be sold for money and the latter pledges it, it is not open to criminal Court to order the pledgee to deliver possession of the machine to the owner on the ground that the agent had exceeded his authority. 1 Bur. L. J. 45; 1923 Rang. 68. An investigation into whether a transaction was benami or not should not ordinarily be undertaken by a criminal Court and where a person *bonafide* asserts a claim to property which he had transferred but over which he had dominion even if it turns out to be unsustainable in law, there is no offence under s. 409 unless the claim is a mere pretence. 28 C. W. N. 831=81 Ind. Cas, 829=25 Cr. L. J. 1083. It was proved by as good evidence as could have been produced that accused received the three sums in question and, up to the time of the prosecution more than a year if he had not paid them over to the persons authorised to receive them, he must be presumed to have converted them to his own use. 1923 Lah. 363.

Of the Receiving of Stolen Property.

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed, is designated as stolen property, "whether the transfer has been made, or the misappropriation] or breach of trust has been committed, within or without British India." But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to the stolen property.

Legislative changes.—Here the words "the offence of" have been omitted by Act XII of 1891 and Act VIII of 1882. The words quoted have been inserted by the Indian Penal Code Amendment Act (VIII of 1882) s. 9.

Principle.—The receiver of stolen property though not strictly a participator in the offence by which the property has been acquired, facilitates the commission of that offence or at least renders its detection more difficult, by aiding the thief in the disposal of the property. But the Code does not treat the receiver as an accessory or abettor, or as an offender against public justice. It makes the offence of receiving stolen property a substantive offence, and punishes the receiver, not always as it punishes the principal offender but with a punishment more or less severe according to circumstances.—*Morgan and Macpherson.*

Stolen property.—An extended signification is given to the words "stolen property," which are used in the four subsequent sections. Not only things which have been stolen, extorted or robbed but also things which have been obtained by criminal misappropriation or criminal breach of trust are within the meaning here assigned to these words. *Morgan and Macpherson*, 371. 15 Cr. L. J. 675. Property is not stolen property, unless the act by which it has been acquired has been com-

mitted either in British India or elsewhere by a person who is liable to be tried in British India for offence committed elsewhere. 5 B. 338. (F. B.)

But if such property, etc.—The rules of the civil law applicable to the transfer, and acquisition of moveable property, must be consulted to ascertain when "stolen property" ceases to be so by reason of its coming "into the possession of a person legally entitled to the possession thereof." Suppose goods are found by the owner in the pockets of a theft or on his person and the owner takes the goods again into his possession, but afterwards, for the purpose of detecting the receiver, gives them back to the thief desiring him to sell them as he had sold other stolen property. These goods having ceased to be "stolen property," the person who receives or buys them from the thief, however guilty is not a receiver of such property.—*Morgan and Macpherson*, 371. See also 11 P. L. R. 1905 ; 113 P. L. R. 1914.

Identification.—A conviction under this section is not maintainable, unless the stolen property is undoubtedly identified. 194 P. L. R. 1912 ; 3 M. L. T. 30. The identity of property alleged to be stolen, but recovered and produced and not distinguishable from the property stolen, may be generally established from the surrounding circumstances found to have existed rather than by the evidence of persons able to speak with personal knowledge on the matter. L. B. R. (1893-1900), 199.

Theft.—If stolen property is found soon after the possession of a person who cannot give a reasonable account of the way by which he became possessed of it, it is fair to presume that he himself is the thief. If the evidence leaves it doubtful whether the accused is guilty of theft or of receiving stolen property, he may be adjudged guilty and punished under s. 72. *Morgan and Macpherson*, 473 ; 1 L. B. R. 39. The presumption arising from the possession of stolen property is one which is strengthened, weakned or rebutted by concommittant circumstances, such as the length of time elapsing, vicinity to the spot, nature of the property and the behaviour of the accused. *Morgan and Macpherson*, 373 ; 23 W. R. Cr. 16. A missing bullock cannot be stolen within the meaning of this section. 30 Cr. L. J. 1133= 119 Ind. Cas. 863=A. I. R. 1929 All. 917.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Receives.—There must be a taking into his possession of the "stolen property" by the receiver ; but a manual possession or a touching of the property is not essential to constitute a receipt of it. If the stolen property has come under the control of the receiver, as, if it is in the hands of a person whom he can command in respect to it, he has received it—*Morgan and Macpherson*, 371. In the case of dishonest receiving, the offence is complete when the stolen property is received the receiver knowing or having reason to believe at the time that the property was stolen property. 9 C. W. N. 1027. The production of railway receipt of gonds establishes possession of the accused. 14 Cr. L. J. 318=19 Ind. Cas. 1006=40 C. 990. Where the stolen property was found in a room belonging to joint family, the possession of the articles was presumed to be that of the managing member. 29 A. 598=A. W. N. 1907, 107=6 Cr. L. 23 ; see also 22 A. 445 : 5 N. W. P. 120 ; 1 P. L. T. 431=58 Ind. Cas. 341=21 Cr. L. J. 757 ; 22 O. C. 256=54 Ind. Cas. 248=21 Cr. L. J. 40 ; but see 145 Ind. Cas. 13=1933 A. L. J. 1338=34 Cr. L. J. 930=A. I. R. 1933 All. 437. Criminal possession can be joint. 1933 Lah. 148=34 P. L. R. 576=34 Cr. L. J, 604= 34 P. L. R. 576.

Retains.—If a "stolen property" has been brought without permission to the house of a person who retains it after he becomes aware that it has been stolen, he will be punishable under this section. *Morgan and Macpherson*, 371 ; 1912 M. W. N. 362 ; 31 P. R. 1879 Cr ; 21 A. L. J. 836 ; 44 M. L. J. 243. Where considerable time elapses between the theft and the discovery of the stolen article possession by itself does not require any explanation. 1912 M. W. N. 529 ; see also 57 C. L. J. 57=1933 Cr. C. 958=A. I. R. 1933 Cal. 594 ; A. I. R. 1933 All 893 ; A. I. R. 1931 Pat. 85=32 Cr. L. J. 614=12 P. L. T. 1350.

Stolen property.—Where there is no evidence to show that a certain property has been actually stolen, a conviction under s. 411 with reference to such property, is not valid. 2 N. W. P. 187 ; 8 P. R. 1867 Cr. 13 P. R. 1867 ; Rat. Un. Cr. C. 416 ; 35 Ind. Cas. 488, 19 N. L. R. 176=244 Cr. L. J. 960 ; 50 C. 564=72 Ind. Cas. 372 ; 97 Ind. Cas. 664. Bull set at large on the death of a relative is not property. 9 A. 348=A. W. N. 1887, 73. It is not correct for conviction under this section that there must be proof of theft. 96 Ind. Cas. 869=27 Cr. L. J. 1013.

Believe.—The word "believe" is a very much stronger word than "suspect" and it involves the necesssity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. 17 Cr. L. J. 25=32 Ind. Cas. 153=33 Cr. L. J. 969=A. I. R. 1929 Oudh. 213 ; see also 134 Ind. Cas. 401=32 Cr. L. J. 1184=8 O. W. N. 517 ; 134 Ind. Cas. 401=8 O. W. N. 517=32. Cr. L. J. 1184=6 Luck. 658=1932 Cr. C. 592=A. I. R. 1932 Oudh 25. Where neither receiving nor retaining of stolen property by accused is proved, accused need not prove absence of knowledge or belief that property was stolen one. A. I. R. 1933 Sind. 359=1933Cr. C. 1335,

Knowing or having reason, etc.—The Receiver should know or have reason to believe the goods to be stolen, but it is immaterial whether or not he knows who stole them. The offence made punishable is not the receiving stolen property from any particular person, but receiving such property knowing it to be stolen. The receiver must have a dishonest intention, but whether he takes the goods for some purpose of profit or gain to himself, or merely to assist the theft or in order to conceal them, this taking cannot but be intended to cause wrongful gain or wrongful loss, and is therefore dishonest.—*Morgan and Macpherson*, 372 ; 1913 M. W. N. 696 ; A. W. N. 1898, 70.

Guilty knowledge.—In order to sustain a charge of dishonest receipt of stolen property "guilty knowledge" at the time of the receipt is necessary. 1 Weir. 469 : 4 M. H. C. App. 42 ; 2 Cr. L. J. 189. A. W. N. 1883, 17. There can be no hard and fast rule as to time, within which the stolen article should be fouud with accused, to hold him guilty of being in possession of stolen articles but two and a half months after a dacoity is not a long time. 103 Ind. Cas. 62=28 Cr. L. J. 638=A. I. R. 1927 Oudh. 277. Mere suspicion on the accused's part that property was dishonestfy acquired is not enough to make person guilty under this section. A. I. R. 1928 Cal. 264. In cases of long lapse of time between theft and discovery of stolen property, the onus to prove innocent possession is not on the accused. 1928 Lah. 687. Mere suspicion is not sufficient. A. I. R. 1935 Oudh. 327.

Proof.—To support a charge of receiving stolen property, the prosecution must prove, 1st, that the property is "stolen property," that is, that it comes within the definition of s. 410, having been obtained by some one of the offences there mentioned ; 2nd, the receiving or retaining of the property by the accused person ; 3rd the guilty knowledge of the accused. His dishonest purpose may be inferred if the above matters, are satisfactorily proved and left unexplained. As to the proof of the receiver's guilty knowledge, from the caution necessary in this sort of traffic, it must often happen that no express disclosure is made to him, and yet he knows the property to have been stolen as well as if he had actualluy witnessed the theft. In this, as in other cases, it is sufficient if circumstances are proved which, to persons of ordinary understanding in the situation of the accused person, must have led to the conclusion that the property was stolen or otherwise dishonestly acquired. Thus, if ornaments, bundles of clothes of various kinds or moveables of any sort from persons destitute of property and without any lawful means of acquiring it, and especially if it is proved that the property was brought at untimely hours and under circumstances of evident concealment, it may well be concluded that it was received with a full understanding of the guilty mode by which it has been acquired. And this will be still further confirmed, if it appears that the property was purchased for a sum far below its real value, or was concealed in places not usually employed for keeping such property, or if the marks on it are effaced, or if false or inconsistent stories are told as to the mode of its acquisition. Another circumstances from which such guilty knowledge may be inferred is that the property has been received from a notorious thief or one from whom stolen property has, no previous occasions, been received.—*Morgan and Macpherson*, 373 ; A, W. N. 1883, 17. Before a conviction, can be had under this section the possibility of the accused having obtained the goods of which he is found in possession by legitimate means must be excluded. 62 Ind. Cas. 867.

Where the only facts proved are, that certain stolen property was given to the accused by a third person to raise a loan on that the accused raised a loan and that the accused had similar dealings with such third, person *held*, that the last matter was irrelevant and that the evidence was insufficient to prove dishonest intention. A. W. N. 1885, 27. Where a person is charged with receiving or being in possession of property alleged to have been stolen, an important factor is the value of the property and as to this the Court should insist on having direct evidence as the accused is entitled to have some sworn testimony of value which he can cross-examine. 56 Ind. Cas. 856=21 Cr. L. J. 552. The finding of the Appellate Court, viz, "The evidence to implicate the accused is that they were all in a house one day disputing as to what was to be done with the booty and a dozen pepole were seen discussing as to how the booty was to be divided" is sufficient to sustain a conviction under ss. 411 and 414 I. P. Code. 7 Pat. L. T. 567=27 Cr. L. J. 657=94 Ind. Cas. 705. It is for the prosecution to prove that the accused received the property dishonestly. 29 Cr. L. J. 594.

The mere fact of possession of stolen property is not in all cases sufficient to warrant the inference that the accused was in possession of it dishonestly and to cast upon him the onus to displace the inference of dishonesty. 122 Ind Cas. 586 =31 Cr. L. J. 437=A. I. R. 1930 Pat. 353. Possession of stolen things nine months after loss does not amount to possession soon after theft. A. I. R. 1931 Pat. 85. A man who is in possession of stolen goods soon after the theft may be presumed to be either the thief or has received the goods knowing them to be the stolen unless he can account for his possession. 149 Ind. Cas. 31=35 Cr. L. J. 994=1934 Cr. C. 512= A. L. R. 1934 Rang 80 ; see also A. I. R. 1934 Oudh. 399=11 O. W. N. 905=1934 Cr. C. 1324=35 Cr. L. J. 1130=150 Ind. Cas. 845. Court may draw presumption if accused is not able to account for his possession, But onus of proving ingredient of offence under section 411 is on prosecution and does not shift to accused. A. I. R. 1933 All. 843 ; see also A. I. R. 1933 All. 461=1933 Cr. C. 761=34 Cr. L. J. 1018=145 Ind. Cas. 609.

Cases.—The only evidence against an accused person that, in the presence of several persons, he pointed out a part of the stolen property buried in a grave yard, is insufficient to establish his guilt under s. 411. 32 P. W. R. 1913 Cr.= 315 P. L. R. 1913=21 Ind. Cas. 474 ; see also A. W. N. 1895, 229 ; 13 Ind. Cas 220 ; 17 A. 576 ; A. W. N. 1881, 94 ; 15 C. 511 ; 9 Cr. L. J. 52=19 M. L. J. 301 ; 92 P. L. R. 1902 ; 3 Bom. L. R. 187 ; 24 O. C. 294. 73 Ind. Cas. 331 ; 11 Lah. L. J. 439 ; A. I. R. 1934 Sind, 159=28 S. L. R. 41=1934 Cr. C. 1261. A. I. R. 1933 Sind. 352=1933 Cr. C. 1180. Whether the fact of the accused pointing out stolen property is or is not evidence of possession is a question of fact. 126 Ind. Cas. 53=A. I. R. 1930 Sind. 168. Where all that is proved against the accused person is that he is receiver of stolen property knowing it to be stolen, and the evidence falls short of showing that this offence, of receiving was a repeated offence, *held* that the conviction of the accused as having received the property of a particular person is bad in law. 9 A. L. J. 370=13 Cr. L. J. 254= 14 Ind. Cas. 606. In the absence of conclusive evidence of guilt an accused cannot be convicted under this section where the circumstances are gravely suspicious. 10 C. W. N. 219=3 Cr. L. J. 195. It is enough for the prosecution to prove facts which justify the inference that the accused either dishonestly received the property, or having received it honestly dishonestly retained it. 15 P. R. 1889 Cr. Where stolen goods apparently of two thefts are found on an accused person at one and the same search and there is no proof of two distinct acts of receiving, he cannot be convicted of two offences under s. 411 I. P. Code. 4 P. W. R. 1907 Cr.=5 Cr. L. J. 122 ; S. C. 167 Oudh ; 15 A. 317 ; see also 142 Ind. Cas. 884= 34 Cr. L. J. 458=34 P. L. R. 433=1932 Cr. C. 921=A. I. R. 1932 Lah. 615. Failure to disclose names of theives is not sufficient ground for conviction under section 411. 145 Ind. Cas. 284=1933 Cr. C. 881=34 Cr. L. J. 957=A. I. R. 1933 Lah. 596. Sale of ornaments after more than a month after theft does not in itself lead to inference that they were proceeds of theft. A. I. R. 1933 Lah. 987 Where accused is found with *stolen* article within twenty-four hours of the theft and the accused refuses to disclose the name of the person from whom he received it without assigning any reason, guilty knowledge can be presumed. 9 O. W. N. 1169 ; see also A. I. R. 1933 ⅛ Oudh. 53=1933 Cr. C. 93=9 O. W. N. 977=34 Cr. L. J. 101.

Where the stolen article is of an ordinary make and there is nothing peculiar in it, the uncorroborated evidence of the complainant of an ordinary position alone

as to its identification is not sufficient for finding that it does not belong to the accused, specially where it has been equally contradicted by a witness on the other side. 22 P. W. R. 1912 Cr.=15 Ind. Cas. 971=13 Cr. L. J. 555 ; see also, 1 Pat. L. T. 727=21 Cr. L. J. 673=57 Ind. Cas. 913. The mere fact that a person was in possession of a stolen animal and he sold it to another is not in itself sufficient for his conviction under this section, and his denial of having any connection with the animal does not prove his guilty knowledge, especially when there is some enemity between the alleged vendor and the vendee. 34 P. W. R. 1914 Cr.=229 P. L. R. 1914=15 Cr. L. J. 654=25 Ind. Cas. 982. A person who has obtained possession of property by criminal breach of trust is liable to be punished for the breach of trust only, but not for an offence under s. 411. 2 N. W. P. 312. The fact that a person is in possession of stolen property and does not account for it is, although suspicious, not sufficient to convict him of an offence under s. 411=6 A. 224=A. W. N. 1884, 55. Possession of Currency Notes of not large value a year and a half after their theft, is not in itself evidence of any guilty knowledge on the part of the possessor so as to support a conviction for dishonest retention of stolen property. In such a case, the fact that the accused gave a false explanation of his possession is not sufficient to warrant his conviction. 1912 M. W. N. 362=11 M. L. T.186=15 Ind. Cas. 315=13 Cr. L. J. 475. It is not sufficient to show that the accused person was careless or had reason to suspect that the property was stolen or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. 29 B. 449=7 Bom. L. R. 527=2 Cr. L. J. 480.

The offence of receiving or retaining stolen property is not one of those offence mentioned in s. 562 of Cr. Pro. Code, as it is punishable under s. 411 or s. 414 I. P. Code with more than two years' imprisonment. 2 Bom. L. R. 343. The accused purchased a shop-keeper's weight from a begger boy without making any enquiry of the boy. *Held* that these circumstances did not justify the inference that the accused either knew or had reason to believe that it was stolen property. 5 Bom. L. R. 877. A person receiving property which is not stolen, but erroneously believing it to be stolen, is not guilty of an offence under s. 411. Rat. Un. Cr. C. 389. The mere fact of possession of stolen articles, not of an unusual character and such as easily pass from hand, to hand, does not justify a conviction under s, 411 of the Penal Code. Rat. Un. Cr. C. 594. But the possession of stolen property, immediately after it has been stolen, affords a strong presumption, that the person in whose possession it is, is either the actual thief or a receiver with a guilty knowledge ; and the presumption is strengthened, if the person, in whose possession the stolen property is, fails to give a satisfactory account of the manner in which he acquired such possession or gives a false account, or gives accounts which are contradictory, or if the property is secreted. 11 C. 160 ; 13 M. L. T. 30=7 Cr. L. J. 30 ; 1 Weir. 477 ; 12 C. P. L. R. Cr. 51 ; 17 Cr. L. J. 179 ; 1922 Lah. 80. Where the disappearance of a document from records of an office and substitute of a forged one in its place were proved and the genuine document was found in the possession of the accused, the sevant of the person to further whose civil suit the substitution was made, *held*, that it would raise a presumption that the accused was retaining stolen property with a dishonest intention. 21 C. 328. In order to convict a person of an offence under s. 411, I. P. Code, on the presumption of guilt arising from the possession of stolen property, the possession must be exclusive as well as recent. 15 P. R. 1889, Cr. Retention of property criminally misappropriated is not dishonest retaining of stolen property. Where a person takes possession of property not in the possession of another person, he does not, by that act alone, commit an offence. 15 P. R. 1889 Cr. Act or ommission under s. 411 and Arms Act s. 19 is not the same. 145 Ind. Cas. 609=34 Cr. L. J. 1018=1933 A. L. J. 523=1933 Cr. C. 761=A. I. R. 1933 All. 461. Where three accused were in possession of stolen revolver at various times. Conviction under s. 411 or s. 414 is no bar to conviction under Arms Act, s. 19 (F). A. I. R. 1933 Oudh. 470=1933 Cr. C. 1393=146 Ind. Cas. 354. Where accused was charged under s. 302 I. P. Code alone, conviction can not be altered into one under s. 411. 10 O. W. N. 466=1933 Cr. C. 693 =8 Luck. 518=A. I. R. 1933 Oudh. 315. Where a village Magistrate is charged with offence under s. 411, sentence under s. 197 Cr. Pro. Code is not necessary. 143 Ind. Cas. 102=1932 M. W. N. 1075=1933 Cr. C. 373=34 Cr. L. J. 326=A. I. R. 1933 Mad. 270.

To constitute dishonest retention, there must have been a change in the mental element of possession (possession always subsisting *animo et facto*) from an honest to a dishonest condition of the mind in relation to the thing possessed. 18 P. R.

1884 Cr. Being in possession of stolen property with the knowledge that it is stolen is not an offence under s. 411, I. P. Code. though it may be evidence of such an offence or of theft. 46 P. R. 1887. What amounts to a "reason to believe" that certain property is stolen property explained. 37 P. R. 1888 Cr. A pawnee, in the possession of stolen property, was ordered to restore the property to the owner thereof, notwithstanding that he received it without guilty knowledge. 37 P. R. 1870 Cr. In a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with guilty knowledge. *Held*, that proof that an accused person retained a certain property, alleged to be stolen, with guilty knowledge must be clearly given where the accused is charged with receiving stolen property. 13 W. R. Cr. 70. Where the accused rescued from police custody property alleged to have been stolen *held* that they could not be convicted of an offence under s. 411 without strict proof that the property was stolen property. Rat. Un. Cr. C. 98. Where in a case under this section, the stolen property was found in the possession of the accused more than three months after the theft, *held*, that having regard to the length of time there was no presumption that the accused knew or had reason to believe that the property was stolen. 22 C. W, N. 596=46 Ind. Cas. 158 ; 29 C. L. J. 325=51 Ind. Cas. 685=20 Cr. L. J. 525. In a case under this section, in charging a jury it should be pointed out that the stolen goods referred to must be in possession soon after the theft or that the stolen goods must have been recently stolen. 24 C. W. N. 619=31 C. L. J. 310=56 Ind. Cas. 849=21 Cr. L. J. 545. Before a conviction can be had under s. 411 of the Penal Code the possibility of the accused having obtained the goods of which he is found in possession by a legitimate means must be excluded. 62 Ind. Cas. 867=22 Cr. L. J. 595. Where properties stolen at a burglary are recovered from the possession of two persons on different dates and on different places they cannot be tried together for an offence under section 411 of the Penal Code. 63 Ind Cas. 620=22 Cr. L. J. 684. Where certain stolen articles were found in a *nohera* of which the accused was joint owner and which was at that time in the charge of a disreputable person the accused cannot be convicted under s. 411, I. P. Code. 4 Lah. L. J. 484. In the absence of anything to convict the husband with the possession of stolen property he cannot be convicted of an offence under s. 411 I. P. Code in respect of stolen property found in the possession of his wife. 20 A.L.J. 162=67 Ind. Cas. 338= 27 Cr. L.J. 386 ; see also 74 Ind. Cas. 271=24 Cr.L.J. 767. Where the fact of burglary was not reported until after four months had elapsed and goods of common pattern were found in the house of the accused with the accused and the complainant each claimed as his own. *Held*, that there was no satisfactory evidence to prove that the article belonged to the complainant and the accused must be acquitted. 1923 Lah. 36. Where there is no proof of separate receipt of two properties found with the accused at one and the same time, he cannot be convicted separately for each, unless there was distinct evidence of receipt of articles under different circumstances at times. 9 O & A. L. R. 779 ; A. I. R. 1928 Lah. 637. The mere finding of stolen property with the accused three years after the theft does not indicate dishonest intention within the meaning of section 411. 1923 Lah. 460. Where the evidence in a case of receiving stolen properties does not show whether the properties were all received on one day or on different dates, no presumption can be drawn as to the date of receipt either way. 2 Pat. L. R. 131=5 Pat. L T. 319=25 Cr. L. J. 738= 81 Ind. Cas. 226 ; 26 Cr. L. J. 1=83 Ind. Cas. 481. Though the facts may raise a certain amount of suspicion, as to a person being in possession of stolen property an offence under s. 411, I. P. Code cannot be established on the mere suspicious conduct of the accused. 26 P. L. R. 165. Where the accused are proved to have stolen more goods than had been established to have been stolen property and they are found in a room accessible to all the members of the joint family a conviction cannot be held under s. 411 I. P. Code. 47 A. 511=23 A. L. J. 421=87 Ind. Cas. 846. In a charge under this section, the person from whom the property was originally stolen must be stated if known. 91 Ind. Cas. 64=27 Cr. L. J. 32. Where an accused person produces property known to have been stolen at different places, he can be convicted separately of receiving stolen property. 96 Ind. Cas. 120=27 Cr. L. J. 872.

Joint-trial.—Separate trial is the rule. Joint-trial is an exception. Where more than one offence of theft is committed persons in possession of such property cannot be jointly tried. A. I. R. 1935 Oudh. 327.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly receiving property stolen in the commission of a dacoity.

Scope.—For one description of cases of receiving stolen property, namely, the cases in which property is known by the receiver to have been acquired by the offence of dacoity or is received from a dacoit, it was thought fit specially to provide a heavier punishment. The receiver, in these cases, may be punished as severely as those who commit dacoity.—*Morgan and Macpherson* 374. The bare discovery of stolen property and arms in joint family house is not such evidence of possession on the part of each of its members as would form a sufficient basis for conviction. 22 A. 445. But the fact of stolen property being found concealed in a man's house would ordinarily be sufficient to raise a presumption that he knew the property to be stolen property, but not to prove that he knew that it had been acquired by dacoity. Rat Un. C. Cr. 184 ; See. 7 W. R. Cr. 199 : 9 W. R. Cr. 16. To support a conviction under s. 412, it is not sufficient to show that the accused knew the property to be stolen property, it must be proved that they knew or had reason to believe that its possession had been transferred by the commission of dacoity or that, being stolen property, they received it from a person whom they knew or had reason to believe belongs or beloned to a gang of dacoits. Rat. Un. Cr. C. 756 ; see also U. B. R. (1897—1901) Vol. 1, 72 ; 6 B. 731. The fact of stolen property being found concealed in a man's house would ordinarily be sufficient to raise a presumption that he knew the property to be stolen property, but not to prove that he knew that it had been acquired by dacoity. Rat. Un. Cr. C. 184=Cr. Rg. 10-10-1882. The mere knowledge of the place of concealment does not necessarily lead to the conclusion that the person having such knowledge actually received the articles stolen or participated in the act of concealment. 1 P. R. 1917 Cr. In a case of identification of ornaments of small value the opinion of the assessors is of considerable value as they are well acquainted with the ways and habits of men of ordinary standings. 25 Cr. L. J. 1291=A. I. R. 1925 Oudh. 452. Where in a case of dacoity the Judge charged to the jury saying that if the articles were stolen properties and where found in possession of the accused it is sufficiently proved that they were thieves or dacoits and the rebuttable presumption that arises in law is that the accused are either thieves or dacoits until they succeed by adducing sufficient proof in establishing their innocence. 42 C. L. J. 212=90 Ind. Cas. 542. A receiver of the articles of petty value stolen at a dacoity should not be treated in practically the same manner as though he were accused of the actual dacoity. 103 Ind. Cas. 62. Where a person received at one and the same time several stolen articles belonging to different owners, the receipt constitutes one single offence. A. I. R. 1923 All. 547=21 A. L. J. 389=45 All. 485=24 Cr. L. J. 632=73 Ind. Cas. 520.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment or either description for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property.

Scope.—The common receiver or professional dealer in stolen property, is hereby made punishable.—*Morgan and Macpherson*, 374. The essence of the offence under this section is the habitual, that is to say, constant receipt or dealing in goods which the prisoner knew or had reason to believe, were stolen. A man cannot be said to be habitually receiving stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day ; but in addition to the receipt from different persons there must be a receipt on different occasions and on different days. 19 C. 190 ; 13 P. R 1914 Cr. Where the charge of an offence under s. 401, I. P. Code. rested primarily

on the approver's statement about the accused having been present at a meeting held for the purpose of forming the gang, and where it was beacuse that statement was disbelieved that the prosecution failed and where the approver's statement was in fact part of the material on which the prosecution for the offence under s. 413 I. P. Code, had been instituted but that prosecution would be based entirely on the evidence as to the discovery of the stolen property in the accused's house, which, it was held in the former trial, did not prove his membership of the gang. *Held*, that the two trials were not based on the same facts and s. 403 did not apply. 26 P. L. R. 470=88 Ind. Cas. 185=26 Cr. L. J. 1077.

Procedure—Cognizable—Warrant—Not-bailable—Noe-compoundable—Triable by Court of Session.

Assisting in concealment of stolen property.

414. Whoever voluntarily assists, in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Scope.—Those whose dealing with stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it, may be punished under this section. Assistance given by aiding the concealment or destruction, or by promoting the sale, of the stolen property, if it is given voluntarily, by a person who knows or who has reason to believe that the property is stolen, constitutes the offence.—*Morgan and Macpherson.* 375 ; 29 B. 449=7 Bom. L. R. 527; Rat. Un. Cr. C. 553 : 1 Weir. 469 ; 39 P. R. 1881 Cr.; 1 Agra. Cr. 9 ; A. W. N. 887, 96 ; 14 Bom. L. R. 893 ; 28 A. 313 ; 15 P. R. 1896 Cr. ; 1 A. 379 ; 45 M. L. J. 728. The word "believe" in s. 414 I. P. Code is a very much stronger word than "suspect" and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. It is not sufficient to show that the accused was careless or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. 6 B. 402=6 Ind. Jur. 538 ; See also 139 Ind. Cas. 442=33 Cr. L. J. 764=33 P. L. R. 572=1932 Cr. C. 580=A. I. R. 1932 Lah. 434. The finding that the property in question was stolen property is necessary for a conviction under s. 414. Such a finding may be based on strong circumstantial evidence. An accused who conceals property in the belief that it is stolen while really it is not is not guilty. A. I. R. 1924. Mad 350=45 M. L. J. 728=25 Cr. L. J. 790=81 Ind. Cas. 310. Under this section it is not necessary to trace the ownership of property. Proof that the property is stolen is sufficient. The accused should have helped another in the disposal of the stolen property. A. I. R. 1926 Bom 71=49 B. 878=27 Bom. L. R. 1373=27 Cr. L. J. 114=91 Ind. Cas. 690 This section applies where there is no actual receipt of stolen property. Where there is such evidence s. 41 applies. Rat. Un. Cr. C. 553 ; 4 M. H. C. App. 13=1 Weir. 469=2 Weir. 35. Neither s. 411 nor s. 414 can be applied to the original thief of the property concerned. 4 N.L.R. 71=8 Cr.L.J. 11. The words "disposing of" in s. 414 I. P. Code, must be interpreted by the light of the words they are associated with, viz., "concealing", and "making away with", and they cannot be taken to include "restoring to the owners". U.B. R. 1910, 1st Qr. 8=7 Ind. Cas. 465=11 Cr. L. J. 493. Where the accused voluntarily assisted in concealing, or disposing of or a making away with stolen property, and was also found to have concealed it in the field of an enemy of his, with a view that it might be found there and that he might be apprehended and charged with theft, *held* that the Magistrate acted properly, in convicting and punishing the prisoner under ss. 192 and 414 I. P. Code. 1 A. 397. This section is not applicable to original thief. 4 N. L. R. 71.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class or 2nd class.

Of Cheating.

Scope of the offence of cheating.—"The provisions for the proper punishment of some of the aggravated forms of cheating are contained in other chapters of the code than the present one (of offence against property) wherein cheating is defined, viz. in the chapter of offence relating to the coin, to weights and measures,

to documents and to trade or property marks. The practice of intentional deceit for purposes of gain or to induce a person to act in such a way as to cause damage or harm to himself is an offence made punishable by the Code under this head. It is important that the law should in no case encourage deceit or falsehood, and that it should impose restraints on those who practise deception. But the legislator cannot go so far as to establish the rule of morality as a part of the rule of law. Many false pretences and many representations calculated and intended to mislead are morally wrong and deserving of punishment ; but a Penal Code cannot adopt so severe a standard as the moral law whereby to measure the conduct of men. It is by public opinion, the opinion of the general body of the people, that restraints and punishments must in such cases be imposed. It would be highly inexpedient to punish as a criminal every dependent who obtains pecuniary favour by false profession of attachment to a patron, every legacy-holder who obtains a bequest by cajoling a rich testator, every debtor who moves the compassion of his creditors by over-charged pictures of his misery, every petitioner who, in his appeals to the charitable represents his distresses as wholly unmerited, when he knows that he has brought them on himself by intemperance and profusion.

"In dealings between buyers and sellers, frequently even in tolerably honest transactions, there happens an exaggeration on the one side and a depreciation on the other of the value of the thing sold which may be morally reprehensible, but with which the penal law cannot deal. If all the misrepresentations and exaggerations, in which men indulge for the purpose of gaining at the expense of others, were made crimes, not one day would pass in which many thousands of buyers and sellers would not incur the penalties of law—A very large part of the ordinary business of life is conducted all over the world, and no where more than in India, by means of conflict of skill, in the course of which, deception to a certain extent perpetually takes place. The moralist may regret this but the legislator sees that the result of the attempt of the buyer and seller to gain an unfair advantage over each other is that in the vast majority of cases, articles are sold for the prices which it is desirable that they should fetch ; and therefore he does not think it necessary to interfere. It is enough for him to know that all this great mass of falsehood practically produces the same effect which would be produced by truth ; and that any law directed against such falsehood would, in all probability, be a dead letter, and would if carried into rigorous execution, do more mischief in a month than all the lies which are told in the making of bargains throught all the bazars of India produce in a century."—*Morgan and Macpherson.*

Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a*) A, by falsely pretending to be in the Civil Service, intentonally deceives Z, and thus dishonestly induces Z, to let him have on credit goods for which he does not mean to pay. A cheats.

(*b*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g*) A intentionally deceives Z into a belief that a means to deliver to Z a certain quantity of indigo-plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but, if A, at the time of obtaining the money, intends to deliver the indigo-plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that, in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage-money from Z. A cheats.

Object of the section.—In order to bring a case within the 1st part of the section. it is essential in the first place, that the person who delivers the property should have been deceived before he makes the delivery and in the second place, that he should have been induced to do so fraudulently or dishonestly. The object of this section is to make it cheating to obtain property by deception in all cases where the property is fraudulently or dishonestly obtained. However immoral a deception may be, it does not constitute the offence of cheating, if its object is only to cause a distribution of property which the law recognises as rightful; there must be an intention to acquire or retain wrongful possession of that to which some other person has a better claim, and that other person is entitled to recover by law; in all such cases the object is wrongful gain attended with wrongful loss. 2 C. L. J. 524. The damage or harm referred to in this section must be the necessary consequence of the act done by reason of the deceit practised, or must necessarily be likely to follow from them, *Ibid*; 17 C. 606. Mere silence on the part of the accused would not amount to deception. U. B. R. (1892-1896) Vol. I. 255. In order to find whether a person is guilty of cheating, the Court has to take into consideration the cumulative force and effect of all the sorrounding circumstances. 1 Weir 476; See also 23 Cr. L. J. 443; 31 Ind. Cas. 353; 34 P. R. Cr. 1919.

Fraudulently or dishonestly.—The word "fraudulently" used in this section together with the word "dishonestly" means something different from "dishonestly." The word is not confined to transactions in which there is wrongful gain on the one hand, or wrongful loss on the other, either actual or intended. The word "defraud" may or may not imply deprivation, either actual or intended. 32 C. 775=9 C.W.N. 897 =1 C.L.J. 469; see also 64 Ind. Cas. 33. The words "fraudulently" "and dishonestly" do not govern the whole of the definition. They do not apply to the second part of the definition. 20 P R. 1889. Illustrations (f) and (g) leave no doubt that an intention as to future, expressed falsely or dishonestly for the purpose of deceiving a person, could amount to deception as a constituent element. A. W. N. 1886, 262. Where the charge does not contain any allegation that the accused acted dishonestly or that he deceived the complainant the charge should be set aside and the proceeding quashed. A. I. R. 1933 Sind. 169=34 Cr. L, J. 1049=145 Ind. Cas. 617. It is not necessary to constitute cheating that wrongful gain should accrue from the party deceived. 16 Cr. L. J. 753=31 Ind. Cas. 353.

Deception.—This section does not in any manner limit the mode in which the deception may take place, nor is it necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself. 32 C. 941=9 C. W. N. 1006; 18 A. L. J. 408.

Sale.—To constitute the offence of cheating by taking delivery of property, there should be deceit at the time when delivery is taken and the seller should be fraudulently and dishonestly induced to deliver the property in consequence of such deceit. 9 Ind. Cas. 458; Rat. Un. Cr. C. 546.

What constitutes offence.—Under section 415 unless and until damage or harm is proved the offence of cheating is not completed. 148 Ind. Cas. 690=35 Cr.

L. J. 872=A. I. R. 1934 Pesh. 5. The burden is on the prosecution to prove fraud or dishonesty on the part of the accused. Every ingredient which is included in the definition of the offence must be established by the prosecution. A. I. R. 1933 Pat. 598. 1933 Cr. C. 1360=146 Ind. Cas. 580. There must be active deception by which a person is fraudulently induced to deliver property or there must be dishonest concealments of facts causing damage. 60 C. 262=1933 Cr. C. 502=A. I. R. 1933 Cal. 366 ; see also 51 C. 250=28 C. W. N. 160=26 Cr. L. J. 330=84 Ind. Cas. 554 ; 2 P. L. T. 211=50 Ind. Cas 921. Valuable security does not include a decree. 39 C. L. J. 1288=28 C. W. N. 414. To constitute the offence of cheating, it is enough to allege that the property obtained was in the possession of the person defrauded and it is not necessary to allege that such property belonged to him. 1 Weir 471=1 M. H. C. 31. It must be proved that the person who was made to deliver property etc., or to do or omit to do anything, which causes or is likely to cause him danger in body, mind, reputation or property, and which he could not have otherwise done. The offence is not committed if a third party, on whom no deception has been practised, sustains. pecuniary loss in consequence of the accused's act. 25 P. R. 1904 Cr. ; 10 P. L. R 1905. Certain retail dealer induced their creditors to give time and soon after vacation intervened and they removed the goods. *Held*, that they are guilty of cheating. 23 A. L. J. 433=87 Ind. Cas. 426. Negotiations between the cheat and the persons cheated does not create a new contract between the parties and such negotiations make no difference to his criminal liability for an offence which is not compoundable. 26 Cr. L. J. 1602. To convict a person for cheating, it is necessary to show that there is a proximate connection between deception practised on the complainant and his being induced to part with some property. If the connection is too remote or very indirect the offence of cheating would not be complete. 26 Cr. L. J. 213= 83 Ind. Cas. 997=A. I. R. 1924 All. 209. Sending an insured letter containing *Khilafat* notes does not amount to cheating. 26 Cr. L. J. 209=83 Ind. Cas. 993= A. I. R. 1924 All. 205. Under this section proximate and natural result and not a vague and contingent one is to be taken into account. 52 C. 188=85 Ind. Cas. 641. The delivery contemplated by this section is "delivery to any person" a phrase which will include even an agent for that purpose. 1927 M. W. N. 221=101 Ind. Cas. 484= 28 Cr. L. J. 452=A. I. R. 1927 Mad. 544=52 M. L. J. 511. In the absence or dishonest intention, a judgment-debtor is not guilty by mere dishonour of a cheque. A. I. R. 1928 Oudh. 292. The essence of an offence under this section is (1) that there must be deception practised upon a person, (2) that by that deception the person must be induced to do or omit to do something which he would not have done or omitted to do if he has not been so deceived (3) that such act or omission must cause or be likely to cause, the person deceived damage or harm in body, mind, reputation or property. To constitute the offence of cheating under s. 415 of the Penal Code the damage or harm caused or likely to be caused to one person deceived in mind, body, reputation or property must be the necessary consequence of the act done by the person of the deceipt practised, or must be necessarily likely to follow therefrom. The mere possibility of harm or damage however remote is insufficient. 34 P. R. Cr. 1919=48 Ind. Cas. 877=20 Cr. L. J. 77 ; 18 N. L. R. 52= 67 Ind. Cas. 619=23 Cr. L. J. 443 ; 26 Bom. L. R. 211=81 Ind. Cas. 926. In the absence of dishonest inducement the charge could not be entertained. 21 A. L. J. 321=1923 All. 431. No offence under s. 413 is committed by untru praise of goods offered for sale. A. I. R. 1925 Cal. 605=26 Cr. L. J. 921=29 C. W. N. 362=86 Ind. Cas. 985.

To constitute cheating within clause (ii) of this section it is necessary (1) that the person deceived must have acted under the influence of the deceipt (2) that the facts must establish damage, or (3) that the damage must not be too remote. 51 C. 250. The word delivery contemplated by this section is "delivery to any person" a phrase which will include even an agent for that purpose. 101 Ind. Cas. 484=28 Cr. L. J. 452=A. I. R. 1927 Mad. 544. In order to bring a case within the second part of s. 415 I. P. Code damage or harm caused or likely to be caused, must be the necessary consequence of the act done by reason of the deceipt practised or must be necessarily likely to follow therefrom, and the law does not take into account remote possibilities that may follow from the act. 35 P L. R. 666=A. I. R. 1934 Lah. 833. Mere criminal breach of trust does not constitute an offence under this section. A I. R. 1930 Pat. 404. In case of payment by cheque an offence of cheating is made out if the accused knew that the cheque would not be met. 32 Bom. L. R, 562=A. I. R. 1930 Bom. 179.

Intentionally.—The word "intentionally" in the second branch of the definition, only applies to the act or omission which the person deceived is induced to do, or

omit to do, and it is not necessary in order to sustain a charge under that branch of the definition, that the accused person should also have intended to cause harm or damage as, the result of such act or omission. 36 P. R. 1888 Cr.

Cases.—A person employed as a clerk in charge of the renewal of licences for hand carts received Rs. 2 for each such renewal, whereas he ought to have taken Rs. 1-14-0. He was charged with cheating and evidence was produced showing that he had taken two annas in excess from persons other than those named in the charge ; *held*, that such evidence was inadmissible either under s. 24 or under s. 15 of the Evidence Act. 8 A. L. J. 1269=12 Ind. Cas. 987=12 Cr. L. J. 611. An attempt to deceive by a false representation of facts, involves that the person charged should have taken some steps towards the communication of the representation to the person whom it was intended to deceive. 8 C. W. N. 278=1 Cr. L. J. 124. Where the accused hired certain property from the complainant for use at a wedding, and advanced a portion of the hire, promising in writing to pay the balance and to restore the goods when the wedding was over, being fully aware that there was to be no wedding, and intending, when he got the property, to apply for its attachment before judgment as belonging to another person against whom he had brought a suit, *held* that the accused was guilty of cheating. 3 N. W. P. 16 ; see also 3 N. W. P. 17. Inducing a *Karkun* to deliver a warrant of attachment by false representation is an offence under this section. 6 Bom. L. R. 375. But to induce a son to pay his father's debt, by acting on his fear af consequences to his father, does not seem to come within the definition of the crime of cheating. W. R. 1864 Cr. 25. The mere taking of money one day and dishonestly running away without paying it the next day is not necessarily cheating. 5 W. R. Cr. 5. Where reward was taken from father of abducted girl for making search for girl and restoring her to her father, but person taking the reward does not keep his promise, conviction of the person under s. 415 is not justified in absence of proof that he had practised any deception on the father of the girl. A. I. R. 1932 Lah. 516. Where the accused sent a letter to his creditor and insured it for a sum of money but when the addressee opened it he found blank sheet of paper within the envelope, held that the accused was liable to be convicted under s. 415. 145 Ind. Cas. 671=34 Cr. L. J. 1020=14 P. L. T. 48=1933 C. 514=A. I. R. 1033 Pat. 183. Disposing a woman by false representation as to status and receiving money is cheating. 61 P. L. R. 1918=44 Ind. Cas. 351. An accused obtaining health certificate by false persuasion is guilty of cheating. 21 Cr. L. J. 478=56 Ind. Cas. 510. Where the accused promised to elevate a certain community to the position of *Kshatriyas* by inverting its members with the sacred thread, held that he was not guilty of cheating unless it was impossible for the members of the community to be classed as *Kshatriyas*. A. I. R. 1925 Cal. 603=26 Cr. L. J. 849=29 C. W. N. 408=41 C. L. J. 172=86 Ind. Cas. 750. Where accused send insured cover containing blank papers and creditor signs postal acknowledgment, an offence under s. 415 is committed. 145 Ind. Cas. 671=14 P. L. T. 48=34 Cr. L. J. 1020=A. I. R. 1933 Pat. 183.

A contractor in the Public Works Department, who was charged with cheating in respect of a sum of money which he received on account for work which he had not then finished, was acquitted on the ground that there was not proof (1) that there was a false pretence made use of by the accused (2) that he knew he was making use of a false pretence or that he intended to defraud (3) that the Public Works Department were deceived by the pretence as they believed in its truth, and (4) that the accused received the money with the intention of causing wrongful loss to the Government. 23 W. R. Cr. 43. Purchasing of waste paper by Government servant under an assumed name is not an offence under this section, in the absence of any rules forbidding employees in the office from bidding at auction sales held by the Government. A. W. N. 1992, 151 ; A. W. N. 1903, 231. The selling of milk and water in about equal proportions as pure milk will support a finding of cheating under s. 415 of the I. P. Code. Rat. Un. Cr. C. 145.

Where there is no deception or dishonesty an offence under this section has not been committed simply because the accused made a false representation. 33 C. 50=5 Cr. L. J. 244 ; 4 Bom. L. R. 442. Cheating unaccompanied by delivery of property may be punished under s. 415 or section 420 of the Penal Code, but if of a serious nature, the case should be sent to the Sessions Court. Rat. Un. Cr. C. 2. Where there is a concealment of fact, there is neither fraud nor dishonesty, unless there is duty imposed by law, as between the accused and the person with whom he is dealing, to make the fact known. 27 A. 561=A. W. N. 1905, 98=2 A. L. J. 268=2 Cr. L. J. 218. A person making a false statement in respect of his place of residence,

in order to facilitate his recruitment in a certain discrict, has not committed the offence contemplated by s. 177 or s. 182 I. P. Code nor has he committed the offence of cheating under s. 415. 6 A. 97=A. W. N. 1883, 224. If a vendor at the time of selling his immoveable property, either makes a positive statement that the property is encumbered or dishonestly conceals the facts within his knowledge thinking that if he stated those facts the vendee would not buy, he can be convicted of cheating as defined in s. 415. I. P. Code. 3 P. W. R. 1908 Cr.=101 P. L. R. 1908=7 Cr. L. J. 272. Where a person instigates another to enter into a contract by a false statement of his own intention to fulfil its terms, he commits the offence of cheating, but mere non-fulfilment of the contract is no *prima facie* evidence even of an original intent to defraud. 15 C. P. L. R. 97 ; see also 10 C. W. N. 1005=4 Cr. L. J. 154. The essence of the offence of cheating is a fraudulent or dishonest intention, and the act done towards the commission of the offence, which is requisite to establish the attempt to cheat, must be done with a fraudulent or dishonest intent. 19 C. 380 ; see also 2 A. L. J. 718=2 Cr. L. J. 788 ; Rat. Un. Cr. C. 470 ; 7 C. L. J. 375=12 C. W. N. 750 ; P. L. R. 1900, 38 Cr. ; 128 P. L. R. 1903=25 P. R. 1903 Cr. ; 9 P. R. 1884. Where a person purchased a stamp from a licenced vendor, representing himself to be another, the vendor entering the latter's name in the Register, *held*, that he was not liable to be convicted of cheating. 16 P. R. 1876 ; A. W. N. 1884, 87 ; 1 Weir. 480. The ordering of goods on credit would amount to an offence of cheating under s. 415 only where there was an implied promise to pay and it is proved that the person so ordering had no reasonable expectation of being able to pay within a reasonable time. 56 B. 204. The more fact that at the time when the goods were ordered the accused was in embarrassed circumstances is not enough to justify the inference that the accused did not intend to pay for those goods, and that the statement that he would pay for them on a particular day was a deception. *Ibid.* Mere taking thumb impression of a blank piece of paper is not enough to prove an intention to use the paper dishonestly. A. I. R. 1926 Pat. 267=7 P. L. T. 772=27 Cr. L. J. 609.

The petitioner proposed to the father of a girl for the hand of his daughter and obtained his consent and was admitted into his house. Subsequently information was received by the father that the petitioner was a married man this the petitioner admitted to be true. Shortly after the daughter who was major left the parent's protection of her own accord and went to the petitioner. On the complaint of the parents the petitioner was convicted of cheating under s. 417 I. P. Code. *Held* that the facts did not bring the case within s. 417 read with s. 415 I. P, Code. 22 C. W. N. 1001=28 C. L. J. 485=46 Ind. Cas. 701=19 Cr. L. J. 781. Where a shop-keeper to whom currency notes are tendered in payment retain a small amount in depreciation of notes, no deceit is practised. 43 Bom. L. R. 842=21 Bom. L. R. 763=52 Ind. Cas. 604=20 Cr. L. J. 684. Sale of property without disclosing that the vendor had no right is an offence under this section. 17 A. L. J. 500=50 Ind. Cas. 667=20 Cr. L. J. 331. Where a minor borrowed money representing himself as a major during the continuance of his guardianship by his mother and after attaining the age of eighteen years and without the intention of repayment, he can be convicted under this section. 18 A. L. J. 408=58 Ind. Cas. 253=21 Cr. L. J. 749. To convict a person for cheating, it is necessary to show that there is a proximate connection between deception practised on the complainant and his being induced to part with some property. 21 A. L. J. 873=9 O. & A. L. R. 968 ; 52 C. 188=85 Ind. Cas. 641 ; 26 Cr. L. J. 213. By means of wrong entries more wagons were sent to a colliery siding then it was entitled to, *held* this does not amount to "a delivery of property, so as to constitute offence of cheating. 28 C. W. N. 160. Certain retail dealer induced their creditors to give time and soon after vacation intervened and they removed the goods, *held*, they were guilty of cheating. 23 A. L. J. 433=26 Cr. L. J. 970. Where the judgment-debtor gave to the decree-holder as an accommodation a crossed cheque which was dishonoured, held that the judgment-debtor was not guilty as he had no dishonest intention to cheat. A. I. R. 1928 Oudh. 292=29 Cr. L. J. 657. Where an applicant obtained an advance for the purchase of a motor-car on its security but had already mortgaged it to another the failure to disclose the mortgage was a dishonest concealment of facts. A. I. R. 1927 Rang. 239=5 Rang. 274=28 Cr. L. J. 765=103 Ind. Cas. 845.

When a person is cheated by another, no new contract is substituted between the parties by the temporary fresh accommodation given to the offender, as the result of negotiations to save his reputation in business and by the attempt to obtain sufficient security from him for the payment of money due from him. Such negotiations make no difference to his criminal liability for an offence which is not

compoundable. 26 Cr. L. J. 1602=90 Ind. Cas. 706. Sending an insured letter containing *khilafat* bonds does not amount to cheating. 26 Cr. L. J. 209=83 Ind. Cas. 993=A. I. R. 1924 All. 205.

Illustration (*f*)—Deceiving in s. 415 does not necessarily require that there should be any representation in words. A dishonest concealment o facts is a deception within the meaning of the section, where the concealment is of something while there is a duty to disclose. The deceit referred to in the section and the illustration may clearly be by conduct. The nature of the transaction itself may imply an assertion. 56 B. 204=A. L. R. 1931 Bom. 243. Proof of absolute impossibility of payment is not necessary. A person may know that except for a miracle he will not be able to pay. In such a case it can reasonably be said that he has no intention of paying, since he cannot be said to intend to do what he has no expectation of being able to do. 56 B. 204.

Cheating by personation.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustration.

(*a*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Scope.—Where there is cheating and it is effected by any of the following deceptions, the offence will, it seems, amount to cheating by personation. First by pretending to be some other person :—as if A pretends to be a certain rich banker of the name name. Secondly, by taking a name not his own:—as if A pretends to be B, a person who is deceased. Thirdly by taking a title or addition to which he has no right :—as if A takes the title of Raja having no right to the title. Fourthly, by pretending to be of a country of which he is not :—as if A, an East Indian pretends to be an African. Fifthly,—by pretending to be of a calling of which he is not :—as if A falsely pretends to be a clergyman. Sixthly :—by pretending to be of a family of which he is not :—as if A pretends to be a member of one of the Sovereign Houses of India. Seventhly :—by falsely pretending to hold or to have held any office, real or imaginary. Eighthly :—by falsely pretending to be related by blood or marriage to any person real or imaginary :—as if A falsely pretends to be married to B, an heiress. Ninthly :—by falsely pretending to be in the employ of any person, real or imaginary :—as if A falsely pretends to be the agent of a great commercial house in Europe, or to be the vakil of a native prince, etc., There may be personation without any false pretence made in words :—*Morgan and Macpherson.* 385

A person represented a girl to be the daughter of one woman, when she was, within his knowledge the daughter of another woman, *held* that he was guilty of cheating by personation. 7 W. R. Cr. 51 ; see also 16 W. R. Cr. 42 ; A. W. N, 1882, 236 ; 7 W. R. Cr. 55. Where accused, falsely representing himself as a bachelor was admitted into the house of complainant as a prospective husband of complainant's daughter, but before marriage, he was discovered a marriedman and nevertheless the girl went away with him, held that accused could not be convicted under the section. 19 Cr. L J. 781=22 C. W. N. 1001=28 C. L. J. 485=46 Ind. Cas. 701. Four students, who were entitled to travel at a reduced rate, were mentioned in a certificate which was properly signed by the proper authority and endorsed by the Railway Company. The accused, who was not one of the four was also entitled to travel as the reduced rate, as a student, and there is no rule prohibiting the transfer of a student's ticket. On the presentation, by the accused, of the endorsed certificate containing the names of 4 persons eligible for concession tickets, the Railway Company issued a pass for passenger tickets and arrested the accused who was convicted. *Held* that the conviction was bad, as it cannot be assumed that the accused intended to used the pass for persons who were not entitled to travel at the reduced rates. 7 M. L. T. 201=5 Ind. Cas. 793=11 Cr. L. J. 339=1910 M. W. N. 510.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

Notes.—An offence under section 420 is more serious than that under this section. 25 Cr. L. J. 1193=A. I. R. 1925 Mad. 367. Where a person advertising goods praised them unduly and as result a person who purchased them found they were of inferior stuff, no prosecution for cheating is maintainable. 29 C. W. N. 362=86 Ind. Cas. 985=26 Cr. L. J. 921. Where all that is had is a blank piece of paper with thumb impression upon it and there is no writing in the paper it is hardly sufficient to show a dishonest intention and there in no cheating. 27 Cr. L. J. 609=7 Pat. L. T. 772. To satisfy the definition of cheating there must be immediate causation and the act itself must involve the probability. 51 M. L. J. 800. Person inducing another to give on credit certain articles but not intending to pay for them is guilty under section 420 and not section 417. A. I. R. 1928 Lah. 935.

Where the accused made an offer to mortgage his property in order to pay off his creditors and thus averted institution of a suit against him, but subsequently would not complete the transaction unless a certain amount not originally stipulated were paid, *held*, that as the accused had no intention, under the circumstances of the case, to cheat at the time when the promise was made he was not guilty of the offence of cheating. 9 B. H. C. 448. If the creditor by a trick induces his debtor to pay him money less than what is actually due to him in full settlement of the account, and then refuses to abide by the arrangement, it is doubtful whether his act would amount to cheating. 25 P. W. R. 1913 Cr.=14 Cr, L J. 524=20 Ind. Cas. 1004=327 P. L. R. 1913. Where a *kye dangyi*, who had no authority to collect capitation tax, collected the tax, from three separate tax payers, leading them to believe that he had authority from the *thugyi* to collect, and where after collection he paid over to the *thugyi* only a portion of his collections from each tax-payer and dishonestly misappropriated the remainder. *Held*, that he was guilty under s. 417 I. P. Code. L. B. R. (1872—1892) 492.

Where a person, who has been previously convicted is charged and convicted subsequently, under s 417, *held* that he is not liable to enhanced sentence under s. 75, as the offence under s. 471, is not punishable with three years' imprisonment or upwards. 19 P. R. 1889 Cr. A person can be convicted for the sale of a girl for marriage on misrepresentation as to her cast. Book Cir. 25 of 1865 (Oudh). In order to convict a person under this section, mere illegal demand is not sufficient, but fraudulent intention must be proved. 15 C. L. J. 512=13 Cr. L. J. 512=15 Ind. Cas. 656.

In a suit or pre-emption, a consent decree was passed on plaintiff's agreeing to pay a certain sum in cash and to discharge a prior incumbrance. The plaintiff subsequently discovered that the defendent, the vendee, had, after the purchase but before the suit, mortgaged the property. But there was no evidence to show that the plaintiff would not have consented to pay the consideration, had he been aware of the charge created by the vendee. *Held*, that there was not obligation on the vendee to disclose the existence of the mortgage, and that consequently, his ommission to do so would not constitute the offence of cheating. 27 A. 302=A. W. N. 1904, 265=1 C. L. J. 1044. Using false name with intent to defraud postal authorities is an offence under this section. 13 M. 27=1 Weir. 545. If an accused person writes a letter to the Registrar of the University for a duplicate Matriculation certificate, falsely signing the name of another person who really passed the examination, he cannot be convicted under this section, in as much as there is nothing to show that the deception practised on the Registrar caused harm or damage, to the Registrar of the University which he represents. 25 M. 726=1 Weir. 481=12 M. L. J. 68. Where a person is convicted of cheating by inducing the persons deceived to do any of the acts described in s. 415, but not specified in s. 420, the offence is punishable under s. 417. 1 L. B. R. 266; 4 Bom. L. R. 76. Cheating unaccompanied by delivery of property is an offence under s. 417. When accompanied by delivery of property, the offence is punishable under s. 420. Rat. Un. Cr. C. 96. The accused, a prostitute, was charged under s. 269 I. P. Code with communicating syphilis to a person who had sexual intercourse with her; *Held* that she was not punishable under the section. *Held* also that if there was an offence in the case, it was one of cheating punishable under s. 417 or s. 420, if there was evidence that the intercourse was induced by misrepresentation on the part of the deceased person. 11 B. 59. A licensed opium vender commits the

offence of cheating, if he sells opium at rates higher than those fixed by the Government. 4 Bom. L. R. 823. Selling liquor by fraudulent measure is also an offence under this section, Rat. Un. Cr. C. 336. But selling rice at a higher rate than that agreed upon with the seller vendor is not an offence under this section. 22 W. R. Cr. 82. Where a person gives a false name and address to a Sanitary Inspector in order to shield himself from prosecution for an offence, he cannot be convicted of cheating. Rat. Un. Cr. C. 635=Cr. Reg. 10 of 1893. A coolie recruiter induced the complainant to come to the depot promising him domestic service, and entered his name in the books of the depot. He wrote a letter to a coolie contractor in Calcutta offering the complainant as a coolie. *Held* that the acts of the accused amounted to an attempt to cheat. 9 C. W. N. 764=2 Cr. L. J. 422. But inducing another by false representation to withdraw a criminal charge is not an offence under this section. 1 Weir. 437. In a proceeding under s. 107 Cr. Pro. Code, the opposite party undertook not to go to the property, the subject matter in dispute, or to do any act which was likely to involve a breach of the peace, on the pleader for the complainant agreeing to persuade complainant's master to file an undertaking that he would protect the property from sale. The undertaking which the latter offered to file not having been proved by the opposite party was not filed, whereupon the opposite party started proceedings against the pleader under s. 417 of the Penal Code : *Held* that the proceedings should be quashed as no *prima facie* case of cheating had been made out. 20 C. W. N. 1112. The accused in this case was sued by the complainants for Rs. 650. In order to create evidence that he paid Rs. 650, the accused filled a registered envelope with blank sheets of paper and posted it to the complainants after insuring it for Rs. 650. The complainant gave an acknowledgment receipt to the post office. *Held* that the above facts did not amount to a complete offence of cheating but that they amounted to an attempt to cheat. 1 Pat. L. J. 391=17 Cr. L. J. 272=34 Ind. Cas. 992 ; 50 C. 849=28 C. W. N. 252=73 Ind. Cas. 780 ; 21 A. L. J. 865. Accused lent sum of money to the complainant who executed a bond. He also gave the complainant a *kamaiti porcha* in respect of his homestead land. After some years, the complainant paid the money back to accused, but the latter refused to return the bond until the *kamaiti porcha* was returned to him. 2 Pat. L. T. 211= 59 Ind. Cas. 921=22 Cr. L. J. 164. Taking complainant to another village on pretence of buying a buffallo and obtaining deed of divorce in intoxication does not constitute an offence under this section. 3. L. L. J. 283. A cheque issued at Gaya was dishonoured by the Bank of Calcutta and the fact of such dishonouring reached the complainant at *Butani, held*, a prosecution could be initiated at *Gaya, Butani*, or *Calcutta*. 25 Cr. L. J. 81=76 Ind. Cas. 17. Giving a cheque in payment of debt amounts to a representation that the drawer has authority to draw that amount, that the cheque is a valid order for payment and that it will be paid, but does not amount to representation that he has money at the Bank to that amount at that time. Prosecution has to prove that the failure to meet the cheque was not accidental but was a consequence expected and intended by the accused. A. I. R. 1930 Bom. 179 =32 Bom. L. R. 562=126 Ind. Cas. 868. Where a person obtains by deception from his creditor a document which is likely to facilitate the evasion of payment by the debtor he commits an offence under this section. A. I. R. 1933 Pat. 183=34 Cr. L. J. 1020=145 Ind. Cas. 67=14 Pat. L. T. 48. Where the mortgagor assured the mortgagee that ths property was free from encumbrance and that there was no defect or dispute as regards title but it subsequently transpired that the mortgagor had previously executed a *farzi* deed of sale but he continued to remain in possession ; *Held*, that on those facts the mortgagor was not liable to be convicted for the offence of cheating as the prior sale was merely a *farzi* deed. 9 Pat. L. T. 303=110 Ind. Cas. 332=29 Cr. L. J. 700=A. I. R. 1929 Pat. 337.

A sentence of one year's rigorous imprisonment and fine with further rigorous imprisonment for 4 months in default of payment of it is perfectly legal under s. 420 I. P. Code. But where the finding of the offence is altered in the appellate Court into one of attempting to cheat, punishable under ss. 417 and 511, read together, the same sentence is illegal because the longest term of imprisonment that could be imposed substantially under the two sections is six months and the largest that could be imposed in default of payment of fine is a month and a half. 106 Ind. Cas. 678=29 Cr. L. J. 86=A. I R. 1928 Nag. 113. An attempt to commit an offence is punishable under s. 511 though the final act short of actual commission of that offence has not been accomplished. 29 Cr. L. J. 780=A. I. R. 1928 Lah. 551 ; see also 11 Lah. L. J. 95. Where there is no allegation of misrepresentation, an accused cannot be convicted under this section. 10 Lah. L. J. 301.

Procedure.—Not-Cognizable—Warrant—Bailable—Compoundable with permission of the Court—Triable by the Presidency Magistrate or Magistrate of the first or second class.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

Scope.—The aggravated form of cheating which is punished by this section is committed when the person who cheats stands in some relation of trust or confidence to the person cheated either as a clerk, servant or agent generally, or as a person employed on a particular occasion only, as a broker employed to buy or sell certain goods, as auctioneer employed to sell property, etc. Whoever undertakes to act as the agent of another person, whatever may be the nature of the agency, is bound by law to protect within the scope of such agency his employer's interests. Cheats by persons like those who are punished when their offence amounts to the criminal breach of trust by sections 407, 408 and 409 appear to be within this section. The deception must not be only intentional, but also with the knowledge that it is likely to cause wrongful loss."—*Morgan and Macpherson.* 386. Where the directors, the manager and the accountant of a Bank, intending defraud the share-holders, knowingly put forward false balance sheets, so that depositors were induced to allow their money to remain in deposit, *held*, that they were guilty of cheating under s. 418. I.P.C. 16. A. 88=A.W.N. 1894, 23. Where general effect of statements, which are literally true is to create a false impression. *Held* that the statements, were non the less fraudulent. 5 S. L. R. 95. Representation by a Mahomedan that he is a Hindu with an object of securing service is an offence under this section. 18 S. L. R. 59= 28 Cr. L. J. 312=A. I. R. 1925. Sind. 57=81 Ind. Cas. 309.

Procedure.—Non-Cognizable.—Warrant.—Bailable.—Compoundable with permission of the Court.—Triable by a Court of Session, Presidency Magistrate or Magistrate of the first or second class.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

Cases.—Where a person falsely personating another caused a Registrar to register a fictitious divorce, whereby he personated person purported to divorce his wife, *held* that the registering the deed did not or was not likely to cause damage or harm to the Rsgistrar, in body, mind, reputation or property, and therefore the accused was not guilty of an offence under s. 419 of the Code. 17 C. 606. A person can not be convicted of an offence under this section, for disposing of a girl representing her to be of a caste different from that to which she belongs. 149 P. L. R. 1903 ; 13 P. R. 1904 Cr.=1 Cr. L. J. 949. 17 P. R. 1903. Where it was not proved that the accused, who was travelling with a forged pass, showed the pass at any time to a Ticket Examiner or any other Railway Official before the completion of the journey, and where the charge was laid under s. 419, I. P. Code, and s. 112, Railways Act, *held* that he could not be convicted of cheating by personation under s. 419 I. P. Code. 12 Cr. L. J. 406=11 Ind. Cas. 590=12 M. L. J. 748. Attempt to get reinstated in *Kurnam's* post by the production of a false certificate does not cause "harm" or "damage" within the meaning of section 415, to the officer before whom the certificate is produced ; and so conviction under ss. 419 and 511, held illegal. 4 M.L.T. 324 =19 M. L. J. 271=8 Cr. L. J. 421. Where the accused was found to have knowingly represented one J. to be B., the mother of a sepoy named K, who had been killed, and thereby induced the military authorities to grant a pension to J. to which she was not entitled, it was held that the accused had committed the offence of cheating, punishable under this section. A. W. N. 1907, 291=3 M. L. T. 61=6 Cr. L. J. 426. But where there is no intention to defraud, no offence under this section has been committed. 32 C. 775=9 C. W. N. 807=2 Cr. L. J. 368=1 C. L. J. 469. The accused wished to pass a stolen note and, in order to escape detection, gave his name falsely, when he was asked by the shop-keeper, after he has cashed the

note, to give his name. The shop-keeper did not know either of the men, and admitted that the men made no difference. *Held*, that the accused was either guilty of cheating by personation or of cheating. 1 Weir. 479. Where a person belonging to a certain caste, whose enlistment in the police force was prohibited, representing himself to be a member of another caste, got a Government appointment in the Police Department, *held*, that the accused wos not guilty of the offence of cheating by personation, but might be guilty of an offence under s. 182 I. P. Code. 14 P. R. 1880 Cr. A Mahomedan who pretends to be a Hindu in order to get a job under a Hindu who would not employ a Mahomedan is guilty under this section. 25 Cr. L. J. 789=81 Ind. Cas. 309. Taking into account of previous convictions for theft and burglary to increase sentence for an offence under section 419 seems anomalous. A. I. R. 1927 Lah. 220=28 Cr. L. L. 312=100 Ind. Cas. 536.

Procedure.—Cognizable—Warrant.—Bailable.—Compoundable with the permission of the Court—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd Class.

Cheating and dishonestly inducing delivery of property.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security; or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.— An increased punishment may be awarded where the cheating causes any property to be delivered "dishonestly" that is where it is of the kind which the first clause of the definion in s 415 describes; where it causes a valuable security as a title deed, bond bill of exchange, receipt, etc, to be made, altered or destroyed, or where it causes such a document as a deed, bond, bill of exchange, receipt, etc, which has been prepared, but which still continues in the hands of the person who will be bound thereby and has not yet taken effect or come into operation—to be made that is completed and brought into force by delivery, etc, altered, or destroyed—*Morgan and Macpherson*, 387 An offence under s. 420 of the Penal Code, does not consist merely in a fraudulent or dishonest representation but also requires the delivery of property by the victim. 12 P. L. T. 12=32 Cr. L. J. 611=A. I. R. 1931 Pat. 102. Obtaining money by cheating is an offence under s. 420 and not under s. 417. A. I. R. 1933 Lah. 1009. In cases under s. 420 intention to defraud must be clearly established before allowing criminal prosecution to start. 134 Ind. Cas. 309=32 Cr. L. J. 1133=1933 Cr. C. 604=53 C. L. J. 457=A. I. R. 1931 Cal. 452. Issue of cheque knowing it will be dishonoured is an offence under this section. A L. R. 1923 Oudh. 3=9 O. W. N. 1136. Where money was taken for bribing public servant, the accused can be convicted under this section. A. I. R. 1933 Rang. 199=34 Cr. L. J. 1255=146 Ind. Cas. 240. An attempt to obtain money from another by inducing him to believe that God has ordered him to pay, constitutes an offence of attempt to cheat. 48 M. 774=26 Cr. L. J. 755=A. I. R. 1925 Mad. 480. Silence may amount to deception. 52 C. 347=29 C. W. N. 447=84 Ind. Cas. 1041. In a charge of cheating it must be considered whether the offence of cheater is compatible with honest action. 44 C. L. J. 230. Where the balance of consideration of a sale-deed is not paid the dispute is of a civil nature and there is no offence of cheating. 43 C. L. J. 287=27 Cr. L. J. 588=94 Ind. Cas. 204. It is but proper to put the exact dates of the commission of offence in the charge. 27 Cr. L. J. 909. Deception may be practised by representation mnde through an innocent agent. 101 Ind. Cas. 458=28 Cr. L. J. 426=A. I. R. 1927 Sind. 161. J went to M. and told him that two ornaments of gold were for sale which he could secure for him cheap, and on the latter, agreeing introduced A who sold certain jewels to M. An assurance was given by A to J that ornaments were of pure gold. In fact they were not so and J and A were prosecuted for an offence under s. 420. *Held*, that in order to sustain the conviction of J it was necessary for the prosecution to establish that he acted dishonestly and fradulently in the transaction since it might be that he was himself duped by A. 28 P. L. R. 171=102 Ind. Cas. 553=28 Cr. L. J. 585. In a prosecution for cheating the essential points which the prosecution has to prove are that the accused made certain representations knowing them to be false and as a result of such representation money was handed over to the accused. 39 M. L. T. 596. Where the dispute between the parties seems to be of a civil nature the conviction on a charge of checting is unsustainable. A. I. R. 1928 Pat.

13. Mere handing over the rules of a club by its servant does not make members criminally responsible for representations contained in the rules. A. I. R. 1928 Mad. 224. Although there is a common feature between the offence of extortion and that of cheating yet they cannot be regarded as two aspects of one offence. 1928 Bom. 346. This section has no application to the delivery of immoveable property. A. W. N. 1882, 6. Property in this section means money. 32 C. 22=C. W. N. 784=1 Cr. L. J. 794. Where a charge of cheating rests upon a representation which is impugned as false and which relates not to an existing fact but to a certain future event, it must be shown that the representation was false to the accused's knowledge at the time when it was made. 15 Bom. L. R. 297=14 Cr. L. J. 232=19 Ind. Cas. 328. Where the complainant was not really deceived a conviction under this section is not tenable. Rat. Un. Cr. C. 301; see also 9 Cr. L. J. 261; 146 Ind. Cas. 552=A. I. R. 1933 Lah. 215. The mere suppression of some facts at the time of borrowing money does not amount to cheating, where there is no evidence of either active deception or dishonest fraudulent action. 40 P. W. R. 1910 Cr.=8 Ind. Cas. 256=11Cr. L. J. 610.

To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be conduct or implied in the nature of the transaction itself. 10 P. W. R. 1912 Cr.=114 P. L. R. 1912; but see 30 N. L. R. 303=A. I. R. 1934 Nag. 149. Fraudulent admixture of inferior cotton, with good cotton by the accused is an offence under this section. 14 Bom. L. R. 137=14 Ind. Cas. 669=13 Cr. L. J. 285; 15 Bom. L. R. 568=20 Ind. Cas. 593. Receipt of advance by execution of hand notes but by false representation of supplying goods may amount to an offence under this section. 6 L. B. R. 38=13 Ind. Cas. 389=13 Cr. L. J. 50=4 Bur. L. T. 79. There cannot be any conviction under this section for cheating in respect of an immoral contract. 14 Bom. L. R. 503=15 Ind. Cas. 793=13 Cr. L. J. 521. In a case of cheating, it is open to the prosecution to show that the acts charged against the accused were parts of a series of similar acts committed by him, or in which he was concerned, at or about the time in question. Evidence of such other acts, whether previous or subsequent to the frauds charged against the accused, is relevant for the purpose of showing whether or not the intention of the accused was honest or fraudulent. 269 P. L. R. 1914: 26 P. W. R. 1910 Cr.=6 Ind. Cas. 964=11 Cr. L. J. 428. Dishonest intention is the gist of the offence of cheating. 6 Bur. L. T. 201=15 Cr. L. J. 80=7 L. B. R. 143=22 Ind. Cas. 438; 57 Ind. Cas. 103=21 Cr. L. J. 583; 68 Ind. Cas. 621=23 Cr. L. J. 589; 23 Cr. L. J. 664. In this case, the findings of facts are that the petitioner who was indebted to the complainant despatched from Benares to the latter in the Guzerat district an envelope insured for Rs. 530 containing two pieces of waste paper, apparently post office forms, that the envelope was delivered in the presence of postal official to the complainant, who found that it contained only two pieces of paper. *Held*, that the facts did not justify a conviction under s. 420 I. P. Code but constituted an attempt to cheat them within the definition contained in ss. 415 and 511 I. P. Code. 10 P. R. 1913 Cr.=14 C. L. J. 436=20 Ind. Cas, 596=299 P. L. R. 1913. Where a person is misguided and then his money is taken off, the offence is one of theft and not of cheating. A. I. R. 1932 Cal. 865=36 C. W. N. 791=55 C. L. J. 448=33 Cr. L. J. 828. Deception is proved where a person not being a police officer wears *Khaki* and threatens another to take to thana. A. I. R. 1933 Cal. 308=34 Cr. L. J. 530=56 C. L. J. 73=1933 Cr. C. 408. Deception without motive is not an offence under this section. 145 Ind. Cas. 229=34 Cr. L. J. 922=A. I. R. 1933 Rang. 114. In the absence of misleading or deceptive representations a conviction under the section is not maintainable. 35 Bom. L. R. 1181=35 Cr. L. J. 644=148 Ind. Cas. 271.

A manufactured spurious trinkets, and took them to N saying that they were of gold, and that they were stolen property (which was not also true) and that A does not like to sell them in bazar and asked him to buy. N did not buy, but A was arrested. *Held* that the act of A amounted to an attempt of cheating punishable under ss. 420, 511, I. P. Code. 13 P. W. R. 1914 Cr.=66 P. L. R. 1914=15 Cr. L. J. 265=23 Ind. Cas. 473=14 P. R. 1914 Cr.

To describe a Brahman woman as a *Kirari* is not cheating by personation but may be an offence under section 420 I. P. Code. 13 P. R. 1904 Cr.=114 P. L. R. 1904. Where the accused obtained the complainant's money by a promise which he knew he could not fulfil, he committed an offence under this section. 13 C. W. N. 728=9 C. L. J. 605; see also 2 Bom. L. R. 621. Inducing execution of bonds for fictitious amounts, does not amount to cheating. 18 Cr. L. J. 131=37 Ind. Cas 483. A person

who by representing a woman to be a Jat widow, when she is only a sweeper whose husband is alive, induces another to pay Rs. 303 to him commits the offence of cheating. 6 P. R. 1918 Cr.=49 Ind. Cas. 351=19 Cr. L. J. 335 ; 58 Ind. Cas. 820. The accused had executed a *kobala* in favour of the complainant and presented it for registration but took it back from the Sub-Registrar before registration on the pretext that he could not understand whether it was a mortgage or *kobala*, and having thus obtained possession of the document, he tore it to pieces. *Held* that a charge of cheating cannot be maintained as the person cheated was the Sub-Registrar and he did not complain. 30 C. L. J. 175=54 Ind. Cas. 64. It is absurd to expect a Court to take any notice of a complaint of cheating except where it is put in by the person actually defrauded. 63 Ind. Cas. 464=722 Cr. L. J. 672. Accused pawned six rings which he said were of gold. Subsequently it was discovered that the rings were of silver gilt. Accused was charged with an offence under s. 420 I. P. Code. *Held* that the burden of proving that the accused knew that the rings were not what he suggested them to be was on the prosecution. 53 Ind. Cas. 609. For a conviction under s. 420 it was necessary for the prosecution to prove that there had been not only an act of cheating on the part of the accused but also by that very act of cheating the person cheated was induced to deliver property. If property is delivered owing to the effective inducement of a third person's assurance there is no offence under this section. 18 A. L. J. 371=55 Ind. Cas. 730=21 Cr. L. J. 362. The word "dishonestly" in this section implies deliberate intention to cause wrongful gain or wrongful loss, and when this is coupled with cheating the offence is punishable under this section. Section 417 covers cases of cheating in which though there is fraud there is no intention of causing wrongful gain. 13 Bur. L. T. 239=64 Ind. Cas. 33=22 Cr. L. J. 721. Where none of the complainant has suffered damage or harm in body, mind, reputation or property a conviction under this section is not maintainable. A. I. R. 1934 Pesh. 5=35 Cr. L. J. 872=148 Ind. Cas. 960. Where the accused set tire to a car which was insured and then submitted false information to the company, an offence under ss. 420/511 has been committed and he should be severely punished. 151 Ind. Cas. 249=35 Cr. L. J. 1345=A. I. R. 1934 Pesh. 67. So also a person who after collecting funds for charitable institutions pockets the money himseif should be severely punished. A. I. R. 1934 Pat. 114=1934 Cr. C. 300=15 Pat. L. T. 318=35 Cr. L. J. 1167=150 Ind. Cas. 927.

The accused drew a hundi and borrowed money on it without assuring himself that the drawee, with whom he had no previous dealings and who was not supplied with funds, would honour the same. The money so borrowed was spent by him on his own purposes. The hundi when presented for payment was dishonoured by the drawee. The accused though appraised of the dishonouring, took no steps either to have the hundi honoured or to repay the money borrowed on the hundi. But he made himself scarce. *Held*, that the accused was guilty of cheating. 23 Bom. L. R. 340=60 Ind. Cas. 993=22 Cr. L. J. 305. Inducing by false personation to part with property and subsequently offering to credit the value thereof against sum due under an alleged contract unfulfilled does not amount to an offence under this section. 25 C. W. N. 618=60 Ind. Cas. 618. A person who takes property under a hire purchase system arrangement, but sells it before the instalments are paid commits criminal breach of trust. 45 A. 588=21 A. L. J. 510=73 Ind. Cas. 508. In a Criminal Court it has to be shown that the man who plays the part of the confidence man is putting forward what he knows to be untrue and in many cases, shares in the proceeds. L. R. 4 A. 83 Cr.=1923 A. 285. Petitioner was convicted of cheating on the ground that inspite of receiving from his debtor, cash and cattle in payment of what he owed him, he gave him notice later on for payment of the debt originally due, and denied what he had already received. *Held*, there was nothing to show that the petitioner received payment with the preconceived intention of denying it later on. If he subsequently denied it he cannot be said to have cheated the debtor though this conduct of him was highly reprehensible. 1923 Lah. 621. In a case of cheating the Court is to see the intention of the accused at the time of the offence and judge of the consequences of the act or omission itself. 40 C. L. J. 283=1925 All. 100. A person cannot be charged under this section for deceiving Court and Judges by institution of false case and to get a decree, because a decree does not come within the definition of valuable security. 28 C. W. N. 414=39 C. L. J. 122=81 Ind. Cas. 810. An offence under s. 420 of the Indian Penal Code cannot be tried by a second class Magistrate. 25 Cr. L. J. 1193=82 Ind. Cas. 57=20 L. W. 919. Aa attempt to commit the offence described in s. 420. Penal Code and thereby induce delievery of property is known to the law. 25 Cr. L. J. 475=77 Ind. Cas. 827=1924 Nag. 120 ; see also 25 Cr. L. J. 1175. The

accused having no account at a Bank drew a cheque in favour of a vendor of goods as if in payment of the price and signed the cheque with a name other than his real name. The cheque was dishonoured and it was found that the accused had drawn a cheque with a view to induce the vendor to deliver the goods. *Held* that the accused was guilty of an offence under this section. 40 C. L. J. 256=1925 Lah. 14. No offence under this section is committed on the refusal of the accused to admit legal liability. 26 Cr. L. J. 1303=89 Ind. Cas. 247=A. I. R. 1925 Sind 231. Where a Railway employee obtained a free pass for his wife and mother and handed over the pass to a stranger to be used by her, he commits an offence under this section. 88 Ind. Cas. 524=26 Cr. L. J. 1164=A. I. R. 1925 Oudh. 479. Where a defect in framing a charge under this section does not materially affect the accused, the trial is not vitiated. 29 C. W. N. 483=26 Cr. L. J. 906. But where the charge is too vague and indefinite to give the accused proper notice of the manner of deception the charge is bad. 41 C. L. J. 172=29 C. W. N. 408=26 Cr. L. J. 849. In a prosecution for cheating the essential points which the prosecution has to prove are that the accused made certain representations knowing them to be false and that as a result of such representations money was handed to the accused. 39 M. L. T. 596. Under this section some sentence of imprisonment must be given and the Court has a descretion to add or refrain from adding a fine, for, to the latter an offender is only liable. 27 A. L. J. 400=114 Ind. Cas. 733=30 Cr. L. J. 340=A. I. R. 1929 All. 260. A second class Magistrate has no jurisdiction to try an offence under this section. 12 Lah. L. J. 87=A. I. R. 1930 Lah. 664.

Procedure.—Cognizable—Warrant—Bailable—Compoundable with permission of the Court—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class. (A. I. R. 1933 Lah. 1009=1934 Cr. C. 1554).

Of Fraudulent Deeds and Dispositions of property.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes conceals, or delivers to any person, or transfers or causes to be transferred, to any person, without adequate consideration, any property intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—This section is intended to cover *benami* transaction in fraud of creditors rather than fraudulent preferences given to one *bonafide* creditor over another. In order to support a conviction under this section, it is necessary to prove that a transfer was (1) fraudulent (2) without adquate consideration and (3) with intent to prevent a rateable distribution among creditors. L. B. R. 1893-1900, 593. The Presidency Towns Insolvency Act does not take away a Magistrate's jurisdiction to try the insolvent for an offence under s. 421. 6 Rang. 664=30 Cr. L. J. 345=A. I. R. 1929 Rang. 14.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate, or Magistrate of the 1st or 2nd class.

Dishonestly or fraudulently preventing debt being available for creditors.

422. Whoever dishonestly of fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—The object of the provisions under this head appears to be the punishment of dishonest and fraudulent debtors. The Civil law fixes the relative rights of debtors and creditors, and assigns to the latter remedies for the recovery of their just demands. It also provides for the distribution of a debtor's property among his creditors if he becomes insolvent and is unable to satisfy their claims in full. But if he endeavours to evade his just liabilities by a fraudulent disposal of his property, he is treated as a criminal. Ss. 421-24 seem to be intended to protect the

general body of creditors from such fraudulent dealings and disposition of his property (whether by deeds or writings or otherwise) by the debtor as prevent or are likely to prevent the fair distribution of his property according to law. *Morgan and Macpherson*, 388 ; See also 22 W. R. Cr. 46 ; 18 Ind. Cas. 893 ; 28 C. 314=5 C. W. N. 174.

Procedure.—Not-cognizable—Warrant—Bailable— Not-compoundable —Triable by Presidency Magistrate, or Magistrate of the first or second class.

Dishonest or fraudulent execution of deed or transfer containing a false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to, any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—The law does not make punishable every false statement in an instrument of transfer The false statement must relate to the consideration or to the person to be benefited by it in order to become criminal. 37 M. 47. A false and exaggerated declaration of consideration in a sale-deed with the consent of the purchaser, for the purpose of defeating the claims of the pre-emptor is an offence under this section, the purchaser being guilty under s 423. 19 P. R. 1902 Cr ; 16 P. R. 1908 Cr. ; A. W. N. 1883, 209 ; 16 P. R. 1907 Cr. ; 25 A. 31. A *Kobuliyat* is not a document contemplated under this section. 46 C. 686. "Fraudulently" in this section does not connote deprivation of property. It is not essential that the person deceived or to be deceived and the person injured or intended to be injured should be one and the same. 66 Ind. Cas. 996=26 Cr. L. J. 340=48 C. 911. Where document is executed with false recital as to consideration with fraudulent intent and in that consent, an offence under s. 423 is committed. A. I. R. 1933 Pat. 495=34 Cr. L. J. 846= 1933 Cr. C. 1029=144 Ind. Cas. 791.

Procedure.—Not-cognizable—Warrant— Bailable— Not-compoundable— Triable—by Presidency Magistrate, or Magistrate of the first or second class.

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Gist of the offence.—To sustain a charge under this section, there must be evidence of the persons intended to be defrauded by the concealment. 16 P. R. 1868 Cr. In the application of this section, care should be taken that civil rights are not made the basis of a criminal prosecution. 1 Weir 483. Parties should not be encouraged to resort to the Criminal Court in cases in which the point at issue between them is one which can more appropriately be decided by a Civil Court. In the absence of proof of dishonesty a conviction under this section is unsustainable. 22 Cr. L. J. 142 ; 2 Pat. L. T. 627 ; 1 Pat. L. T. 318 ; 1 Weir 484 ; A. I. R. 1929 Pat. 513 ; A. I. R. 1929 Pat. 520. See also 25 M. 729 ; 1 Weir. 485 ; 26 M. 481 ; 1 Weir. 483 ; 8 W. R. 17 Cr. Where the procedure has not been followed conviction under this section should be set aside. A. I. R. 1928 Rang. 285. Magistrate's jurisdiction is not taken away by Presidency Towns Insolvency Act. 1929 Rang. 14. The criminal question for determination under s. 424 is whether the alleged removal of property is dishonest or fraudulent and therefore if persons claiming title to a property under attachment in execution of a decree on another remove the same, the matter whether such property belonged to the accused or not has to be determined by criminal Court before deciding upon conviction. A. I. R. 1930 All. 329. The act of taking away property by others with a view that it may be attached, if done with a dishonest intention would fall under s. 424, I. P. Code. 126 Ind. Cas. 601=31 Cr. L. J. 1086=A. I. R. 1930 Mad 670. Removal of crops under illegal attachment is no offence under s. 424. A. I. R. 1930 Mad. 509=58 M. L. J. 509=1930 M. W. N. 352=127 Ind. Cas. 296. In addition to the action against the tenant as provided for

in s. 71 (4) of the B. I. Act, he may be proceeded against under this section, if dishonesty is proved. 1 Pat. L. J. 353=(1917) Pat. 71=17 Cr. L. J. 315=3 Pat. L. W. 43=35 Ind. Cas. 491. Tenants under *Bhaoli Dama bandi* system carrying away the outturn of lands, commit an offence under s. 424 if the landlord has no reasonable time to appraise it. 18 Cr. L. J. 687=1 Pat. L. W. 891=40 Ind. Cas. 335. Where tenant holds lands of woram tenure, reaping and removal of crops by him, without landlord's knowledge in order to defeat landlord's claim is an offence under this section. 1932 M. W. N. 639=P. L. R. 1932 Mad. 1223; see also 1931 M. W. N. 1049. A person cannot be charged under s. 424 I. P. Code for removing crops not validly attached. A. I. R. 1934 All. 711=1934 A. L. J. 749=151 Ind. Cas 366=1934 Cr. C. 901; see also 1933 M. W. N. 722; A. I. R. 1933 All. 46. Refusing to return is not removing. So refusing to return is not an offence under this section. A. I. R. 1934 All. 46=1933 Cr. C. 52=1933 A. L. J. 1=144 Ind. Cas. 32.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Mischief.

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person or others jointly.

Illustrations.

(*a*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b*) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e*) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. A has commited mischief.

(*f*) A causes a ship to be cast away intending therby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g*) A, having joint-property with Z in a house, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

Scope.—In the offences against property which have hitherto been considered, the purpose of the offender ordinarily is, to cause a wrongful gain of property; there is a transfer of property which is the subject of the offence from the rightful possessor to the offender or to some other person, or there is an appropriation or conversion of it by the offender. In the offence of mischief, there is not necessarialy any transfer of property or any wrongful gain to the offender. The property continues with the possessor (unless the mischief extends to his absolute destruction), but it does not continue in his possession without change or diminution in value. Some injury has been sustained by it, and this injury, if it is intentionally caused, constitutes mischief. This offence is commonly perpetrated from vindictive motives; but absence of spite will be no answer to a charge of mischief, nor is it essential that any motive for the mischievous acts should be assigned, if the intention to cause wrongful loss is shown.—*Morgan and Macpherson* 397. Where the

accused removed an obstruction from a property which they believed to be their own, the accused cannot be said to have caused any wrongful loss to the complainant under s. 425. 99 Ind. Cas. 414=28 Cr. L. J. 158=A. I. R. 1927 Lah. 145. In order to constitute an offence under this section, something should be done to property contrary to its natural use. 1929 Mad. 5. It is no mischief if a person innocently removes a barricade placed by Municipality on a piece of land in front of his house, which impairs his ingrees and egress to or from the said house. Rat. Un. Cr. C. 745. Where the accused blocked a channel the result of which was that the surplus water flowed direct on to the complainant's land and damaged his crop, and the site of the channel was the common property of all the accused. *Held*, that the act of the accused did not constitute the offence of mischief and that complainant's remedy for any damage he had sustained lay in an action in the Civil Courts. 8 M. L. T. 385=8 Ind. Cas. 128=11 Cr. L. J. 566 ; see also 1913 M. W. N. 179=19 Ind. Cas. 305=14 Cr. L. J. 209. The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution' and it must be very clear, before conviction, that the accused has brought himself within the true meaning of section 425 of the Penal Code. 6 W. R. Cr. 59. The act of impounding cattle does not amount to causing such a change in the situation of property as diminishes its utility or value. A, W. N. 1881, 158. The accused apprehending that the water in his tank would overflow, caused a breach in the bank of the complainant's field so as to let the surplus water from the tank overflow complainant's land. It was found that there were no crops in the field, and apart from the damage done to the bank no other damage was caused to the complainant. *Held*, that the accused was guilty of the offence of mischief. 49 Ind Cas. 861=20 Cr. L. J. 237. Where there is a Hindu god over a *chabutra* of a mosque surrounded by a wall belonging to Mahomedans, the breaking of the wall for widening the doorway is an offence under s. 425. 96 Ind. Cas. 210=27 Cr. L. J. 898=A. I. R. 1926 All. 704. The word "change" in this section means physical change in composition or form and a change in value is not sufficient to constitute mischief. 105 Ind. Cas. 672=28 Cr. L. J. 960=A. I. R. 1928 Sind. 49. So mere omission to give light to house by failing to switch on the light is not an offence under this section. *Ibid.* If the landlord after the surrender of the land by the *raiyat*, entered the land and dispossessed the under-*raiyat* up-rooting seeds sown by him, he cannot be convicted under this section. 9 Pat. L. T. 728=110 Ind. Cas. 98=29 Cr. L. J. 642 ; 55 M. L. J. 767. Where the harvesting and removal of the by the raiyat is dishonest, his conviction under s. 425 is right. 1931 M. W. N. 1049. The expression "wrongful loss or damage" means loss or damage by unlawful means. There is nothing unlawful in the accused installing an oil-engine in his own property and working it in any way he chooses, although if his working causes damage to a neighbour's property, the accused would be liable to a civil suit for damage. The damage cannot be said to be caused by any any unlawful means and the accused is not liable to be convicted for mischief. A. I. R. 1935 Bom. 165.

Intention.—The intention to cause one wrongful loss or damage to the property is essential. An act which harms or lessens the value of property, if it is done by accident or mistake and not wilfully, does not make the doer an offender under the Penal Code, although he may be answerable in a civil suit for such damage. The wrongful loss may be to any person, or to the public, or to any class of the public or any community as the inhabitants of a particular village. Where the act which causes damage is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property, the doer commits no offence (see section 81)—*Morgan and Macpherson*, 391. But in a Bombay case (Rat. Un. Cr. C. 690) it was held that the terms of this section were satisfied where there was a distinct finding as to the prisoners's knowledge and that the question of intention was material only as regards the sentence. See also 2 L. B. R. 158 ; 1 Weir 488. To sustain a conviction for the offence, it must be shown that there has been an intention or knowledge that, from the destruction of the property wrongful loss should or would accrue. 1 Weir 488 ; 25 W. R. Cr. 65 ; 8 Bom. L. R. 489 ; Rat. Un. Cr. C. 88 ; Rat. Un. Cr, C. 357 ; Rat. Un. Cr. C. 189 ; 1 Weir 492 ; 11 Cr. L. J. 168 ; 9 P. R. 1878 Cr. ; 1 Weir. 489 ; 3 B. L. R. A. Cr. C. 17 ; Rat. Un. Cr, C. 87 ; Rat. Un. Cr. C. 199 ; 7 C. W. N. 713 ; 8 Ind. Cas. 318 ; 28 Ind. Cas 498 ; 26 Ind. Cas. 171 ; 23 Cr. L. J. 321 ; 8 Rang. 18=A. I. R. 1933 Rang. 158=125 Ind. Cas. 271 ; 21 Cr. L. J. 828 ; 24 Cr. L. J. 693 ; 21 Cr. L. J. 450. A. I. R. 1934 Pat. 221.

Damage.—This section does not necessarily contemplate damage of a destructive character. It is only necessary that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it. 12 C. 55 ; 12 C. 660 ; 7 B. 126 ; 9 B. 173 ; 6 B. L. R. Ap. 3 ; 23 P. R. 1904 Cr. 10 W. R 29 Cr. ; 1 Weir. 487 ; Rat. Un. Cr C. 60 ; 1 Weir. 497 ; 7 Bom. L. R. 86. 1 Weir 496 ; 4 Bom. L. R. 463 ; 1 Weir. 489 ; 37 P. R. 1866 Cr. ; 24 P. R. 1905 Cr. To cut ripe crops which are grown, to be cut is not to destroy them or to affect them injuriously within the meaning of s. 425 and is not mischief. A. I. R. 1934 Oudh. 182=11 O. W. N. 508=35 Cr. L. J. 797. The essence of the offence of mischief is that the property must be destroyed or have some change caused in it or its situation, which destroys or diminishes its value or utility or affects it injuriously. U. B. (1897-1901) Vol. I, 347 ; Rat. Un Cr. C. 185 ; Rat. Un. Cr. C. 318. Mischief cannot be committed in respect of one's own property. A. I. R. 1926 Pat. 244=7 P. L. T. 79=27 L. L. J. 392=93 Ind. Cas 40 ; see also 24 Cr. L. J. 467=72 Ind. Cas. 883. 66 Ind. Cas. 817=3 P. L. T. 335. It is not an offence to remove lateral support and cause damage unless the right to support has been acquired by prescription for 20 years. 68 Ind. Cas. 831=14 M.L.W. 728. Throwing a heavy stone at a cow that had strayed into the field and fracturing her leg is mischief. 18 Cr. L. J. 286=12 N. L. R. 188=38 Ind. Cas. 318.

Property.—All kinds of property whether moveable or immoveable may be the subject of this offence. Some change or diminution in value or utility must be caused to the property. Such damage should be of a nature serious enough to be worthy of notice—*Morgan and Macpherson* 390. The word "property" means tangible property capable of being forcibly destroyed, but does not include an easement. Ral. Un. Cr. C. 387. Postal receipt is such a property. 24 P. R. 1905 Cr, ; A. I. R. 1930 Mad. 973—930 M. W. N. 909.

Bonafide claim.—When the defence raised a *bonafide* claim of right, the Court should determine whether the accused acted with any such intent as is specified in this section. Rat. Un. Cr. C. 432 ; Rat. Un. Cr. C. 466 ; see also A. I. R. 1923 All. 428=21 A. L. J. 213=71 Ind. Cas. 645 ; 19 C. L. J. 729=5 Pat. L. W. 114=46 Ind. Cas. 40 ; 4 Pat. L. W. 291=44 Ind. Cas. 451 ; 40 Ind. Cas. 750=18 Cr. L. J. 750=2 Pat. L. W. 49=40 Ind. Cas. 750. One of the several co-sharers in constructive possession of joint land has right to dig part of it with a view to apportioning it for his exclusive use. 35 Cr. L. J. 730=1934 A. L. J. 689=A. I. R. 1934 All. 829.

Change.—The word "change" in s. 425 means physical change in composition or form. A. I. R. 1928 Sind. 49=22 S. L. R. 393=28 Cr. L. J. 960=105 Ind. Cas. 672. Mere omission to give light to the house failing to switch on the light does not involve change in the property even though it may diminish its value or utility, *Ibid.*

426. Whoever commits mischief, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Punishment for mischief.

Scope.—Under this section mischief must be done to the property belonging to another person but where a person's right is declared by a Civil Court he commits no mischief by damaging the property. 7 Pat. L. T. 79=93 Ind. Cas, 40=27 Cr. L. J. 392=A. I. R. 1926 Pat. 244. Where there was no finding that the branches of trees were cut with intent to cause wrongful loss or damage but it appeared from the evidence that the branches were cut at the instance of the accused and with the knowledge that it was likely to cause wrongful loss, the accused can be convicted under this section. A. I. R. 1927 All. 610. In an offence of mischief, change *i. e.* physical change in property is necessary. Only diminishing its use or, utility is not sufficient. 1928 Mad. 49. The essence of the offence of mischief is that the property must be destroyed or have some change caused in it or its situation which destroys or diminishes its value or utility or affects it injuriously. U. B. R. (1897-1901), Vol. I, 847. In order to convict of mischief under s. 426, the owner of an animal which has done damage to crops, it is not sufficient to show that he was guillty of carelessness in allowing it to stray but the prosecution is bound to show an intention on his part to cause worngful loss or damage. Rat. Un. Cr. 187. Negligently allowing one's cattle to stray into another man's garden does not amount to mischief within the meaning of s. 426 I. P. Code. Rat. Un. Cr. C. 185 ; Rat. Un. Cr. C. 199. But where the accused was present when

his buffaloes destroyed some road side trees, and being able to prevent the baffaloes from destroying the trees failed to do so, *held* that he was properly convicted under s. 426 I. P. Code. Rat. Un. Cr. C. 318 ; see also I Weir 29. The cutting of paddy belonging to another, which is unripe and not fit to be cut, amounts to mischief. 7 C. W. N. 713. Ploughing *bonafide* on widowed daughter's husband's land is not an offence under this section. 8 Ind. Cas. 118=11 Cr. L. J. 623 ; see also Rat. Un. Cr. C. 465. A mortgagee by openly cutting a few trees on the land mortgaged to him in order to repair another part of the mortgaged premises is not guilty of mischeief. 15. Cr. L. J. 290=23 Ind. Cas. 498. Where a person cut his own tree and allowed it to fall in anothers' tree to protect his own trees inspite of protest of that other, *held* that he must be presumed to have intended to cause damage to such tree. 98 Ind. Cas. 181. Where accused obtained an injunction restraining complainant from obstructing the way by dams and when the complainant did not remove the dams, he himself had the dams removed, *held* that the loss caused to complainant was caused by unlawful means and therefore accused was guilty of mischief. A. I. R. 1917 Bom. 363=51 B. 417=29 Bom. L. R. 484=28 Cr. L. J. 476=101 Ind. Cas. 604.

To make a breach in the wall of a canal is an act which causes such a change in the property as destroys or diminishes its value or utility or affects it injuriously. and, as such, it is an act of wilful mischief punishable under s. 426, Penal Code. 9 A. L. J. 162=13. Ind. Cas. 829=13 Cr. L. J. 141=34 A. 210. The mere cutting of a few small branches of no appreciable value for the sake of the leaves from a large tree, which is not practically injured at all by the operation, scarcely calls for punishment for theft or mischief as it comes under s. 95. 8 C. P L. R. Cr. 15. Cutting a channel across one's own land into a jhil in possession of another, may amount to an offence under this section. 7 C. W. N. 663.

Rash driving on a public road causing thereby collision with and injury to the horse of another carriage is punishable under s. 279 I. P. Code, and not under s. 426. 13 P. R. 1900 Cr. Throwing brickbats at the back of a house is an offence under this section. 5 L. B. R. 100=4 Ind. Cas. 293=10 Cr. L. J. 552 ; see also 12 N. L. R. 188. Cutting of trees to annoy a person is an offence under this section. 16 Cr. L. J. 544=29 Ind. Cas. 672. Where certain cattle in charge of a servant strayed or were driven on various occasions into the Government gardens and there caused damage, *held* that the master could not be convicted of the offence of mischief. 29 A. 565=A. W. N. 1907, 170=6 Cr. L. J. 13. Section 426 deals with physical injury from physical cause. 24 A. 555. Where a person inflicts wounds on one animal with a spear whereby it is disabled for some days, his offence falls within s. 426. 3 Bom. L. R. 503. If one commits the offence of mischief by intentionally causing wrongful loss or damage to another by entering on his land, he convicts also criminal trespass. U. B. R. (1892-1896) Vol. I, 259 ; see also 11 C. W. N. 467=5 Cr. L. J. 278. If a person takes possession of the site of a public road and builds upon it to the obstruction of the public, it is no offence for a member of the public to pull down that obstruction and exercise his right of way. 15 Cr. L. J. 723=26 Ind. Cas. 171. The allowing of a buffalo to stray without a keeper does not constitute the offence of mischief. Rat. Un. Cr. C. 357 ; Rat. Un. Cr. C. 60 ; 61 Bom. L. R. 539. To support a conviction under s. 426. I. P. Code, it must be proved that there was an intention to cause wrongful loss or damage or to cause damage by wilfully turning an animal into an enclosure, or at least that the accused was present and able to restrain the animal from causing damage and did not restrain it from so doing. Rat. Un. Cr. C. 357. But an offence under this section is committed if the accused grazed the cattle in certain waste land, in contravention of a notification by Government prohibiting the public from grazing cattle there. 1 Weir. 492. Disturbing graves for purposes of cultivation is an offence under this section. 1 Weir. 496. But destruction of carcass against customary right to skin is not an offence. 8 B. 295. But no such offence is committed where tombs with the land passed to the accused. 4 Bom. L. R. 463.

The accused set fire to a heap of rubbish in his field, which was closed to a protected forest. The wind carried the flames to the forest and destroyed a part of it. *Held* that on these facts, the accused could not be convicted of the offence of mischief punishable under this section. 8 Bom. L. R. 851=4 Cr. L. 446=1 M. T. T. 444. The accused caused diversion of the course of a certain river, knowing that such diversion by him and the consequent destruction of very large quantities of fish in the river would injuriously affect the person who as lessee of Government held rights of fishery in the river. He was thereupon convicted by the lower Court under s. 426 of the Penal Code. 28 A. 234=A. W. N. 1905, 255=A. L. J. 826=2 Cr. L. J. 801. Where there is admittedly a *bonafide* civil

dispute between the parties regarding a wall, and one of the parties pulls down a newly built wall in the *bonafide* exercise of his supposed right, he cannot be convicted under s. 426. 1 Weir 490 ; see also 73 P. L. R. 1903=6 P. R. 1903 Cr, ; 2 Bom. L. R. 340 ; A. W. N. 1882, 209, 21 W. Cr. 38 ; A. W. N. 1881, 64. A bailiff cannot be convicted under this section for breaking open doors in execution of decrees. Rat. Un. Cr. C. 949 ; see also 3 C. 573=1 C. L. R. 352. Where an accused person, who had no right to remove earth from an *odai*, did so in such a manner as to cause the destruction of the complainant's bund, *held* that he must have contemplated the result and that he was rightly convicted. 3 M. L. T. 147=7 Cr. L. J. 133. An offence under this section is committed by the destruction of a document containing immoral agreements if in connection with that agreement the complainant gains some right. 5 M. 401=1 Weir. 409. The accused persons were employed to float timber through a bridge ; while doing so, some of the logs struck against the arch of the bridge. The accused were convicted under s. 426. *Held*, that the conviction was wrong, as there was no evidence whatever of mischief and still less of the intention and knowledge required by the section. 1 Weir 487=5 M. H. C. App. 40 ; see also 1 Weir. 510. Where the accused alleging himself as the owner of a land harvests tenant's crops, he commits an offence under this section. 1 Weir 491. Where there is a custom of bringing an idol once a year underneath a tree for worship, the owner of the land on which the tree stands cannot be convicted under this section for the removal of the tree. 1 Weir. 496. Stealing property and then destroying it are but one offence, viz., theft and not to offences, theft and mischief. 37 P. R. 1866 Cr. ; 2 Weir. 458. Where three Municipal Councillors permitted a tree within the Municipal limits to be cut for a public purpose, against the order of the Municipal Committee as a whole, *held*, that they were not guilty of an offence under s. 426. 9 P. R. 1878 Cr. Where the accused, who received a registered letter, instead of returning the acknowledgement duly signed to the post man, tore it away, *held* that the accused was guilty of the offence of mischief. 24 P. R. 1905 Cr.=71 P. R. 1905=2 Cr. L. J. 242. Where it has not been shown or found that the utility or value of the trees was diminished by reason of the branch having been cut, conviction under section 426 could not be sustained. 4 Pat L. W. 291=44 Ind. Cas. 451=19 Cr. L. J. 339 ; see also 2 Pat L. T. 394=23 Cr. L. J. 504=68 Ind. Cas. 40. Where a tenant in the *bona fide* assertion of a customary right, without intending to cause wrongful loss cuts down an ancient tree standing on his holding, he can not be convicted of the offence of mischief under s. 426 I. P. Code. 58 Ind. Cas. 828 ; see also 62 Ind. Cas. 311=22 Cr. L. J. 507. To sustain a conviction under ss. 426 and 427 I. P. Code, the presence of a criminal intention is necessary. 53 P. L. R. 1922. Where a tenant removed earth in the *bona fide* exercise of his right and the landlord complained the dispute is one of the civil nature between landlord and tenant and is not an offence under s. 426. 73 Ind. Cas. 805=24 Cr. L. J. 693 ; see also 86 Ind. Cas. 136=26 Cr. L. J. 660 ; 1929 M. W. N. 711 ; 2 P. L. T. 394=23 Cr. L. J. 504=68 Ind. Cas. 40 ; A. I. R. 1924 Cal. 736=26 Cr. L. J. 194=83 Ind. Cas. 898. The cutting and removal of dead jack-fruit tree standing on the homstead of the tenant, by a servant of the landlord does not constitute the offence of mischief. 28 C. W. N. 736. Demolition of a party wall in a *bona fide* claim of right is not an offence under the section. 26 Bom. L. R. 978. No offence under s. 426 is committed when a person only removes an obstruction from a well which he believes to be his own, by removing a few bricks from the wall. A. I. R. 1927 Lah. 145=28 Cr. L. J. 1587=99 Ind. Cas. 414 ; see also A. I. R. 1932 Mad. 676 =33 Cr. L. J. 655. Where the accused is charged with offence under s. 430 and Bench Magistrate tried them for lesser offence under s. 426, their proceedings are not void. A. I. R. 1931 Mad. 494=32 Cr. L. J. 971=1933 M. W. N. 770=133 Ind. Cas. 4.

Procedure.—Non-cognizable—Summons—Bailable—Compoundable in case of loss to private persons.—Triable by any Magistrate.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief causing damage to the amount of fifty rupees.

Scope.—In estimating the amount of the loss or damage caused, the actual loss only should be taken into consideration and not the damage which, in consequence of such loss, may be occasioned to the sufferer. It is not clear whether to

support the charge under the section, the court must be satisfied not only that the offender intended to cause wrongful loss but also that he intended (or knew himself to be likely) to cause wrongful loss to the amount of fifty rupees or upwards. It will be reasonable to infer such an intention in the absence of satisfactory proof on behalf on the accused person, showing that he did not contemplate or intend to cause mischief to this amount.—*Morgan and Macphersan*, 303. See also 16 C. W. N. 263=13 Ind. Cas. 826 ; 21 Bom. L. R. 247 ; 17 A. L. J. 343 ; 22 A. L. J. 820. To support a conviction under this section intent or knowledge that he is likely to cause wrongful loss to his neighbour must be proved. 147 Ind. Cas. 538=35 Cr. L. J. 430=A. I. R. 1934 Pat. 199. In case of encroachment on public road there is no right of private abetment and as such encroachment constitutes mischief. 1933 M. W. N. 905. To support a conviction for an offence under this section it is sufficient to prove that the property was in the possession of the complainant ; it is not necessary to prove his title. 25 A. L. J. 1010. Grazing cattle on lands rented from Government, without payment of fees is not an offence under this section. 1 Weir 497=5 M. H. C. App. 29. Where the accused was alleged to have wrongfully permitted the licensee to cut one kind of trees in a forest instead of another but there was no allegation that Government had been put to any loss owing to the act. *Held* that the conviction under s. 427 I. P. Code could not be supported. 8 Rang. 17=A. I. R. 1930 Rang. 158. A person allowing his cattle habitually and intentionally to graze on crops of others is guilty under s. 427. 28 Cr. L. J. 387=21 Bom. L. R. 247=50 Ind. Cas. 995. Where accused was charged under s. 427 and was not acquitted he cannot subsequently be charged with noting on the same facts. A. I. R. 1924 Mad. 478=25 Cr. L. J. 244=76 Ind. Cas. 708=1924 M. W. N. 153. Where there is no intention to cause wrongful loss or wrongful gain, a charge under s. 427 cannot be stained. A. I. R. 1925 All. 311=23 A. L. J. 21=26 Cr. L. J. 748=86 Ind. Cas. 284. A complainant in possession need not prove ownership. 25 A. L. J. 1010=A. I. R. 1927 All. 724. No order under section 106 Cr. Pro. Code can be passed upon conviction of an offence under s. 143 or s. 427 I. P. Code. A. I. R. 1927 All. 136=28 Cr. L. J 140=99 Ind. Cas. 348. The jurisdiction of a Court depends upon the allegation made in the complaint unless such allegations are found at the very outset to be exaggerated for purposes of jurisdiction. A. I. R. 1925 All. 290=26 Cr. L. J. 586=47 A. 64=85 Ind. Cas. 730. Where a person cuts away the newly erected roof of the adjacent house under a *bona fide* claim of right no offence is committed as the requisite criminal intent is wanting. A. I. R. 1932 Mad. 676=33 Cr. L. J. 655=1932 M. W. N. 648=138 Ind. Cas. 608.

Procedure.—Non-cognizable—Warrant—Bailable—Compoundable in case of loss to private persons—triable by Presidency Magistrate, or Magistrate of the first or second class.

Mischief by killing, or maiming animal of the value of ten rupees.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope—It must be proved that the destruction or damage is of that wilful description which falls within the definition of mischief. But it must, it seems, be understood that the animal destroyed is the subject of property. Wild animals which have been captured as bears, tigers, etc., kept in cages, could probably be deemed within the meaning of the section.—*Morgan and Macpherson*, 304 ; U. B R. 1905. Penal Code, 25.

Maiming.—In its primitive meaning the verb "to maim" involves the notion of mutation of some part of the body useful for fighting. The framers of the Code did nt intend this restricted meaning only of this expression. The expression would fairly include the amputation of any member, or the injury, of an animal by which its speed, or endurance or use, was permanently diminished. L. B. R. (1872—1892), 404 ; U. B. R. 1905 Penal Code, 28 ; 1 Weir. 500 ; 1 Weir. 498 ; 34 P. R. 1888 Cr, ; A. W. N. 1884. 87. The cutting off completely of the ears of an as is maiming under this section. 22 M. L. T. 68.

Procedure.—Cognizable—Warrant—Bailable—Not-Compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, &c., of any value or any animal of the value of fifty rupees.

Scope.—The words 'bull" or, "cow" include the young of these animals, and the expression "any other animal" does not mean an animal of the kind already mentioned, but refers to an animal of a different genus altogether. The section specifies the more valuable of the domestic animals without any regard to the age, but in respect of other kinds of animals not so specified, the section would not apply, unless the particular animal in question was shown to be of the value of fifty rupees or upwards. *Gouri Mandal* v. *Jafar*, 22 C. 467. No offence of mischief is committed in killing a bull branded and let loose according to the custom of Hindus on the death of a person, since such bull is no one's property. A. W. N. 1884, 87 ; 1 Weir. 500 ; but see 34 P. R. 1888 Cr. Where the accused threw a stone at a buffalo, in order to drive it out of her backyard and the animal after running some distance, fell down and died ; *held*, that the accused was not guilty of an offence under s. 429. 1 Weir. 502.

Maiming.—The word "maiming" in s. 429 involves the definition of the use of some limb or member involving a permanent injury and not a mere disfigurement. 17 Cr. L. J. 253=18 Bom. L. R. 289=34 Ind. Cas. 973. The cutting off of the ears of a horse amounts to "maiming" within the meaning of this section. 21 M. L. J. 843. But where a person inflicts a wound on an animal with a spear whereby it is disabled for some days, this offence falls within s. 426 and not within this section. 3 Bom. L. R. 503. The cutting off of nearly one-half of one ear of a mare whereby the animal's sense of hearing is not impaired, is not maiming. 18 Bom. L. R. 289. Killing of an animal by the thief does not merit double conviction for theft and mischief. 26 Cr L. J. 277=84 Ind. Cas. 341=A. I. R. 1925 Pat. 34.

Intention.—The provision of this section requires that the offence of mischef must have been committed as the result of the acts specified therein and in order to constitute that offence it is necessary that the accused should either intend to cause or know that he is likelyito cause, wrongful loss or damage. 3 Cr. L. J. 107 ; See 14 C. P. L. R. Cr. 159 ; L. B. R. (1893—1900), 633 ; 7 Ind. Cas. 415. Where conviction both under this section and section 379 were held to be bad.

Procedure.—Cognizable—-Warrant—-Bailable—-Not-Compoundable—-Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation, or by wrongfully diverting water.

Scope—To constitute the offence, not merely loss. should be proved, but also that it was wrongful loss and that accused intended to cause or knew he was likely to cause the loss. A. I. R. 1925 Mad. 577=26 Cr. L. J. 1100=88 Ind. Cas. 188=1925 M. W. N. 45. Under s. 430 the physical requisites, of the Act are the doing of an act which causes, or to the doer's knowledge is likely to cause, a diminution of supply. 13 P. L. T. 162=33 Cr. L. J. 313=1932 Cr. C. 407=A. I. R. 1932 Pat. 224. This section is applicable equally to irrigation channels, as to other sources of irrigation such as tanks and pods. 1 Weir. 510. Where an accused is charged under this section his intention to cause wrongful loss is the essential element to be considered. 29 Ind. Cas. 670 ; 7 M. H. C. Ap. 39 ; 4 L. B. R. 149 ; 1 Weir. 507 ; 1 M. 262. To bring an act under this section, it must be shown to cause, or be likely to cause, a diminution of the supply of water for agricultural purpose. U. B. R. (1897—1901) Vol. I. 349 ; 5 A. L. J. 159 ; 1 Weir. 507 ;

16 Cr. L. J. 542 ; 34 M. L. J. 206 ; 60 Ind. Cas. 95=23 Cr. L. J. 655 ; 12 Cr. L. J. 551=12 Ind. Cas. 527 ; 1 M. 262 ; 11 Cr. L. J. 621 ; 25 P. L. R. 1910 ; Rat. Un. Cr. C. 217 ; 8 C. W. N. 370 ; 1 Weir. 510 ; 5 A. L. J. 159 ; 1 Weir. 503 ; 41 A. 599=51 Ind. Cas. 201 ; 1 Weir. 504 ; 1 Weir 505 ; 1 Weir 508 ; 25 W. R. Cr. 69 ; 54 Ind. Cas. 617 ; 24 Cr. L. J. 830 ; 24 Cr. L. J. 467 (1) ; 32 Cr. L. J. 476 ; 22 Cr. L. J. 270. The offence under this section requires as an essential element of it that the accused had the intention to cause or the knowledge that their act was likely to cause wrongful loss to the complainant. 26 Cr. L. J. 1100. Guilty knowledge is essential to a conviction for the offence of mischief, and, in the absence of any consideration or discussion of the circumstances and the reasonableness or otherwise of the acts of the accused persons it is impossible to uphold a conviction for that offence. 52 Ind. Cas. 276=20 Cr. L. J. 612. To substantiate an offence under s. 430 the prosecution must prove that there has been unlawful and intentional interference on the part of the accused with the admitted or proved rights of the complainant. 32 C. L. J. 476=61 Ind. Cas. 665=22 Cr L. J. 415. Where the accused was charged under s. 430 I. P. Code, for having erected a fence across a channel flowing through his land with the result that the supply of water to the complainant's land was reduced. *Held*, that in the absence of a claim of easement or contract for the supply of water by the complainant, the accused could not be convicted. 69 Ind. Cas. 95=23 Cr. L. J. 655=16 L. W. 793 ; 44 M. L. J. 234. Every person has a perfect right to do a particular act upon his own land, and if a person breaks open his bund or opens his own sluice, no one can complain of it, until some injurious consequence follows from it. As soon as such a consequence follows, the injury and not the original act, becomes a cause of action. In such a case the mischief consists not in breaking the bund or in opening the sluice but in flooding or withering up the complainant's crops. 21 S. L. R. 107=98 Ind. Cas. 49=27 Cr. L. J. 1233. Where a matter is prominently one for the Civil Court to decide, whether a bund was put up or not by one of the parties, there ought not to be a conviction for an offence under this section. 98 Ind. Cas. 474=27 Cr. L. J. 1354 ; see also 34 C. W. N. 86=50 C. L. J. 589=A. I. R. 1930 Cal. 318. The words "diminution of the supply of water for agricultural purposes" in this section cannot be limited to those cases only where the water has been allowed either to go waste or has been diverted for a non-agricultural purpose. The section read as a whole also refers to cases where the water is intended for use by particular person for purposes of agriculture and is diverted by an accused person for his own purposes though of a like nature. 21 S. L. R. 107=98 Ind. Cas. 49=27 Cr. L. J. 1233. An offence under this section is particularly a grave form of the offence of committing mischief as defined in s. 425. It is necessary to prove in such cases the elements that constituted mischief under s. 425. No doubt a person who takes water from a tank causes loss but it should be shown that he has caused a diminution of the supply of water for agricultural purpose. A. I. R. 1930 Cal. 289. Accused knowingly diminishing supply of water without a *bonafide* claim is guilty, A. I. R. 1924 Pat. 704=26 Cr. L. J. 258=84 Ind. Cas. 322 ; see also 44 Ind. Cas. 582 ; 44 Ind. Cas. 580=34 M. L. J. 206=19 Cr. L. J. 356=23 M. L. T. 248. Person cutting bund and letting out some water is guilty under s. 430. 136 Ind. Cas. 592=13 P. L. T, 162=33 Cr. L. J. 313=1932 Cr. C. 407=A. I. R. 1932 Pat. 224. In order to prove an offence under s. 430 it is necessary to prove mischief as defined in s. 425 and it is also necessary to prove that the act committed is likely to cause a diminution of the supply of water for the various purposes mentioned in the section. A. I. R. 1934 All. 687=35 Cr. L. J. 1250=150 Ind. Cas. 1048 ; 1933 M. W. N. 427.

Object.—Injuries to a river or well or any natural or artificial channel or reservoir of water, or any work for the purpose of irrigation, if such injuries cause or are likely to cause a diminution of the supply by wrongfully drawing off or diverting water are punishable under this section. In some parts of India disputes about water for irrigation are numerous and are carried on with great violence. When two villages draw their supply from one tank and the scantiness of the supply renders it necessary that they should each be supplied for a regulated number of hours, it is not unusual for the people of one village to attempt undue appropriation during the night, an act which, if discovered by the rival village, ends in an affray of a very serious character. Such an act causing wrongful loss to individuals or to the public or community of the injured village will, it seems, be punishable under the present section. Mischief committed by drawing water used for domestic and other like purposes and thereby causing a diminution of the supply, will like wise be punishable under the section.—*Morgan and Mazpherson.*

Procedure.—Cognizable—Warrant—Bailable—Compoundable with permission of Court—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st or second class.

Mischief by injury to public road, bridge, river or channel.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Public road.—A path through a jungle is not a road in the sense in which that word is used in this section. L. B. R. (1893—1900) 629.

Scope.—In the definition of mischief, loss or damage to the public is mentioned. This section applies when the mischief is to a public road, navigable river, etc., and is of the kind mentioned. An obstruction or impediment caused not wilfully but by some negligent act or omission is an offence which is punishable not under this but under a preceding section (see section 283). Mischief caused to a private pathway, bridge, etc., is punishable under section 426.—*Morgan and Macpherson*, 395. See also U. B. R. (1892—1866) Vol. I. 260 ; 1 Weir 511.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st or Second class.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Scope.—Work of irrigation are within the protection of section 430. Wilful injuries to embankments where such injuries as are not punishable by a special law are punishable under this section. Works or public drainage such as those which exist or are in courses of construction in some of the Presidency towns or other big citites are included in the present section if such works are not constructed under a local or special Act containing the necessary provisions for their protection.—*Morgan and Macpherson*, 396. In order to constitute an offence under this section, it is not sufficient to prove probable consequential damage to other property. 1 Weir 512=4 M. H. C. App. 15

Procedure.— Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Mischief by destroying, moving or rendering less useful, a light-house or sea-mark.

433. Whoever commits mischief by destroying or moving any light house or other light used as a sea-mark, or any sea mark or buoy or other thing placed as a guide for navigators or by any act which renders any such light-house, sea-mark, buoy, or other such thing, as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

Mischief by destroying or moving &c., a land-mark fixed by public authority.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cases.—8 A. L. J. 925 ; 1 A. L. J. 619 ; 30 C. 1084.

Procedure.—Non-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Mischief by fire or explosive substance with intent to cause damage to the amount of one hundred or (in case of agricultural produce) ten rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Legislative changes.—In this section the words quoted have been inserted by Act 18 of 1882 s. 10.

Scope.—When mischief is committed by means of fire or any explosive substance and the evidence enables the Court to conclude that the offender not only intended to cause wrongful loss, which intention is necessary to the committing of "mischief" but either intended or knew himself to be likely to cause wrongful loss or damage to the amount of Rs. 100 there may be conviction under this section. If the evidence falls short of this, but is sufficient to show that mischief to the amount of 50 rupees has been caused, whether by fire or by any means whatsever, the offender may be convicted under s. 427. If the offence proved is simple mischief and there is no aggravating circumstance in the case, the offender is punishable under section 426.—*Morgan and Macpherson*, 397. But an accused cannot be convicted both under this section as well as under s. 436 because when, in the same penal statute, there are two clauses applicable to the same act of an accused, cumulative punishments are not to be awarded unless it is so expressly provided in the statute. The case may be different where different statutes provided separate punishments for this same act, for the intention of the Legislature is to guard two distinct interests of different species. 11 B. H. C. 13.

Procedure.—Cognizable—Warrant—Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Mischief by fire or explosive substance with intent, to destroy house, &c.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—This highly penal provision is for the punishment of the offence mentioned in s. 435 when such offence is attended with the aggravating circumstance that the offender contemplated the destruction of a house, place of worship, or place used for the custody of property. The grass or mat huts of the lowest classes are placed on a level with the substantial, secure and valuable dwellings of the rich ; and it is left to the discretion of the Judge to distinguish in awarding punishment between cases of great criminality and those in which the injury done is inconsiderable. The word "building" must, however, it seems be understood to mean a structure of some permanence and fixedness, not a mere hut, or temporary erection.—*Morgan and Macpherson*, 398. See also 7 P. R. 1923 Cr. A thatched wall of an enclosure in which there are several thatched huts is a building. 7 P. R. 1903 Cr. Section 285 is not applicable where the act of the accused is wilful and not rash or negligent. To such a case s. 436 may be applicable. Rat. Un. Cr. C. 126. A man may commit mischief in certain cases on his own property. In such cases it seems that a person causing mischief by fire to his own house will be punishable under this Section. If death or hurt is accused by fire, the offender may be punished under the chapter of offences against the human body.—*Morgan and Macpherson*, 398 ; see also 8 Ind. Cas. 399. Whihping in addition to sentence under this section is not permisssible. A. I. R. 1928 Oudh. 111. In a case of mischief by fire, evidence of previous fires, unconnected with the charge under enquiry cannot be admitted. 20 C. W. N. 1267

=17 Cr. L. J. 421=35 Ind. Cas. 981. It is absolutely necessary in order to convict the accused under s. 436; I. P. Code to prove that the building which he destroyed comes within the category of a building ordinarily used as a place of worship, as a human dwelling or as a place for the custody of property. The words "ordinarily use" in s. 436 I. P. Code do not mean that other buildings are from time to time used for such purposes, but they mean that the particular building which is the subject of the offence was itself used. 82 Ind. Cas. 54=25 Cr. L. J. 1190. It must be shown that the accused were from the very beginning actuated by the common motive to set fire to the house before a conviction could be had under. ss. 436 and 149. 22 Cr. L. J. 267=60 Ind. Cas. 667. Arson in Indian villages is very serious crime and must be heavily punished. 131 Ind. Cas. 436=8 O. W. N. 101=1931 Cr. C. 276=32 Cr. L. J. 694=6 Luck. 539=A. I. R. 1931 Oudh. 116.

Procedure.—Non-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Mischief with intent to destroy or make unsafe a decked vessel or one of 20 tons burden.

437. Whoever commits mischief to any decked vessel, or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—Decked vessels of any size, however small, and such undecked vessels as the large river craft of Bengal and the class of native vessels engaged in the coasting trade and otherwise on the western costs of India, appear to be meant. If life is endangered the offender may be dealt with under the provisions of the preceding chapter.—*Morgan and Macpherson*, 399.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Punishment for the mischief described in section 437, committed by fire or explosive substance.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Example.—If A, having insured his ship, voluntarily causes or attempts to cause it to be set on fire and destroyed with the intention of causing damage to the insurer, he has committed an offence punishable under this section, although the vessel may be his own property—*Morgan and Macpherson.* 399.

Procednre.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Punishment for intentionally running vessel aground or ashore with intent to commit theft &c.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—The sense in which the word "vessel" is here used is explained by s. 48. In the great navigable rivers of Bengal and probably elsewhere, the crews of river craft, acting in league with persons on shore, sometimes run their vessels aground or ashore, and thus enable their confederates to plunder the cargo.—*Morgan and Macpherson*, 329.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session.

Mischief committed after preparation made for causing death or hurt.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Criminal Trespass.

Criminal trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

Of Criminal Trespass.—The substantive offences which the Code makes punishable under this head of the chapter of offences against property, considered by themselves, are such as might be visited with a light punishment; but when they are attended with aggravating circumstances and above all when they are viewed in relation to some other offence, as murder, theft, etc., the commission of which is the main object of the offender, they become grave offences. The criminal trespass, in whatever form and whether aggravated or not, if it is preparatory to the commission of an offence against person or property, deserves severe punishment. "Criminal trespass" the offence which is first defined and punished, enters into almost all the subsequent offences which are contained under this division. Those penal provisions in fact punish this offence with various degrees of punishment when it is attended with certain aggravating circumstances. The trespass may be aggravated by the way in which it is committed or by the end for which it is committed,—*Morgan and Macpherson*, 400

Division of the chapter.—The division begins by defining the offences of (1) criminal trespass; (2) house-trespass; (3) lurking house-trespass (4) lurking house trespass by night; (5) house-breaking; (6) house-breaking by night. The definition of the lower of these offences includes all cases which are within the definitions of the higher offences. The four last-named offences are house-trespasses, with different circumstances of aggravation; and house-trespass is by its definition a species of criminal trespass. When any of these offences, for instance house-trespass, is committed in order to the committing of another offence, theft for example, this purpose is treated, as will be seen, not as a distinct offence, but as an aggravation of the trespass.—*Ibid* 401.

Distinguishing nature of the crime.—But the offence itself is to be distinguished from those previously noticed, inasmuch as it does not necessarily imply dishonesty, fraud or deceit. The criminal trespasser whose object is "to intimidate, insult or annoy," for instance, has not necessarily any design against the property of the sufferer; perhaps his object is only a frolic. *Ibid.* 400.

Scope.—In this definition the entry and the intention with which a person enters are essentials. The latter part of the definition makes unlawful continuance on property equivalent to an unlawful entry, the intention being criminal—*Ibid*, 401. Unlike several sections of the code where *mens rea* consists in intention or knowledge this section requires that the accused should either unlawfully enter upon property of another or having lawfully entered thereon continue to remain unlawfully with intent thereby to intimidate, insult, or annoy the person in possession of such property or with intent to commit the offence. 100 Ind. Cas. 829=28 Cr. L. J. 349=A. I. R. 1927 Sind. 159; 27 A. 298; 18 Cr. L. J. 402. A trespasser cannot acquire possession by the very act of trespass. A true owner can re-enter but he must not use more force than is necessary. A. I. R. 1928 P. 124. Unlawfully entering on the property and continuing to remain there is a continuing wrong. A. I. R. 1928 P. 124. This section does not require the land to be in the actual possession of the complainant.

1928 Bom. 221. To constitute an offence under this section, there must be an actual personal entry by the person accused. 3 L. B. R. 278=5 Cr. L. J. 415. Unlawful entry followed by unlawful continuance is offence. A. I. R. 1933 All. 816=1933 A. L. J. 1418=1933 Cr. C. 1415. No fresh offence is committed by mere continuing trespass. 139 Ind. Cas. 609=1932 Cr. C. 500=33 Cr. L. J. 861=28 N. L. R. 57=A. I. R. 1932 Nag. 112 ; but see A. I. R. 1928 Pat. 124=6 Pat. 794.

Property.—The word "property" in s. 441 is sufficiently wide to cover any kind of property, either moveable or immoveable ; it includes a ferry boat. 35 Cr. L. J. 949=A. I. R. 1934 Cal. 480=38 C. W. N. 665=1934 Cr. C. 688.

Entry into or upon property.—"Property" here, must from the nature of the provision, mean corporeal property, either land or a building tent or vessel ; and possession would seem to mean actual occupation as contradistinguished from a constructive possession, or still more a vacant possession. It would seem, a person entitled to a right of way or other incorporeal right is not a person in possession of property within this definition and that there can be no criminal trespass "into or upon" such property.—*Morgan and Macpherson*, 401. In order to sustain a conviction for criminal trespass, it must be shown that the property was in possession of some person, other than the alleged trespasser. 28 P. R. 1878. Cr. The complainant in a prosecution for criminal trespass must be in physical as opposed to juridical or constructive possession. 10 Bur. L. T. 77 ; 17 Cr. L. J. 378 ; 67 Ind. Cas. 618 ; 74 Ind. Cas. 856 ; 74 Ind. Cas. 534 ; 16 A. L. J. 501 ; 12 A. L. J. 151. Constructive entry upon property by a servant is not an entry within the meaning of this section. To constitute an offence under this section, there must be an actual personal entry by the person accused, 5 L. B. R. 278=5 Cr. L. J. 415. Person not personally entering, but setting people to build, on another's land commits criminal trespass. 39 A. 722=19 Cr. L. J. 46=15 A. L. J. 793=42 Ind. Cas. 1006. Mere assertion by a person of his right to be in possession is no offence. 19 Cr. L. J. 629=45 Ind. Cas. 677. Entering the cattle pound with intent to commit an offence under s. 24, Cattle Trespass Act, amounts to criminal trespass. A. I. R. 1927 Lah. 495=8 Lah. 331=28 Cr. L. J. 665=103 Ind. Cas. 201.

Intention.—The intention constitutes the entry criminal. Merely to trespass is not ordinarily such an offence ; but when the trespass is in order to the commission of an offence (see section 40), or when it is to intimidate, to insult, or to annoy, it is published—*Morgan and Macpherson* 401 ; 145 Ind. Cas. 625=10 O. W. N. 166=A. I. R. 1933 Oudh. 179=34 Cr. L. J. 1014=1933 Cr. C. 390; 1933 A. L. J. 1418=1933 Cr. C. 1415=A. I. R. 1933 All. 816 ; 87 Ind. Cas. 106=26 Cr. L. J. 954. Intention may be proved by circumstances. 1934 A. L. J. 1061=A. I. R. 1934 All. 1025. 100 Ind. Cas. 829=28 Cr. L. J. 349. Intention is the main deciding factor to constitute criminal trespass. A. I. R. 1931 Cal. 264=1931 Cr. C. 296=139 Ind. Cas. 500 ; see also A. I. R. 1933 All. 816=1933 A. L. J. 1418=1933 Cr. C. 1415. With "intent" does not mean "with knowledge," A. I. R. 1933 All, 816=1933 Cr. C. 1415=1933 A. L. J. 1418. Knowledge that the act is likely to intimidate or annoy etc is not sufficient nor is the rule that a person is to be presumed to intend the natural consequence of his action is applicable. A. I. R. 1934 Pat. 158=15 P. L. T. 392=35 Cr. L. J. 142=13 Pat. 268. An unlawful entry upon property does not amount to criminal trespass unless one of the intents mentioned in this section is made out by the prosecution or found by the Magistrate. 54 Ind. Cas. 620 ; Rat. Un. Cr. C. 390 ; 28 P. R. 1905 Cr. ; 14 P. R. 1901 ; 38 Ind. Cas. 962 ; 25 Cr. L. J. 751 ; 65 Ind. Cas. 446 ; 74 Ind. 534 ; 1923 P. 56 . 69 Ind. Cas. 379. An alternative finding that a trespass was committed with one or other of two intents either of which would make it criminal trespass as defined in s. 441 I. P. Code. is sufficient for a conviction under s. 367 Cr. Pro. Code. 5. P. R. 1886 Cr. Entry as a practical joke is an offence under this section. 18 P. R. 1888. The placing of hay stacks and manure on another's land may be a civil trespass. It may cause annoyance in fact, but the act cannot be treated as criminal trespass, unless it is found that it was intended by the accused to be annoyance. 16 C. W. N. 1007=13 Cr. L. J. 783=17 Ind. Cas. 415. This section defining criminal trespass, is so warded as to show that the act must be done with intent and does not as other sections do, embrace the case of an act done with the knowledge of the likelihood of a given consequence. 19 M. 240=1 Weir. 537 ; 33 M. L. J. 729. Building on another man's land is an offence under this section. 39 A. 722. For a legal conviction, under s. 411 of the Penal Code, there must be an intention to intimidate, insult or annoy a person in actual possession. 8 B. L. R. 62 ; 4 L. B. R.

276 ; 4 L. B. R. 242 ; 2 L. B. R. 319 ; 12 P. R. 1906 Cr. (F. B.) ; 17 W. R. Cr. 47 ; 9 W. R. Cr. 1 ; 14 W. R. Cr. 25 ; 15 C. 390 N. ; Rat. Un. Cr. C. 10 ; 1 L. B. R. 95 ; 2 M. 30 ; 6 C. 529 ; 9 B. L. R. Ap. 19 ; 7 W. R, Cr, 28 ; 1 Weir 512 ; 5 M. H. C. App. 17. A person's entry upon another's property for killing deer is an offence under this section. 4 C. 837 ; see also 16 C. 715. A secret entry into Exhibition building without ticket does not constitute an offence under this section. 6 B. H. C. Cr. 6. Plying boat for hire, three miles from a public ferry does not constitute an offence under this section. 1. A. 527. Encroachment of public road or entry into the compound of a house etc., with the intention mentioned in this section constitutes an offences under this section. Rat. Un. Cr. C. 122 ; Rat. Un. Cr. C. 393 ; 22 C. 123. Intention is the deciding factor to constitue offence of trespas. A. I. R. 1930 Cal. 264. Co-owners cannot be held to have committed trespass, unless they have ousted the other co-owners from possession, or have committed some destruction or waste of common property, as by putting down a common wall, or by carrying away a portion of the common property, as by digging and carrying away turf, etc. 3 M. 178=1 Weir. 286 ; see also 4 M. 243 ; 6 B. L. R. App. 89 ; 15 W. R. Cr. 6. Member of joint family does not commit criminal trespass by entry on joint property unless such property or part ordinarily is exclusively occupied by another member of the family. A. I. R. 1933 Sind. 396=1933 Cr. C. 1436. Where the accused enclosed and commenced to cultivate a portion of a burial ground, *held*, that the accused was guilty of an offence under this section. 6 M. H. C. App. 25. Entry into the sleeping apartment of women constitutes an offence under this section. 16 C. 657 ; 22 C. 994. A person entering another's house after having taken all precautions to avoid discovery cannot be said to have entered with intent to cause annoyance to the persons in possession. 27 P. L. R. 385=96 Ind. Cas. 871=27 Cr. L. J. 1015. Intention cannot be inferred from the actual or probable results. It is necessary to show the actual intention to insult or annoy before the acts were complete, to constitute the offence under s. 441. 116 Ind. Cas, 783=A. I. R. 1929 Pat. 111. A mere knowledge that the trespass is likely to cause insult or annoyance to the owner of the property does not amount to an intent to insult or annoy within the meaning of this section but where the trespasser knows that his trespass is practically certain in the natural course of events to cause insult or annoyance to the owner of the property, it is open to the Court to infer an intent to insult or annoy. It is a question of fact whether this presumption of intent is displaced by proof of any independent object of the trespass. 33 M. L. J. 729 (F. B.) : 82 Ind. Cas. 149 ; 47 All. 855=26 Cr. L. J. 1273 ; A. I. R. 1925 Nag. 36 ; 12 P. R. 1906 : 13 P. R. 1905 Cr. The essence of an offence under this section is the intent in committing the trespass and merely to trespass is not ordinarily an offence. It must be proved that some criminal intent was present in the mind of the accused and it does not at all follow that because an act is unlawful and is one that the civil law will restrain or for which it will compensate the injured party in damages, it is necessarily criminal. 81 Ind. Cas. 351 ; 75 Ind. Cas. 292. See also 41 M. 156 ; 47 Ind. Cas. 77 ; 13 C. L. R. 212 ; 82 P. R. 1906 Cr ; 13 P. R. 1908 Cr.

Intimidate.—The word "intimidate" in this section must be understood in its ordinary sense to overraide, to put in fear, by a show of force or threats or violence and it may include use of actual force our accompanied by threatt 13 Rat. 268=151 Ind. Cas. 894=25 Cr. L. J. 142=15 Pat. L. T. 392=A. I. R. 1934 Pat. 158= 1934 Cr. C. 355.

Offence.—An unlawful act is not necessarily an offence. 26 A 193=A. W. N. 1903, 230. Where the accused trespassed upon the land intending to prevent the respondent by force from harvesting the crops which had been grown by the accused, it does not amount to an offence of criminal trespass or criminal force. 16 C. L. J. 271 : A. W. N. 1882, 228. Where the object of a trespass is to commit an offence, such offence must be possible on the part of the person to be convicted of the trespass. 47 Ind. Cas. 77=19 Cr. L. J. 881.

With intent to annoy.—A person entering another's house after having taken all precautions to avoid discovery cannot be said to have entered with intent to cause annoyance to the persons in possession. 27 P. L. R. 385. The word "annoy" in this section must be taken to mean "annoyance" that would generally and reasonably affect an ordinary person. 2 A 465. Mere knowledge of the possibility of annoyanc resulting from an act of trespass is not sufficient. 26 B. 558 ; 24 W. R. Cr.

58. The annoyance must be in respect of the person in actual possession. 17 Cr. L. J. 378 ; 47 A. 855.

Knowledge.—Knowledge that annoyance will be caused by the act is sufficient. 10 O. W. N. 1078=A. I. R. 1933 Oudh. 469=1934 Cr. C. 1393 ; see also 145 Ind. Cas. 626=1933 Cr. C 1321=10 O. W. N. 1075=34 Cr. L. J. 1055=A. I. R. 1933 Oudh. 436 ; 41 M. 156=43 Ind. Cas. 578 ; 43 Ind. Cas. 405. Mere knowledge that this act is likely to annoy or insult is not sufficient. A. I. R. 1935 Sind. 20.

Remains there etc. If a person enters into property in the possession of another or remains there with an intent other than to intimidate, insult or annoy him or to commit any offence but with the knowledge that his act is likely or certain to cause annoyance or insult to the person in possession he is not guilty of criminal trespass. 33 M. L. J. 729 (F. B.) ; see also A. L. R. 1932 Nag. 210=A. I. R. 1932 Nag. 112=28 N. L. R. 57=139 Ind. Cas. 609.

Possession. Possession must be actual possession. 14 Cr. L. J. 633=21 Ind. Cas. 681=12 A. L. J. 151; 10 Bur. L. T. 77 ; but see A. I. R. 1931 Mad. 560. Possession must be physical possession and not merely construction. 1933 Cr. C. 1436=A. I. R.=1933 Sind. 396 In order to constitute possession dominion and consciousness of is necessary. 145 Ind. Cas. 130=1933 Cr. C. 743=1933 A. L. J. 1338=34 Cr. L. J. 930=A. I. R. 1933 All. 437 ; see also A. I. R. 1928 Bom. 221=30 Bom. L. R. 631=29 Cr. L. J. 977=112 Ind. Cas. 97 ; Possession at the date of trespass must be found as a fact. 18 Cr. L. J. 761=41 Ind. Cas. 1307.

Cases.—In a charge under s. 454, conviction can be under s. 441. A. I. R. 1935 Pat. 129.

Any person in possession. The words "any person in possession" do not mean only a complainant in possession there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. 25 C. W. N. 425 ; see also 49 Ind. Cas. 99 ; U. B. R. (1899-1901) Vol. I. 352.

Bona-fide.—Where the accused have acted *bona-fide*, there is no question of criminal trespass. 1924 Mad. 862 ; 20 Ind. Cas. 219 ; 15 Ind. Cas. 317 ; 12 A. L. J. 790 ; 27 A. 296 ; 13 C. L. R. 212 ; A. W. N. 1882, 236 ; 1 L. B. R. 358 ; 9 Cr. L. J. 566 ; A. I. R. 1925 Pat. 167=81 Ind. Cas. 823=25 Cr. L. J. 1047 ; 81 Ind. Cas. 888=25 Cr. L. J. 106 ; 19 Cr. L. J. 704=46 Ind, Cas. 160 ; 43 C. 1143=35 Ind. Cas. 515.

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Building.—A *dalan* or entrance which was surrounded by a wall in which there are two door ways, but without doors, which was used for custody of property, was held to be a building. 10 P. R 1879 Cr. A *whera* used for custody of property is a building within the meaning of this section. 1925 Lah. 117=6 Lah. L. J. 385 ; see also A. I. R. 1926 Lah. 28=6 Lah. 463=27 Cr. L. J. 38=91 Ind. Cas. 70. A court-yard partly surrounded on the front by a mud wall with no roof over it nor any door or gate-way is not a building or house within the purview of this section. 49 Ind. Cas. 864 ; 4 L. B. R. 24 ; A. I. R. 1925 Lah. 279=6 L. L. J. 578=26 Cr. L. J. 383=84 Ind. Cas. 863, but see 55 P. R. 1879 Cr. But a thatched hut is such a building. 36 Ind. Cas. 584. See also 9. P. R. 1887 Cr. Entry into a cattle pen is not an offence under this section. 28 P. R. 1905 Cr. Entry in the enclosure is not house-trespass. 1928 All. 607 ; 1929 Mad. 135. A court-yard bounded by walls on all the sides without a door opening out any where, is not a building for the purposes of s. 442 I. P. Code. 77 Ind. Cas. 809=9 Lah. 623=25 Cr. L. J. 457. The expression "building" includes a structure whether covered or not and made of any materials whatever. 111 Ind. Cas. 459=29 Cr. L. J. 875 ; 131 Ind. Cas. 427=31 Cr. L. J. 268=A. I. R. 1930 Lah. 414. Intention to use as a dwelling is a question of fact and depends on the facts of each case. A. I. R. 1929 Sind. 17=22 S. L. R. 466=29 Cr. L. J. 875=111 Ind. Cas. 459. A thatched hut built for residence, is a building used as a human

dwelling within the meaning of s. 442. 17 Cr. L. J. 536=3 O. L. J. 493=36 Ind. Cas. 584.

Vessel.—A ferry boat cannot be held to be a vessel in the absence of evidence that the boat was ever used as a human dwelling. 149 Ind. Cas. 431=35 Cr. L. J. 949=38 C. W. N. 665=1934 Cr. C. 688=A. I. R. 1934 Cal. 480 ; see also A. I. R. 1934 Cal. 480=1935 Cr. C. 688=38 C. W. N. 665=A. L. R. 1934 Cal. 560=35 Cr. L. J. 949=149 Ind. Cas. 431.

Entry.—The mere putting of a hand into a hole in the wall without putting it through the hole is not entry into the house within the meaning of s. 442, I. P. Code. 4 Lah. 399=1923 Lah. 509.

Possession.—There cannot be any conviction under this section where the property is not in the possession of the complainant and where the accused had no intention of annoying him. 17 A. L. J. 334.

Custody of property.—5 N. W. P. 307.

Injury, annoyance, etc.—An accused who had no intention of causing annoyance to any one and took measure to avoid it cannot be convicted of an offence under this section even though a feeling of an annoyance be the inevitable consequence of being found out. 52 Ind. Cas. 274. In order to constitute an offence there must be an intention to intimidate, insult or annoy any person in possession. 81 Ind. Cas. 716 ; 2 Bur. L. J. 17 ; A.W.N. 1882, 224 ; 20 C. 65. Intention as to use of a particular structure depends upon particular facts. 1929 Sind. 17.

Bona-fide claim.—An entry into a house in assertion of a *bona-fide* claim of right cannot constitute criminal trespass which requires an intent to commit an offence or to intimidate, insult or annoy any person in possession. 1925 P. 167 ; see also 75 Ind. Cas. 353 (2) ; 15 A. L. J. 808 : 18 P. R. 1888 Cr. ; 16 C. W. N. 1007 ; Rat. Un. Cr. 390.

Lurking house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

Notes.—Vide 4 W. R. Cr. 19.

House-breaking.

445. A person is said to commit "house-breaking," who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described ; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

First.—If he enters or quits through a passage made by himself; or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence for human entrance ; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intendend by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house, or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house-door which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

Notes.—The offence of outraging a woman's modesty not being punishable with whipping, house-breaking in order to commit that offence cannot be punished. 23 A. L. J. 894=89 Ind. Cas. 146=26 Cr. L. J. 1282. House-breaking cannot be committed without entrance into the house. 106 Ind. Cas. 422 ; 23 Cr. L. J. 340=29 Cr. L. J. 4=29 P. L. R. 54. A door cannot be said to be fastened when its shutters were merely closed. 66 Ind. Cas. 422 ; 23 Cr. L. J. 728.

Illustrations (a).—Vide 4 Lah. 399.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

House-breaking by night.

Notes.—Effecting an entrance into a house at night by scaling a wall constitutes house-breaking by night. 2 W. R. Cr. 65. When the door of a house was found broken, an offence under this section was committed. 4 W. R. Cr. 19.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for criminal trespass.

Possession.—For a conviction under this section the finding on the point as to who was in possession of the land in dispute is necessary. 45 Ind. Cas. 677. Lessee of a District Board road for collection of tolls is not in possession of the road. 55 Ind. Cas. 721. Where possession is permissive at its inception subsequent refusal to move does not amount to criminal trespass. 26 P. L. R. 247.

Intention.—It is not necessary that intimidation, insult, or annoyance should be the primary intent with which the entry is made. It is sufficient if the intent to commit one or other is involved in the action. The presumption is against a person entering on property in possession of another without that other's consent except in strict accordance with law. U. B. R. (1892-1896) Vol. I, 264. There must be an express finding that the accused intended to cause annoyance for a conviction under section 448. 101 Ind. Cas. 457=28 Cr. L. J. 425=8 A. I. C. R. 50. Where a decree-holder tries to get possession of land by arbitrary means he commits

criminal trespass. A. I. R. 1928 Nag. 79. Intention must be proved before recording a conviction under this section. A. I. R 1928, All. 671 ; 10 Cr. L. J. 384 ; 2 A. 101 ; 1 Weir. 518 ; 128. P. L. R. 1905.

Cases.—The accused, who had mounted upon the roof of the complainant's house armed, with a stick and a *sandheva*, was convicted of an attempt at house-breaking by night under ss. 457 and 511 of the Penal Code. *Held* that he may not be guilty of the offence charged as the mere presence on the roof of the house could not be construed into an attempt to commit an offence under s. 511, but that he was guilty of criminal trespass punishable under s. 447 of the Penal Code. 15 P. R. 1907 Cr.=44 P. W. 1907 Cr.=6 Cr. L. J. 444=56 P. L. R. 1908 In criminal trespass, criminal force may be used as a matter of fact, but the use of criminal force is not an essential of the offence. 8 Ind. Cas. 219=11 Cr. L. J. 594. Entering into another's land is *bona fide* exercise of claim of right is not an offence. 5 S. L. R. 135=13 Ind. Cas. 219=13 Cr. L. J. 27 ; 15 Ind. Cas. 317=13 Cr. L. J. 477 ; 12 A. L. J. 790=25 Ind. Cas. 336=15 Cr. L. J. 584 ; 16 C. W. N. 1245=15 Cr. L. J 725 ; 11 C. W. N. 171 ; 7 C. L. J. 238 ; Rat. Un. Cr. C. 4 ; 1 Weir. 514 ; 1 Weir. 516 ; 1 Weir. 515 ; 1 Weir. 520 ; 2 N. W. P. 82 ; 1 Weir. 517. 19 Cr. L. J. 701 ; 47 M. L. J. 437. Where a man enters a forest and cuts down reserved trees, he cannot be convicted both under s. 32 of the Forest Act for cutting down reserved trees, and s. 447, Penal Code, for criminal trespass, the latter offence being included in the former. 11 A. L J. 340= 14 Cr. L. J. 424=20 Ind. Cas. 408. Where the servant of a landlord illegally takes possession of the tenant's land with the main object of illegally ejecting the tenant, an intention to annoy cannot be presumed, unless there are other circumstances from which such an inference can be drawn. 9 O. & A. L. R. 638. Where a tenant is holding over it is not open to the landlord to re-enter the land without determining the tenancy in accordance with law and if he does by force he will be guilty of an offence under s. 447 of the I. P. Code. 2 Bur. L. J. 37=1923 Rang. 245 ; 69 Ind. Cas. 379=23 Cr. L. J. 699. Possession given for a few minutes by the act of a Civil Court peon does not constitute possession contemplated by s. 447 I. P. Code. 28 N. L. R. 298. No offence is committed by landlord if he enters the land after abandonment of the holding by the tenant. A.I.R. 1933 Lah. 734=34 P.L.R. 953= 146 Ind. Cas. 559. But forcible entry during the temporary absence of the owner constitutes trespass. A. I. R. 1934 Oudh. 281=1934 Cr. C. 777=11 O. W. N. 733= 35 Cr. L. J. 964=149 Ind. Cas. 368.

To amount to an offence under section 447 I. P. Code the property trespassed upon must be proved to belong to the complainant and there must be intention to commit an offence or to intimidate, insult or annoy any person. 74 Ind. 534=24 Cr. L. J. 790 ; A. I. R. 1923 P. 56 ; 24 Ind. Cas. 856=24 Cr. L. J. 824 ; 75 Ind. Cas. 292=24 Cr. L. J. 916=124 Oudh. 297 ; A. I. R. 1925 Nag. 36. A conviction under this section cannot stand where the facts constituting the very foundation of the prosecution case has not been proved. 6 Pat. L. T. 786. Where Dakhalnama gives formal possession of a house to the complainant and no actual physical possession, any complaint by such a person is not maintainable. 88 Ind. Cas. 357=26 Cr. L. J. 1125=A. I. R. 1925 All. 592. A person trespassing upon a land under attachment under s. 146, Cr. Pro. Code is liable to be punished under s. 447, but not under s. 118. 8 M. L. J. 253=2 Weir. 112. The accused a *peadah*, acting solely in the interest of his master R, removed or damaged certain bamboos belonging to R, which were in the possession of the Court of Wards. He was convicted of criminal trespass and mischief. *Held* that the conviction of criminal trespass was wrong, as the accused entered upon properly in the possession of his master without intending to commit an offence or to intimidate, insult, or annoy the Court of Wards. 7 Ind. Cas. 812=15 C. W. N. 224=11 Cr. L. J. 532. In order to constitute the offence of criminal trespass, it must be proved that some criminal intent was present in the mind of the accused. and it does not follow that, because an act is unlawful and is one that the civil law will restrain, or for which it will compensate the injured party in damages it is necessarily criminal. 29 P. R. 1882 Cr. ; 1 P. R. 1882 Cr. Where the accused was on the complainant's premises with intent to peep into apartments occupied by the ladies of the household, *held* that the accused was not guilty of criminal trespass. 6 P. R. 1892 Cr. An entry upon the roof of a house may be criminal trespass, but cannot be the subject of a conviction for lurking house-trespass or house-breaking. 9 P. R. 1887 Cr. Where the complainant is given possession by a Civil Court, a forcible entry on such land by a sub-tenant claiming under a lease of an antecedent date from the judgment-debtor, constitutes criminal trespass. 1 C. L. J. 104. Infringement of

fishery right under this section constitutes an offence under this section. 2 C. 354. But where the fishery right does not belong to any body in particular no such offence is committed. 1 Weir. 519 ; 1 Weir 520. Encroachment of Government land or public way does not constitute an offence under this section. 1 Weir 521 ; 1 Weir 514 ; U. B. R. 1909, 2nd Qr., Penal Code 235=11 Cr. L. J. 57. Where possession is permissive at its inception subsequent refusals to move does not amount to criminal trespass. 26 P. L. R. 247. Possessor's possession is not necessary for annoyance being caused by the trespasser. A. I. R. 1931 M. 231. Where a person is occupying a land, being so permitted by the owner thereof, then the possession of the land lies with the owner, and servant of the owner does not commit the offence of criminal trespass by entry upon the land. 1 Weir. 521. Superior title in the accused would not by itself convert the complainant into a mere trespasser, so as to justify him in ejecting the complainant, if he was in possession otherwise than as a mere trespasser. 1 Weir. 522. A lawful entry but unlawful remaining constitutes an offence under this section. 1 Weir 528. The accused's entry into the complainant's house with the object of having illicit intercourse with the complainant's sister, amounts to criminal trespass, as the house was not the sister's but her brother's, and such intercourse was bound to cause great annoyance to the brother. 17 P. R. 1908 Cr.=32 P. W. R. 1908 Cr.=8 Cr. L. J. 488. A person who after having been ejected by due process of law from certain agricultural lands, wilfully persists in trespassing upon such lands is liable to be convicted under this section. A. W. N. 1902, 6. An ouster of a mortgagee in possession by a third person constitutes an offence under this section. A. W. N. 1902, 24. In trying offences under s. 447 I. P. Code, it is necessary that the Criminal Courts should do their duty in protecting against trespass, persons who are in peaceful possession of property, whether they be rightful owners or not. U. B. R. (1892—1896) Vol. I. 261 ; U. B. R. (1892—1896) Vol. I. 264. An accused who did not enter the complainant's house, but was found lurking under it for the purpose of stealing or committing some other offence, was held to have committed only ordinary trespass and nothing more. U. B. R (1892—1896) Vol. I. 272. The Amin executing a delivery warrant issued to him cannot be charged and convicted of criminal trespass, even though the delivery warrant was in excess of the decree in the suit and the Amin was shown the decree. 10 L. W. 12=51 Ind. Cas. 847=20 Cr. L. J. 559. The exposure of goods for sale on a public road belonging to a District Board, the collection of tolls leviable on which, is leased to another is not an offence under s. 447 I. P. Code. 55 Ind. Cas. 721=21 Cr. L. J. 353. For a conviction under this section the finding on the point as to who was in possession of the land in dispute is necessary. 45 Ind. Cas. 677=19 Cr. L. J. 629. Section 447 requires it to be affirmatively and positively proved that the complainant was in possession of the land in dispute with respect to which criminal trespass is said to have been committed. 3 Pat. L. T. 347=67 Ind. Cas. 618=23 Cr. L. J. 440. The main ingredients of s. 447 I. P. Code is that the trespass must be with the intention of annoying or insulting some one, or must be with the intention of committing an offence. Where there is nothing in the record to show any such intention the conviction of a crimminal trespass is impossible. 65 Ind. Cas. 446=3 Pat. L. T. 499=23 Cr. L. J. 95. Where a servant acting under the instruction of his master and in the course of his employment trespasses on the property of another this section does not apply. 1923 Rang. 135. Forcible removal of cattle from pound constitutes an offence under this section. 8 Lah. 831=103 Ind. Cas. 201=28 Cr. L. J. 665. Where a person who has unlawfully entered upon property continues to remain unlawfully upon the same by resisting the claim of the true owner to re-enter he commits a fresh offence and can be convicted even though he was convicted originally for the unlawful entry. 6 Pat. 794=106 Ind. Cas. 691=29 Cr. L. J. 99. The offence of criminal trespass can only be committed against a person who is in actual physical possession of the land in question. A person who is in joint possession, if he wishes to have actual possession has got his remedy by bringing a suit for actual partition, he cannot forcibly take possession alleging criminal trespass on the part of the person who is in possession by permission of one of the co-owners. 29 C. L. J. 745. There is no authority for the proposition that the mere absence of the accused at the time of giving possession affects the validity of such possession, nor of course does prior possession of the land by the accused and his predecessors in title matter. 30 Bom. L. R. 631=112 Ind. Cas. 97. Labourers sowing fields at instance of trespasses can not be convicted under s. 447 in absence of proof of their knowledge as to be actual state of facts and their conspiracy with trespasser. 1934 A. L. J. 1061

=1934 Cr. C. 1335=A.I. R. 1034 All. 1025. A complaint at the instance of a mortgagee in possession is maintainable when his tenants are ousted. A. I. R. 1934 All, 1025 =1934 Cr. C, 1335=1934 A. L. J. 1061.

Procedure.—Cognizable—Summons—Bailable—Compoundable—Triable by any Magistrate.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for house trespass.

House-trespass.—To constitute the offence of house-trespass it is necessary that an entry should have been effected into the house or building. Mounting the roof of a house with intent to enter the house is not house-trespass nor even an attempt to commit house-trespass but merely a preparation for the offence of house-trespass. 12 Bur. L. T. 222. Entry on a verandah does not amount to house-trespass. 26 Ind. Cas. 306; see also, 15 P. R. 1907 Cr.; see 1 Weir. 524: Rat. Un. Cr. C. 188. Entry into a verandah may not amount to house trespass, but such entry coupled with an attempt to push open the door does amount to an attempt to commit the offence. 16 Cr. L. J. 2=26 Ind. Cas. 306. Considering the mode of life among the common people of this country, it is straining the language of s. 441 to hold that a man entering the compound of an uninhabited house merely to commit nuisance, intends to annoy the owner and that he is guilty under s. 448 of the Penal Code. A. W. N. 1812, 324. A judgment creditor commits an offence under this section if he enters into other house than that mentioned in the warrant of attachment issued by a Civil Court. 2 O. C. 65. The accused caused the roof of his house belonging to him, which the complainant, occupied as his tenant, to be removed while the complainant's wife, a *pardanashin* woman was in it, and without giving any notice beforehand. The woman had to leave the house to be out of the way of the fragments of the roof falling upon her, and was thus exposed to public view. *Held*, that an offence under this section has been committed. U. B. R. (1897-1901) Vol. I. 350. Where in execution of a decree of Court, certain property was attached and taken out of the house in which it was, the decree holder would not be guilty of criminal trespass in doing the act. 15 A. L. J. 808.

A school was built by public subscription and put in charge of a teacher. He went away having locked the building. The accused who were some of the managers of the school took possession of the building and started certain classes in it. They were convicted of criminal trespass. *Held*, that this conviction was improper as the building was not in the possession of the complainant and the accused had no intention of annoying him. 17 A. L. J. 334=51 I. C. 350=20 Cr. L. J. 463; see also 52 Ind. Cas 274. During the temporary absence of the complainant, the accused who wanted to get possession of the house as mortgagee, put a lock on the house. *Held* that he was not guilty of criminal trespass and that the matter was one for the Civil Courts to deal with. 50 Ind. Cas. 834=20 Cr. L. J. 354.

Where the accused were proved to have gone to a house with Civil Court officers and entered the same in order to execute a Civil Court decree which they had obtained against one of the inmates of the house, *held* that they were not liable to be convicted for criminal trespass. 34 C. W. N. 583=127 Ind. Cas. 551=31 Cr. L. J. 1223=A. I. R. 1930 Cal. 720.

Where a person enters a house with intention of carrying out his amours with married woman, owner has right to arrest him or to pursue him for arrest and to use all means for effecting it. A. I. R. 1935 Pesh. 83.

For an offence under s. 448 intention is one of the most important ingredients and in order to determine the intent it is not necessary to consider the circumstances under which the act was done by the accused as also the *bona fide* nature or otherwise of the claim which the accused may have in respect of the property itself. A. I. R. 1928 Cal. 263.

An entry to a house in assertion of a *bona fide* claim of right cannot constitute criminal trespass, which requires an intent to commit an offence or to intimidiate, insult or annoy any person in possession. 1925 Pat. 167=81 Ind. Cas. 823=25 Cr. L. J. 1047; 88 Ind. Cas. 725=26 Cr. L. J. 1205=A. I. R. 1925 Oudh. 505.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with death.

Sections 449-460.—These sections deal with the offence of criminal trespass when it is aggravated by the end for which it is committed. Hence trespass may be committed for no other purpose than the purpose of playing some idle trick on the inmates of a dwelling, or it may be committed in order to the perpetration of murder or other atrocious crime. These sections regard the ulterior offence which the house-trespasser has in view and visit his crime with a proportionate punishment.—*Morgan and Macpherson*, 404.

In order to the committing.—The intention and design is the commission of an offence. To bring the offender within these severe penal provisions, it is not necessary that he should do any further act than the house-trespass towards the commission of the "offence punishable with death." But to justify a conviction there should be clear proof of the design to commit a murder or other like offences. In the absence of proof of some further act done, in addition to the criminal trespass, in the prosecution of the murderous intention it can rarely happen that the evidence will suffice for a conviction under this section.—*Morgan and Macpherson*. 405.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

450. Whoever commits house-trespass is order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with transportation for life.

Procedure.—Cognizable—Warrant—-Not-bailable—Not-compoundable—Triable by Court of Session.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass in order to commit offence punishable with imprisonment.

Scope.—If the entry in a house is made with the consent of the owner and possessor of the house, no offence under this section can be deemed to have been committed. 15 Cr. L. J. 351. Where the accused was found in the complainant's house at night, having gone there with the intention of visiting the complainant's daughter-in-law, a woman of loose character, and probably with her connivance, *held* that he was not guilty of an offence under s. 456. See also 19 A. 74; 20 Ind. Cas. 622; 1 Weir. 534. In order to constitute an offence under this section all the facts necessary to constitute the offence of simple house-trespass must first be established and it must be further shown that the house-trespass was committed for the purpose mentioned in this section. 41 A. 587; 1 Weir. 535; 1 Weir. 537; 1 Weir. 533; 10 Cr. L. J. 410. A conviction under this section is bad where the house-trespass for an offence was committed with the connivance of the owner. 1 Weir. 534; Colm. Dig. Cr. 58 of 1876. Where during the absence of the complainant the accused entered his house with his wife's consent in order to commit adultery with her. *Held*, that the accused was guilty of the offence under s. 451 I P. Code. 8 P. W. R. Cr. 1921=22 Cr. L. J. 118=59 Ind. Cas. 550; 22 Cr. L. J. 266=60 Ind. Cas. 666; 89 Ind. Cas. 319=26 Cr. L. J. 1343. 3 U. P. L. R. 18=60 Ind. Cas. 666=22 Cr. L. J. 226. To constitute an offence under s. 451 an offence under s. 448 must be proved first. The offence contemplated must be found. 20 Cr. L. J. 347=17 A. L. J. 800=50 Ind. Cas. 827. "Offence" means any offence punishable under the Indian Penal Code. A. I. R. 1931 Lah. 405=1931 Cr. C. 645=32 Cr. L. J. 732=131 Ind. Cas. 381. Where the accused was proved to have stepped into an open court-yard in front of a house and it appeared that some thorny bushes were placed round the court-yard more to indicate its extent rather

than to prevent entry. *Held* that the place was not a building, and that consequently a conviction under s. 452 I. P. Code was not sustainable. 26 A. L. J. 855=110 Ind. Cas. 798=29 Cr. L. J. 766. A man who enters the house of another at night with intent to commit adultery with his wife is guilty of an offence under s. 451, and if in such a case it is shown that the husband was at the time of the occurrence absent from the house in the legitimate pursuit of his occupation, it may safely be presumed that he neither consented to nor connived at any adultery or immorality on the part of his wife. 89 Ind. Cas. 319=26 Cr. L. J. 1343= A. I. R. 1925 Lah. 635.

Procedure.—Cognizable—Warrant—Bailable—Compoundable with Court's permission—Triable by any Magistrate, if the intended offence is theft—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the 1st or 2nd class.

House-trespass after preparation for hurt, assault or wrongful restraint.

452. Whoever commits house trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—Collection of lathies and brickbats on the property unlawfully entered is sufficient proof of threatening behaviour. 1928 Pat. 124. Where no further fact is proved than house-trespass a conviction under this section is bad. 38 C. L. J. 161=25 Cr. L. J. 168=76 Ind. Cas. 292. Criminal trespass were committed with object of interfering with religion is not to be lightly treated. A. I. R. 1935 All. 647.

Procedure.—Cognizable—Warrant—Not-bailable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Punishment for lurking house trespass or house-breaking.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Notes.—Cumulative sentence under ss. 453 and 379 is illegal. 6 W. R. Cr. 62. Mere trespass by night is not enough. But active step taken by the accused to conceal himself must be proved to sustain a conviction for lurking house trespass. 21 P. R. 1916 Cr.=44 P. W. R. 1916 Cr.=17 Cr. L. J. 304=123 P. L. R. 1916=35 Ind. Cas. 176.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

454. Whoever commits lurking, house-trespass or house breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Notes.—Any such trespass, in order to the committing of any offence punishable with death or with transportation for life is punishable by sections, 448, 459—*Morgan and Macpherson*; see also 8 M. H. C. R. App, 6; see for cases 100 Ind. Cas. 120=28 Cr. L. J. 248=1927 Mad. 343; 10 A. 146.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

455. Whoever commits lurking, house trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes.—The offence of house-breaking is complete when entry into the huose is effected. 28 Cr. L. J. 554=102 Ind. Cas. 490=1927 All. 536.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Punishment for lurking house-trespass or house-breaking by night.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Intention.—In a prosecution for lurking house-trespass by night under this section, the burden of proving what his intent was lies upon the accused. 29A. 49; 42 P. R. 1881. The presence of an accused in house at night shows his guilty intention and it is for him to rebut the presumption. 13 A. L. J. 625; 16 A. L. J. 153. See also, 14 P. R. 1883 Cr.; 2 M. 30; 50 P. L. R. 1919; 49 Ind. Cas. 103. To sustain a conviction under this section it is not necessary to specify the intention in the charge. 4 Mys. L. J. 190; 50 P. L. R. 1919. Where the accused was found in the complainant's house at night having gone there with the intention of visiting the complainant's daughter-in-law, a woman of loose character, and probably with her connivance, *held*, that he was not guilty of an offence under s. 456 I. P. Code. 12 P. R. 1898 Cr.; 14 A. L. J. 719=38 A. 517. A Magistrate should not convict under section 453 when an offence punishable under section 456 I. P. Code, is established. U. B. R. (1097—1901), Vol. I, 130. An accused, who having been convicted of an offence under s. 456 is again convicted of an offence under s. 457 of the Penal Code, is not liable to imprisonment and whipping. 14 C. P. L. R. 16. House-trespass or house-breaking is punishable with whipping, only when committed in order to commit an offence punishable with whipping. U. B. R. (1897—1901), Vol. I, 354. An accused person who was being tried on a charge under s. 457 for house-breaking with intent to commit theft, could not be convicted under s. 456 I. P Code, without the amendment of the original charge. 16 C. W. N. 696=13 Cr. L. J. 224=14 Ind. Cas. 320. Where an accused was charged and convicted under s. 457, the appellate Court cannot alter the conviction under s. 455. 1 Pat. L. T. 221=21 Cr. L. J. 493; 2 Pat. L. T. 140. The mere non-production of the owner or person in actual possession of house does not vitiate conviction under s. 456. A. I. R. 1924 All. 764=L. R. 5 A. 127 Cr. It is not an inflexible rule that a person charged under s. 457 can never be convicted under s. 456. 20 C. W. N. 1075=17 Cr. L. J. 424=44 C. 358=35 Ind. Cas. 984. To enter the house of a widow for the purpose of carrying on an intrigue with her is not an offence. 50 P. L. R. 1919; see also 38 A. 517=17 Cr. L. J. 419=14 A. L. J. 719=35 Ind. Cas. 979. Where one is found lurking at night inside anthor's house, a perfect stranger to him, without any apparent business, the Court can infer a guilty intention under section 441 I. P. Code. 19 Cr. L. J. 243=16 A. L. J. 157=44 Ind. Cas. 35.

The accused opened the door of a room and peeped in, his intention being to force an illicit intrigue on one of the women sleeping in the room. *Held*, he was guilty under s. 456 I. P. Code. 6. Pat. L. T. 588=26 Cr. L. J. 954=87 Ind. Cas. 106=A. I. R. 1925 Pat. 713.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

457. Whoever commits lurking house-trespass by night or house-breaking by night in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Adultery.—Where it was proved to the satisfaction of the court that the accused entered the complainant's house in order to have sexual intercourse with the complainant's wife, and it was further proved that he did so without the complainant's

consent, *held* that he was properly convicted under this section. 22 A. 82 see also 2 Weir. 235 ; U. B. R. (1897—1901) Vol. I, 335 ; Rat. Un. Cr. C. 689.

Scope.—To sustain a conviction under this section it is necessary that the court should be in a position to say which specific offence the accused intended to commit. 1 Weir 533. Where the accused broke open into a house during the owner's absence, assaulted his servants and took forcible possessions of it with the object of establishing their title to the house. *Held*, that the accused must be deemed to have intended that their act was likely to annoy the complainant and that they were rightly convicted under s. 457 Penal Code. 9 Ind. Cas. 152=21 M. L. J. 161= 9 M. L. T. 283=12 Cr. L. J. 30. Where soon after a house-breaking by night had been committed and property stolen from the house, the property was found in the possession of the accused and his explanation as to the same is found untrue, the presumption that section 114 of the Evidence Act raises therefrom is sufficient to warrant a conviction under of 457 of the Penal Code. A. W. N. 1882 224. Burglary is serious offence and deserves deterent punishment. 137 Ind. Cas. 716=33 Cr. L. J. 500=33 P. L. R. 215=1932 Cr. C. 323=A. I. R. 1932 Lah. 258 ; A. I. R. 1933 Oudh. 117=34 Cr. L. J. 649, 12 Mys. L. J. 286. Separate consecutive sentences under s. 457 and 380 cannot be passed. A. I. R. 1930 Pat. 385=31 Cr. L. J. 492=1930 Cr. C. 767=123 Ind. Cas. 393 ; see also A. I. R. 1926 Pat. 367=5 Pat. 464=27 Cr. L. J. 976=7 P. L. T. 794=96 Ind. Cas. 528 ; A. I. R. 1929 Mad. 846=57 M. L. J. 548= 1929 Cr. C. 614. Where the accused puts his hand at the top of the railing the offence of house trespass is complete. A. I. R. 1934 All. 833=1934 Cr. C. 1027. Where grievous hurt is inflicted by the accused at the court yard, an offence under this section is complete. A. I. R. 1934 Cal. 557=38 C. W. N. 446.=A. I. R. 1934 Cal. 193. Accused found in possession of stolen property soon after burglary is guilty under this section. A. I. R. 1933 Oudh. 117=34 Cr. L. J. 649=1933 Cr. C. 238=10 O. W. N. 47.

An offence under the latter part of the above section of the Penal Code is more serious and is punishable with very severe sentence especially when committed by an old offender. U. B. R. (1892-1896) Vol. I, 274. A conviction under this section on inconclusive evidence should be set aside. 79 P. L. 1915 ; 28. P. W. R. 1915 Cr. When a peron who has been previously convicted of an offence punishable under chapter XXII, Penal Code, is convicted subsequently under section 457 Penal Code the sentence, which can be passed by a Magistrate, should not exceed two years. 6 M. H. C. App. 2. Accused was charged with having committed lurking house trespass by night by entering into the cattle enclosure of the complainant with the intent to commit theft of his cattle and he was convicted for the same under s. 457 I. P. Code. 24 P. R. 1914 Cr. When the charge is that the accused committed an offence under s. 457 I. P. Code, with a view to commit an offence under s. 497 I. P. Code, it is only fair to him that the offence with which he is charged should be fairly stated, in order that he may meet it. 32 P. L. R. 1902=31 P. R. 1901 Cr. The accused was convicted of house-breaking by night and of house-trespass in respect of the same acts : *Held* that the second head of the charge was superfluous, in as much as it involved the same intention substantively as the first, which intention ought not to be applied to support two different charges. Rat. Un. Cr. 302=Cr. Rg. 50 of 1886. Burglars digging a hole in a wall but not digging it through owing to interruption by third parties, are guilty of an attempt to commit an offence under this section. 15 Bom. L. R. 554=14 Cr. L. J. 451=20 Ind. Cas. 611=37 B. 553. The word "house" or "building" used as "human dwelling" in this section do not include compounds. An entry into a compound with intent to commit theft is punishable only as trespass and attempt to commit house-breaking with the intent above-mentioned. Rat. Un. Cr. C. 484. An offence under this section is ordinarily more serious than one under s. 380 and it is expedient that a person who commits an offence under the former should be correctly convicted and adequately punished. U. B. R. (1892-1896) Vol. I. 273. Where a cattle shed that was used for the castody of agricultural implements was broken open, *held* that a conviction under s. 457 Penal Code, is not illegal. 18 Cr. L. J. 469=39 Ind. Cas. 309. Where a police man whose duty it was to protect the lives and property of the subjects of the crown was convicted of a serious offence of burglary, sentence of five years rigorous imprisonment was held not excessive. A. I. R. 1930 Lah. 667=1930 Cr. C. 811, Before convicting a person of an offence under s. 457 when the offence charged is house-trespass with intent to commit adultery, the Court has to be satisfied that there is no consent or connviance by the husband. 25 Cr. L. J. 1186=82 Ind. Cas. 50. Unless there is actual entry there cannot be house-breaking.

So if the accused was prevented from entering the house, he should be convicted under s 511 and 457 I. P. Code. 29 P. L. R. 54=106 Ind. Cas. 340. Going on roof of the house is not entering the building. 34 P. L. R. 906=146. As regards when evidence is not sufficient vide 16 N. L. J. 246; 143 Ind. Cas. 73=10 O. W. N. 107=1933 Cr. C. 318=34 Cr. L. J. 496=A. I. R. 1933 Oudh. 163. Release after admonition for offence of house-breaking is illegal. A. I. R. 1935 Mad. 157.

Consent or connivance by husband negatives offence of house-trespass for committing adultery. A. I. R. 1925 Cal. 160. Where the accused was a young man of 21 years of age and was subjected to severe beating by the complainant, the High Court reduced the sentence. 26 P. L. R. 777. Entering house by invitation or connivance of a woman living in the house with whom the accused was carrying on intrigue is no offence if he desired his presence not to be known to person in possession. A. I. R. 1925 Lah. 23. A conviction under s. 457 cannot be had when it is proved the accused had on his body valuable properties of his own, and the entrance of the house remained closed and unbroken, and he sets up a story that he went to house to negotiate marriage and the same is corroborated by an inmate of the house. 26 Cr. L. J. 716=86 Ind. Cas. 156=26 P. L. R. 31=A. I. R. 1925 Lah. 459. Where certain accused were convicted under s. 457 on the mere ground that certain articles not capable of indentification, were in their possession shortly after a burglary was committed. *Held*, the articles were beyond indentification, and unless it is established beyond doubt that the articles in possession of the accused were the same as the stolen ones the conviction should he quashed. 7 Lah. L. J. 277=26 P. L. R. 583=A. I. R. 1925 Lah. 495.

Procedure.—Cognizable—Warrant—Not-bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

458. Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Scope.—This section only applies to the house-breaker who actually has himself made preparation for causing hurt to any person or for assaulting any person or for wrongfully restraining any person and so on, and not to his companions as well who themselves have not made such preparation. 1923 Lah. 509.

Cases.—6 Lah. L. L. J. 622.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Grievous hurt caused whilst committing lurking house-tresspass or house-breaking.

459. Whoever, whilst committing lurking house-trespass or house-breaking causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Scope.—This section provides for a compound offence the governing incident of which is that either "lurking hous-trespass or "house-breaking" must have been completed, in order to make the person who commits that offence either by causing grievous hurt or attempt to cause death or grievous hurt, responsible under this section. In other words, the causing of the grievous hurt or the attempt to cause death or grievous hurt, must be done in the course of the commission of the offence of lurking house-trespass or house-breaking, and at the time when it is being committed. 8 A. 649. See also 13 C. P. L. R. 125. The offence of house-breaking is complete when entry into the house is effected and any grievous hurt subsequently caused by the persons breaking into a house cannot be said to be grievous hurt caused while they were committing the house-breaking. 25 A. L. J. 516=102 Ind. Cas. 490=28 Cr. L. J. 554=A. I. R. 1927 All. 536. This section applies in

case of actual use of lathies in trying to escape after burglary. 11 L. L. J. 230=30 P. L. R. 125=30 Cr. L. J. 838=117 Ind. Cas. 802.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundadle—Triable by Court of Session.

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—This section is intended to provide for the punishment of persons who were jointly concerned in the committing of the house-trespass or house-breaking altogether irrespective whether they were the persons who caused or attempted to cause grievous hurt. 8 A. L. J, 575. The expression "at the time of committing house-breaking by night" must be limited to the time during which the criminal trespass continues which forms an element in the house-trespass, which is itself essential to house-breaking and cannot be extended so as to include any prior or subsequent time. 2 P. R. 1862 Cr.; see also 38 Ind. Cas. 997. The section must be limited in its application to offences commited at the time during which the criminal trespass continues which forms an element in house-trespass which is itself essential to house-breaking and cannot be extended so as to include any prior or subsequent time. 2 Lah. 342=23 Cr. L. J. 164=65 Ind. Cas. 628. The provisions of the section must be construed strictly and it is not contemplated that where the principal action done by accused persons amounts to no more than a mhere attempt to commit the offences of lurking house-trespass or house breaking the section should be applicable. 8 A. 649=A. W. N. 1896, 253. See also A. I. R. 1924 All. 1032=1934 Cr. C. 1339=1934 A. L. J. 1160.

Procednre.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Dishonestly breaking open receptacle containing property.

461. Whoever dishonestly, or with intent to commit mischief breaks open or unfastens, any closed receptacle, which contains or which he believes to contain property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—This section and the next section, though ranged under the head of criminal trespass and perhaps within the scope of the definition of that offence, seem to punish a certain form of attempt to commit theft or mischief through criminial trespass on a closed receptacle. "Case, package, or receptacle," are mentioned in s. 480, relating to the offence of using a false trade-mark. The "receptacle" may include not only a room, a part of a room, or closet, etc., but a box or closed packing—*Morgan and Macpherson.* 408.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open to the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of-Session, Presidency Magistrate, or Magistrate of the 1st or 2nd class.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

463. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Forgery.

Forgery.—The offence of forgery is committed when, by a counterfeit, a document is falsely made to represent some other supposed genuine document for a purpose of deception. The relation which this offence bears to the general system of penal law may be thus stated. In most affairs of importance the intentions, assurances or directions of men are notified and authenticated by means of written instruments. Upon the authenticity of such instruments, the security of many civil rights, especially the right of property, frequently depends ; it is therefore of the highest importance to society to exclude the numerous frauds and injuries which may obviously be perpetrated by procuring a false and counterfeit written instrument to be taken and acted on as genuine. In reference to frauds of this description, it is by no means essential that punishment should be confined to cases of actually accomplished fraud. The very act of falsely making and constructing such an instrument with an intention to defraud or deceive is sufficient according to the acknowledged principles of criminal jurisprudence to constitute a crime. The false making is in itself part of the endeavour to defraud, and the existence of criminal intent is clearly manifested by an act done in furtherance and in part execution of that intention.

An instrument which is false or untrue only because the facts which it states are false and untrue, differs from a forged document. Where the instrument is forged, as when a certificate purporting to be signed by a public servant was not in truth signed by him, a person to whom it is shown is deceived, because he is induced to suppose that the fact certified is accredited by the public servant whose certificate it purports to be ; and he is deceived in that respect, whether the fact certified is true or false. If on the other hand, such a certificate is in truth signed by the public servant whose name it bears, the document is not forged, although the fact certified is falsely certified ; for here the person receiving the certificate is deceived, not by being falsely induced to believe that the public servant had accredited the document by his signature, but by the officer having falsely certified the fact. The document may threfore be forged, although the fact which it authenticates is true. And the document may be genuine, although the fact stated in it is false. Where money or other property is obtained dishonestly by a document of the latter description, that is, where it is false merely as containing a false statement, or representation, the offence of cheating, but not of forgery, is committed.

When a document, whether it is a forged document, or a genuine document, containing false statements, is fabricated in order that it may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant, and with the intention to mislead the Judge or public servant, the offence defined by section 192 of fabricating false evidence is committed.—*Morgan and Macpherson*, 410.

Making part of a document.—The "making of a part of a document" must be making part of a false document. Not only the intention but also the falsity of the document should be proved. A. I. R. 1929 All. 396=1929 A. L. J. 592=30 Cr. L. J. 408=115 Ind. Cas. 135.

What constitutes forgery.—To constitute a forgery, the false, document must be made "with intent to cause damage or injury to the public" or to any class of the public or to any community. Forgeries of public securities, of the records of courts of justice, of registers kept by public servants, of documents certifying that a person has the requisite medical skill and fitness to act as a master mariner, or has competent medical skill, etc., or of such documents as are mentioned in illustration (*j*) and (*k*) of the following section, seem to come within these words. A beat constable whose writes in his note book the signature of a headman, whose village he has not visited, does not commit thereby the offence of forgery. U. B. R. (1897—1901) Vol. I, 356. The term "forgery" is

used as a general term in s. 463, Indian Penal Code, and that section is referred to in a comprehensive sense in s. 195 of the Cr. P. Code. A. I. R. 1926 Oudh. 485=1 Luck. 523=3 O. W. N. 614=27 Cr. L. J. 969=96 Ind. Cas. 521 ; see also A. I. R. 1925 Lah. 266=5 Lah. 550=26 Cr. L. J. 537=85 Ind. Cas. 377.

"Or to any person".—Besides such documents as tend to a public damage or injury, every false document, by whatever name it is called, which is intended to cause damage or injury to an individual is included.

Intent to defraud.—The expression "intent to defraud" implies conduct coupled with intention to deceive and thereby to injure ; in other words "defraud" involves two conceptions, namely, deceit and injury to the person deceived that is infringement of some legal right possessed by him but not necessarily deprivation of property. 42 C. L. J. 215=90 Ind. Cas. 534=26 Cr. L. J. 1574. In order to constitute in point of law an intent to defraud, there must be a possibility of some person being defrauded by the forgery, or there must be a possibility of some person being not only deceived but injured by the forgery. A. I. R. 1930 Pat. 271=1930 Cr. C. 458. The term "fraud" as used in the Penal Code, is used in its ordinary and popular acceptation. Hence a man, who deliberately makes a false document with false signatures, in order to shield and conceal an already perpetrated fraud is himself acting with intent to commit fraud. 15 Bom. L. R. 708=14 Cr. L. J. 518=20 Ind. Cas. 998. Giving a false name and address in a certificate of the purchase at the time of purchasing firearms is an offence under this section. 20 C. W. N. 326=43 C. 421=32 Ind. Cas. 661=17 Cr. L. J. 69. In order to constitute forgery the document need not be intended to support a false claim or a false title. If, in order to support a true claim or a genuine title a false document is created, it is forgery. 96 Ind. Cas 850=27 Cr. L. J. 994=A. I. R. 1926 Mad. 1078. In forgery the intent to defraud is essential. A. I. R. 1926 Cal. 224. If a man intends to gain an unfair advantage by deceitful means and uses a false document, for that purpose his conduct is fraudulent. 27 Cr. L. J. 994. Mere antedating a document is not forgery unless there is dishonesty or fraud on the part of the alleged forgerer. 98 Ind. Cas. 111=27 Cr. L. J. 1263=8 Pat. L. T. 104. An intent to commit fraud involves an intent to cause injury. It involves something more than mere deceiving. Where process-server forged names on the notices with a view to save himself from the consequences of his neglect of duty or to save himself trouble : *Held* that it did not amount to intent to commit fraud. A. I. R. 1935 Rang. 203.

"Or to support any claim or title."—Even if a man has a legal claim or title to property, he will be guilty of forgery, if he counterfeits documents in order to support it. Any false document purporting to create, extend, transfer, or otherwise to support, a right or alleged right is included.

"Or to cause any person to part with property."—As orders or requests for the payment of money or delivery of goods, etc.

"Or to enter into any express or implied contract."—As when a man is induced to employ another in a certain capacity by forged documents respecting his qualifications.—*Morgan and Macpherson*, see also 21 A. 113.

Claim.—The term "claim" is not limited in its application to a claim to property only. A. I. R. 1929 Lah. 152=10 Lah. 545=30 Cr. L. J. 900=30 P. L. R. 724=118 Ind. Cas. 385.

Illustrative cases.—The mere fact that the person forged signature of another person, in a plaint, to enable him to file the plaint in time to save case being barred by limitation will not make the act of the person fraudulent. A. I. R. 1930 Pat. 271=1930 Cr. C. 358. An entry of excess payment in a muster roll would not make the muster roll a forged document. A false certificate of not very great importance is not a forgery as it is not made on affidavit. 27 A. L. J. 591=115 Ind. Cas. 135=30 Cr. L. J. 408. Creation of false document for supporting even a true or genuine title is forgery. 96 Ind. Cas. 850=27 Cr. L. J. 994. Using false document for giving unfair advantage is fraudulent within s. 25. 96 Ind. Cas. 850=27 Cr. L. J. 994=A. I. R. 1926. Mad. 1072. A false copy of a forged document by an authorised maker is a false document. But if he has no such authority then he does not commit the offence of making the false copy. 20 Cr. L. J. 142=4 Pat. L. J. 16=49 Ind. Cas. 174. Where a Sub-Inspector keeps persons under surveillance to extort confusion and alters diary to save himself from the consequence of his act offence does not amount to forgery. 34 Bom. L. R. 1090=A. I. R. 1932 Bar. 545. In the above case *Baker J.* said : "The alteration could not be held to have been

made either dishonestly or fraudulently. As dishonesty involves wrongful gain or wrongful loss, obviously it does not apply to the present case when no pecuniary question arises. The element of fraud is also absent. There is no question in the present case of any loss being caused to the Deputy Superintendent of Police who was inquiring into the case by the fact of this diary being altered and pages substituted for the original. It would be a straining of language to say that because he was thereby likely to be led to come to a wrong conclusion as to the guilt of the Sub-Inspector or that there was a probability that the proceedings against him might not result in his conviction, this would therefore render the alteration of the document fraudulent within the meaning, of the Penal Code." In the same case *Broom field J.* said : "The element of injury or risk of injury to an individual or to the public is an essential ingredient in the definition of forgery." Imitation closely copied from disputed writing cannot be proper standard of comparison. 144 Ind. Cas. 301=1933 Cr. C. 542=34 P. L. R. 694=34 Cr. L. J. 714=A. I. R. 1933 Lah. 608. Maker of even part of document can be guilty of forgery. 142 Ind Cas 74=26 S. L. R. 105=1933 Cr. C. 166=A. I. R. 1933 Sind. 37. Forgery is offence of too grave public importance to make it triable merely by subordinate Magistrates. 136 Ind. Cas. 780=35 M. L. W. 267=33 Cr. L. J. 362= A. I. R. 1932 Mad. 216. In forgery cases, circumstantial evidence of fraud must not fall short of proof. 144 Ind. Cas. 301=1933 Cr. C. 542= 34 P. L. R. 694=34 Cr. L. J. 714=A. I. R. 1933 Lah. 308. Comparison of handwriting is valuable aid. A. I. R. 1933 Pat. 481=34 C. L. J. 828=1933 Cr. C. 1010= 144 Ind. Cas. 872.

Essentials of the offence.—The definition of the offence of forgery declares the offence to be completed when a false document or false part of a document is made with specified intent. The questions are "(1) Is the document false ? (2) Was it made by the accused ? (3) Was it made with the intent to defraud ?" If all these questions are answered in the affirmative, the accused is guilty. 1 Weir. 548 ; 10 C. L. R. 181. The falsity as well as the fact that it was forged within one of the intents mentioned in s. 463 has to be proved. 19 Cr. L. J. 344=1918 Pat. 36.

Claim.—The word "claim" is not limited to a claim to property. A written certificate is "property" within the meaning of this section. 15 A. 210=A. W. N. 1893, 96 ; see also 25 C. 512 ; 30 Cr. L. J. 900.

Forgery committed for the purpose of defending one-self.—The fabrication of a false document, or the use of such document by an accused person for the sole purpose of defending himself, does not fall within the range of the sections dealing with forgery. 25 A. 31.

Making a false document.

464. A person is said to make a false document—

First.—Who dishonestly or fraudulently makes, signs, seals or executes a document, or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made signed, sealed or executed by, or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed : or

Secondly—Who, without lawful authority, dishonestly or fraudulently by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations.

(*a*) A has a letter of credit upon B. for Rs. 10,000 written by Z. A, in order to defraud B, adds a cipher to the 1,00,000 and makes the sum 10,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b*) A, without, Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d*) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorities B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e*) A draws a bill of exchange on himself in the same of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f*) Z's will contains these words ; "I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out name, intending that it may be believed that the whole was left to himself and C, A has committed forgery.

(*g*) A endorses a Government promissory note, and makes it payable to Z or his order, by writing on the bill the words. "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h*) A sells and conveys an estate to Z. A, afterwards in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k*) A without B's authority, writes a letter, and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b*) A writes the word "accepted" on a piece of paper, and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery ; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.

(*d*) A purchases an estate sold under execution of a decree against B. B, after seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e*) A, a trader in anticipation of insolvency, lodges effects with B. for A's benefit, and with intent to defraud his creditors, and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Fraudulently.—An intent to defraud implies some thing more than mere deceit. The advantage intended to be secured or the harm intended to be caused need not have relation to property or be such as is implied in the term "dishonestly" but it must be something to which the party perpetrating is not entitled either legally or equitably. There can be no intention to defraud where no wrongful result was intended or could have arisen from the act of the accused. 28 Ind. Cas. 102. To constitute a document a false document, it must be shown that it was made with such an intention as is implied in the term fraudulently or dishonestly. A mere intention to deceive is inot sufficient. 1 Weir 542. See also 22 B. 768 ; 28A. 358 ; 13 M. 27 ; 6 C. W. N. 382 ; 2 J. G. 11 ; L. B. R. (1894-1900), 437 ; 25 C. 512 ; 22 C. 313 ; 13 B. 515 N ; 9 W. R. Cr. 20 ; 6 P. R. 1895 Cr. Absence of intention to cause it to be believed that the document was signed by another person negatives offence. 52 C. 47=29 C. W. N. 447=26 Cr. L. J. 401. In case of forgery, false date of execution and fraudulent intent are necessary elements. A. I. R. Rang, 117.

Making a false document.—A person makes a false document who dishonestly or fraudulently signs document with the intention of causing it to be believed that the document was signed by a person by whom he knows it was not signed. 7 Ind. Cas. 176. The "making" of a document or part of a document, does not mean "writing" or "printing" it, but signing or otherwise executing it. The falsity (of a false document) consists in the document, or part of a document, being signed or sealed with the name or seal of a person, who did not in fact sign or seal it. 8 C. L. R. 572. Such a document must be dishonestly or fraudulently made, signed, sealed or executed by the person who is charged and it must be made with the intention of causing it to be believed that such document or part of a document was made, signed, sealed and executed by or by the authority of a person, by whom or by whose authority he knows that it was not made, signed sealed or executed. 17 C. W. N 354. Makes means "creates" or "brings into existence". A. I. R. 1928 Lah. 681. Where some only of intended executant signs a deed, yet the document is made ; 19 Cr. L. J. 177=41 M. 589=43 Ind. Cas. 593. The "making of a part of a document must be the making of a part of a false document and in the making of a part of a document not only the intention or purpose must be proved but the fact that the document was false must be proved. 27 A. L. J. 592=115 Ind. Cas. 135=30 Cr. L. J. 408. Where a Mahomedan executes a *Kabinama* in favour of his alleged wife with a view to claim her property, he is not guilty of making a false document. A. I. R. 1924 Cal. 336=23 Cr. L. J. 723=69 Ind. Cas. 451.

Document.—The word "document" has an extensive meaning assigned to it. The word seems to include everything done by the pen, by engraving, by printing otherwise, whereby it is made on paper, parchment, wood, other substance or representation of words of their equivalents addressed to the eye. Every writing used for the purpose of authentication, if falsely made, is a 'false document",—as in the case of a will by which a testator signifies his intentions as to the disposition of his property,—or of a certificate by which a public servant assures others of the truth of any fact,—or of a warrant by which a Magistrate signifies his authority to arrest an offender. And the words "false document" include not only writings, but also false seals, stamps, and all other visible marks of distinction by which

the truth of any fact is authenticated. But where the falsehood consists in a mark of distinction falsely testifying to the quality or genuineness or to the ownership of any article, it seems to be a false trade or property mark and to be properly dealt with under the penal provisions contained in the latter part of this chapter. The most obvious way of making a false document is to write or print, as the case may be, the whole in imitation of a real or imaginary original. But to write a signature is the same in law as to write the entire instrument. And the signature may be made by a mark as well as by writing the letters of a name. It can make no difference whether the whole document is false or whether it is merely false in the material part by which the fraud or deceit is to be effected. If the document is falsified for a dishonest or fraudulent purpose, it is a false document. *Morgan and Macpherson.* 412.

Or by the authority of a person, etc.—If a man writes another's name by his authority, it is not of course forgery. And if he has no authority in fact, but acting in good faith without fault or carelessness believes himself to be authorised, he does not commit the offence. But if he is authorized to do a certain thing, as to fill up with a certain sum a blank cheque signed by A [see illustration (*d*),] and he departs from his authority by dishonestly inserting a larger sum, he commits forgery—*Morgan and Macpherson.* 413. If A signs for B and B is present at the time A must be held to be authorized to do so. A. I. R. 1935 All. 410.

"Or at a time at which he knows that it was not made etc."—As when the document is made to bear a wrong date for some dishonest purpose. These words are to be read distributively and are not governed by the preceding, words "by or by the authority etc." Rat. Un. Cr. C. 772. Elements to be proved in a case of forgery are (i) that the document was not executed on the date on which it purports to have been and (ii) that the parties who executed it did so with fraudulent intent. A. I. R. 1928 Rang. 117=6 Rang. 49=29 Cr. L. J. 599=109 Ind. Cas. 679. No forgery is committed by mere ante-dating a document unless it acts or would act prejudicially to another. A. I. R. 1926 Pat. 535=5 Pat. 573=8 P. L. T. 133=27 Cr. L. J, 1308=98 Ind. Cas. 252. Charge of date in a document by accused prejudicial to his case, is not dishonest though improper. 20 Cr. L. J. 573=17 A. L. J. 872=52 Ind. Cas. 61.

Forged document.—Every forged or falsicated document is not a forged document. It must satisfy both ss. 464 and 463. An entry in the credit-side which does not impose any liability on the detor, and as such would not cause any damage is not forgery. A. I. R. 1923 Lah. 11=3 Lah. 373=25 Cr. L. J. 337=77 Ind. Cas. 225. Kabuliyat of a past period prepared subsequently by usufractuary mortgagee to defraud mortgagor as to the amount paid by mortgagors' tenant are forged documents. 26 Cr. L. J. 1115=88 Ind. Cas. 283. It is one thing to hold that because an account book does not appear to have been kept in the regular course of business and does not contain entries that it ought to have contained, therefore, it cannot be acted upon in order to convict a person whose name appears therein as having received money, and it is quite a different thing to hold as a positive fact that that account book is forged. In the absence of any other evidence, no prosecution should be allowed to be launched on the basis that it was forged. 98 Ind. Cas. 56=27 Cr. L. J. 1240=A. I. R. 1927 Pat. 47.

Clause (2). A document which has once existed as a genuine document, may become "false document" by reason of some addition, or omission, or by the obliteration of some material part. Vide illustrations (*a*), (*f*) and (*g*). But a complete cancellation or obliteration of a document, like the destruction of a document is an offence specially made punishable by a latter section (477), and which seems not to fall within this definition.—*Morgan and Macpherson,* 414.

Clause (3).—A document may be a false document, although it is signed or executed by the person by whom it purports to be signed or executed. This happens, where a person [as in the case given in the illustration (*i*)] is fraudulently induced to execute a will, or a material alteration is made in the writing without his knowledge ; for in such case, although the signature is genuine, the instrument is false because it does not truly indicate the testator's intention, and it is forgery of the person, who fraudulently caused such will to be signed, for he made it to be the false instrument which it really is—*Morgan and Macpherson,* 415.

Explanation (1).—It is a false document if the offender makes it falsely in the name of any other person, although that name happens also to be the offender's

own name. A man who makes a promissory note in his own name without any false description or addition and with an honest intention, if he afterwards uses or attempts to use the note pretending that it is signed by another person of the same name does not by this false representation make the promissory note a "false document." It was genuine document when he signed it and does not become false by his subsequent use of it for the purpose of cheating. In such cases as those mentioned in the illustrations (d) and (e) a man signs or executes a document in his own name which is false in a material part and is calculated to induce another to give credit to it as genuine and authentic where it is false and deceptive. A man who having conveyed land, afterwards for fraudulent purpose executes a document, purporting to be a prior conveyance of the same land intends by this false document to obtain credit by deception, the document purporting to have been made at a time earlier than the true time of execution—*Morgan and Macpherson*, 416.

Explanation (2)—If a man forges the name of another person, real or fictitious or the name of a deceased person, he makes a false document if the document is made for a fraudulent or dishonest purpose. It is none the less false, because the name used is a mere fiction—*Morgan an Macpherson*, 416.

Cases.—Entering previous payments on the back of a bill is not forgery. 8 C. W. N. 278. A charge of forgery cannot lie against a person who is not the writer of a document or who does not sign the forged name. 17 C. W. N. 354. The prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been paid to the prosecutor, which in fact, had not been repaid. *Held* that the prisoner was guilty of forgery. 1 Ind. Jur, N. 46. The alteration of a date in a bond is an alteration in a material part thereof, altough the alteration is not made for the purpose of saving limitation. 14 P. R. 1881 Cr ; see also 21 W. R. Cr. 41 ; 23 W. R. Cr. 49 ; 4 L. B. R. 46 ; L. B. R. (1893-1900), 266 ; 13 C. 349 ; 77 Ind. Cas. 423 ; (1918) Pat. 36 ; 41 M. 589 ; 43 Ind. Cas. 828 ; 3 Lah. 373.

False description.—It would be going too far to hold that, whenever the executant of a document attaches a false description to his name, he comes within the purview of this section. But a false description may make a document a forgery when it is found that the accused, by giving such a false descriptjon, intended to make out or wanted it to be believed that it was not he that was executing document but a fictitious person. 19 M. L. J. 78.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for forgery.

Intention.—This section cannot apply except where the dishonest or fraudulent intent embraced in the definition given in s. 464, is made out and such intention is not made out merely by establishing, however clearly that, under conceivable circumstances, a paricular error might be used to support some false claim. Rat. Un. Cr. C. 201. In cases under this section the immediate and more probable intention of an accused is that to which the Court must look and not some more remote and less probable intention. A. W. N. 1892, 243 ; see also 16 Cr. L. J. 76. Clear proof is required in a case of forgery. It should be clearly shown upon whom the fraud was committed. U. B. R. (1892-1896) Vol. I, 279. A document false in fact which B concocted to commit fraud completes the offence. 28 M. 90 F. B.

Evidence.—The facts which show that the document is a false document within section 464 must be proved also that the accused made the false document ; and lastly, the guilty intention of the accused to cause damage or injury, or to support a claim, etc. It is not a necessary part of this offence that any damage or injury should be actually suffered or that any fraud should be perpetrated. Nor is a using or uttering the forged document a part of this offence. From the intention that the false document should deceive others into a belief rhat it is genuine it may generally be inferred that there an intention to damage or injure. It will not avail the offender to show that he meant to pay the promissory note or other forged document when it became due, or even that he actually paid it and it so prevented damage or injury.—*Morgan and Macpherson.*

Cases.—Where a charge is laid against an accused under s. 465 read with s. 471, Penal Code he cannot be convicted and sentenced under s. 466 read with

s. 471. 13 Cr. L. J. 449=15 Ind. Cas. 81=17 C. W N. 94. An accused person canoot be convicted of forgery on the mere similarity of hand-writing of the forged document with the hand-writing of the accused. 51 Ind. Cas. 774=20 Cr. L. J. 534. 18 A. L. J. 1137. Criminal intention to cause wrongful gain to one or wrongful loss to another is sufficient for forgery. A. I. R. 1931 A. 258; see also A. I. R. 1932 Sind. 53=1932 Cr. C. 194=25 S. L. R. 471=138, 766. Fraudulent execution of document on a date other than that on which it was actually executed constitutes an offence under this section. 109 Ind. Cas. 679=29 Cr. L. J, 599=A. I. R. 1928 Rang. 117. Where the evidence is insufficient to prove that accused actually committed forgery, he may be convicted under s. 471 and not under s. 465. 130 Ind. Cas. 492=1930 A L. J. 1451=32 Cr. L. J. 559=A. I. R. 1931 All. 258. Fabrication of electoral roll is an offence punishable under this section. A. I. R. 1934 Cal. 838=1934 Cr. C. 1359. Where an accused person manipulates entries in certain registers with the main object of screening himself from punishment for a past offence, he will yet be liable if he stands to gain by his act as for example, if as a result of such entries he will be continued in service while as fact he is not fit to be continued. 18 S. L. R. 199=A I. R. 1925 Sind. 233. Producing before the Official Receiver a forged receipt showing payment of a debt with a view to obtain a certificate of solvency from him amounts to offences under ss. 465 and and 471, as the intention of the person was to obtain a wrongful gain though the creditor had written off the debt as barred. 18 A. L. J. 1137=22 Cr. L. J. 56=43 A.=225=59 Ind. Cas. 200. False statement in an application for a post and a forged certificate amount to offence under s. 465 A. I. R. 1925 Rang. 9=25 Cr. L. J. 129=76 Ind. Cas. 225. Mere antedating a will does not amount to forgery in the absence of other circumstances. 17 Cr. L. J. 540=3 O. L. J. 477=36 Ind. Cas. 588. Accused an European entitled to possess arms signed certificate of purchase of arms in the name of another with an address not his own. It is forgery as the act is done fraudulently if not dishonestly. 43 C. 421=17 Cr L. J. 69=20 C. W. N. 326=32 Ind. Cas. 661. Where accused was asked to produce documents in support of his complaint of trespass and he knowingly produced forged documents, he is guilty. 1925 Lah. 33=6 Lah. 50=26 Cr. L. J. 1171=26 P. L. R. 156=88 Ind. Cas. 595. Offence of false preparation of signature sheet in an election is specially provided for under s. 171 (f) and as such it is not open to Court to treat it as an offence under. s. 465. A. I. R. 1925 All. 230=22 A. L. J. 1106=26 Cr. L. J. 362=47 A. 268=84 Ind. Cas. 714. Conviction for forgery cannot be based on mere similarity of hand-writing without other evidence of complicity. 20 Cr. L. J. 534 (Pat.)=51 Ind. Cas. 774; see also A. I. R. 1922 Pat. 619=65 Ind. Cas. 882. Conviction for forgery cannot be based on non-resemblance of hand-writing. A. I. R. 1924 Cal. 960=28 C. W. N. 947=40 C. L. J. 135=25 Cr. L. J. 1217=82 Ind. Cas. 145. Where the charge is under s. 465, conviction under s. 468, is illegal. A. I. R. 1921 L. B. 36=11 L. B. R. 45=69 Ind. Cas. 628. The offences under ss. 196 and 464 are indeed serious and difficult to detect and consequently called for deterent punishment. A. I. R. 1926 Bom. 555=50 Bom. 783=28 Bom. L. R. 1051=27 Cr. L. J. 1173=97 Ind. Cas. 805.

Procedure.—Non-cognizable—Warrant—Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Forgery of record of Court or of public register, &c.

466. Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Elements of fraud or dishonesty.—The elements of fraud or dishonesty, as explained in the Penal Code, must be present in the mind of the accused to bring his case under this section. 28 C. 434. Alteration of name and age in an education certificate and using it as genuine with a view to obtain the official appointment consitute, in the absence of a satisfactory explanation, offences under ss. 466 and 471. 2 L. B. R. 216. This section is not intended to apply to cases of persons, whose duty it is to make entries in a public book, and who knowingly make a false entry,

but to cases where a certificate or other document is forged by some unauthorised person with a view to make it appear that it was duly issued by a public officer. 7 C. L. R. 356.

Cases.—Where the accused, a public servant who had committed criminal breach of trust made false entry in an account book and was convicted of the offence under ss. 409 and 466 of the Indian Penal Code, and it appeared that the entry was not made with intent to defraud—*held* that the conviction under s. 466 of the Indian Penal Code must be set aside. 8 P. L. R. 1904=1 Cr. L. J. 41. A rough sketch to serve as practice for a finished forgery but which has not been used and which could not be used in its then form, would not, apparently, come under the provisions of a 466 or s. 467. 16 B. 165. The real and substantial test by which to determine whether several offences are so connected as to form the same transaction depends on whether they are so related to one another in point of purpose, or as to cause and effect or as principal and subsidiary acts as to constitute one continuous action, irrespective of the persons by whom the same may have been committed. 17 O. C. 275= 15 Cr. L. J. 643=25 Ind. Cas. 843. There is nothing illegal in a person being convicted for forgery and also for using a forged instrument as genuine one. The offences are separate and if both are committed, separate convictions are legal. 1925 Nag. 162=77 Ind. Cas. 825=25 Cr. L. J. 473. Where a person was convicted under s. 466, I. P. Code for having committed forgery and made fraudulent use of a forged document altering the dates on the copying sheet of an appeal application the lower Courts sentenced him to 7 year's imprisonment on each count. *Held* on a ppeal that separate sentences against the accused under ss. 466 and 401, I. P. Code, read with s 466, I. P. Code, are illegal and the sentence under the latter section was set aside. 3 Mys L. J. 38 ; see also 86 Ind. Cas. 993=26 Cr. L. J. 929. A man who signs a document makes himself responsible for it as if he was the original drafter of it. It is no defence that some body else wrote it out and he only signed it. If a legal practitioner signs a document he will be deemed to have read it and would be responsible for its contents. He would be responsible for any dishonest or untruthful statement in it and it is no answer to say that it was done in the interests of the client, or that he did not read it before signing it. A. I. R. 1927 All. 45=48 A. 542=27Cr. L. J. 1373= 98 Ind. Cas. 493.

Procedure.—Non-Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Forgery of valuable security, will &c.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable preperty or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—This section punishes the forgery of such documents as are valuable securities (see section 30) and of the other documents here mentioned. Forgery of a hundi is an offence under this section. 31 P. R. 1910 ; see also 149 Ind. Cas. 936= 34 Cr L. J. 892=14 P. L. T. 580=A. I. R. 1933 Pat. 488=1933 Cr. C. 1030. To convict a person under ss. 467/109 it must be established that the act was done dishonestly or fraudulently as required by s. 464. 10 L. L. J. 369=29 Cr. L. J. 1031=112 Ind. Cas. 359 ; see also 32 Ind. Cas. 665. A person who has been convicted under s. 467 and 109 I. P. Code cannot subsequently be convicted of an offence under s. 471 read with section 467 i. e. using the document as genuine. 26 Cr. L. J. 1387. It is not safe to order a prosecution for forgery based on the sole evidence of an expert witness. 86 Ind. Cas. 428=26 Cr. L. J. 796. A *Kabuliyat* is a valuable security for the purposes of this section, and remains such, even if the period for which it is granted has expired. 26 Cr. L. J. 1115=88 Ind. Cas. 283. The writer of a forged receipt is not guilty under this section where there is no evidence that he was present at the execution of the receipt or that he helped any one to make use of it. A. I. R. 1925 Cal.

192. The essence of an offence under this section is deceit and where no body has been deceived or injured by the action, of the accused no offence under this section is made out. 1932 M. Cr. C. 41=1932 M. W. N. 117. The offence of abetment of forgery is plainly quite different from the offence of using as genuine a forged document. There is nothing either in law or in fact to prevent a man being innocent of the first offence and guilty of the second. 55 C. L J. 336=140 Ind. Cas. 544=A. I. R. 1932 Cal. 545. The mere antedating a document is not forgery, but if it is shown that the antedating had or could have had any operation to the prejudice of any one it will be forgery. 5 Pat. 573=98 Ind. Cas. 252. The forgerer using the forged document can be punished only under s. 467 and not under ss. 467 and 471. A. I. R. 1925 Nag. 440=26 Cr. L. J. 1275=88 Ind. Cas. 1051.

Cases.—Where a person sells a note purporting by an endorsement on it to have been sold to his firm, and it is proved that it was not sold to his firm by the persons named in the endorsement, it must be held that the person sells the note knowing or having reason to believe it to be forged, and is liable to be punished under ss. 467 and 471 of the Penal Code. 15 C. 269. There must be a separate Court for every alleged item of perjury and forgery or, in other words, there must be independent evidence of user in the case of each document. 14 C. L. J. 652=13 Cr. L. J. 62=13 Ind. Cas. 398. In order to proceed under this section on the basis of a document which has been found forged by a civil court previous sanction of the civil court is necessary. 16 Cr. L. J. 617=30 Ind. Cas. 441. To base a conviction simply upon the opinion of an expert, is, as a general rule, very unsafe 18 P. W. R. 1912 Cr.=14 P. L. R. 1912=15 Ind. Cas. 979=13 Cr. L. J. 563. A conviction for the offence of forging a document and also for using it as genuine is not illegal in the course of the same trial. 17 Cr. L. J. 73=32 Ind. Cas. 665. A conviction for forgery should not safely be based entirely upon a comparison of the handwriting. But the Court is competent to see for itself whether certain handwritings placed before it are similar or not. 65 Ind. Cas. 426=23 Cr. L. J. 74 ; see also 144 Ind. Cas. 872=34 Cr. L. J. 828=1933 Cr. C. 1010=A I. R. 1933 Pat. 481. Where the accused forges the money order acknowledgement he commits an offence under this section. 24 Bom. L. R 99=66 Ind. Cas. 328=23 Cr. L. J. 264. Where accused withdrew money on two different dates by forged withdrawal cheque, two charges are necessary. 144 Ind. Cas. 936=1933 Cr. C. 1030=14 P. L. T. 580=34 Cr. L. J. 892=A. I. R. 1933 Pat. 488. In a criminal trial the burden of proof is on prosecution to make out its case. Where in a prosecution for offences under ss. 467 and 471. I. P. Code, the accused was alleged to have filed a forged receipt in a suit on a promissory note in which he was the dependent and the accused pleaded that the recepit filed by the pleader was not the same as that given by him to the pleader. *Held* that there was a fair presumption that the document given to the pleader was the document filed and the accused should offer some rebutter. 1930 M. W. N. 76=31 L. W. 384=A. I. R. 1930 Mad. 192. Where a person did not make, sign or execute a false document dishonestly or fraudulently but was merely instrumental in getting it made, he is not guilty of forgery under s. 476 of the I. P. Code but only guilty of abetment of forgery under s. 467 read with s. 109. 113 Ind. Cas. 68=30 Cr. L. J. 52=A. I. R. 1929 Lah. 210. If a person falsely puts his name down as an attesting witness to the signature of some body who he knows has never signed at all, he is guilty of forgery just as well as the scribe. The persons attesting like the above must be put on their trial on a charge under s. 467 read with s. 120 B. A. I. R. 1929 Cal. 539=1929 Cr. C. 194. Where it appeared that certain procedure was not followed but there nothing to show that the act of taking thumb impression contrary to rules was actuated by fraud or dishonesty. *Held*, that under this circumstances a conviction under ss. 467 and 109 I. P. Code could be sustained. 10 Lah. L. J. 369=102 Ind. Cas. 359. Conviction for forgery should not be based entirely upon a comparision of handwriting. But the court can see for itself, whether certain handwritings placed before it are similar. 65 Ind. Cas. 426=23 Cr. L. J. 74. Document held to be valuable security under s. 30 falls also under s. 467. 8 P. W. R. 1916 Cr.=17 Cr. L. J. 205=34 Ind. Cas. 317. To constitute offence under s. 467—471 nature of user is immaterial. 138 Ind. Cas. 705=59 C. 1233=33 Cr. L. J. 685=55 C. L. J. 349=36 C. W. N. 349=A. I. R. 1932 Cal. 390. Where in offences under ss. 467 and 471 sanction is necessary under section 196A. previous section must be obtained. A. I. R. 1933 Pat. 273=34 Cr. L. J. 938=12 Pat. 353=14 P. L. T. 281=145 Ind. Cas. 368. Conviction can not be sustained merely on the evidence of the handwriting expert. A. I. R. 1932 Lah 490=33 P. L. R. 697=33 Cr. L. J. 593=138 Ind. Cas. 368.

S. 195 (1) of the Criminal Procedure Code refers to an offence described in s. 463 I. P. Code and the latter is used there in a comprehensive sense so as to embrace all species of forgery and includes a case falling under s. 467 I. P. Code. 5 Lah. 550. An applicant for an appointment appended to his application a forged certificate. *Held*, his object was to obtain wrongful gain and he was guilty of offences under ss. 467 and 471, I. P. Code. 1925 Rang. 9=76 Ind. Cas. 225=25 Cr. L. I. 126. It is an offence under s. 467 to forge a document, even though there is no intention to use the same. 25 Cr. L. J. 1162=81 Ind. Cas. 986. A person who wrote a forged receipt cannot be convicted under s. 467 I. P. Code, in the absence that he was present at its execution or that he helped any person to use it. 82 Ind. Cas. 261=25 Cr. L. J. 1253. Where the bench clerk of a sub-divisional Magistrate's Court received a sum of money, being the amount of fine levied on the payer, and misappropriated it and with a view to screen the mis-appropriation made a false report he is guilty of offence under ss. 467 and 471 I. P. Code. 25 Cr. L. J. 1378=83 Ind. Cas. 338=3 Bur. L. J. 113. The offence of forging a document and using it as genuine under ss. 467 and 471 I. P. Code, includes the offence of a public servant framing an incorrect document with intent to cause injury under s. 467 I. P. Code, and on a conviction both under ss. 467, 471 and under s. 167 is not maintainable. A. I. R. 1926 Oudh. 615. The bare fact that the stamp on which the document was executed are not supposed to have been issued on the date of the execution of the ducument is not sufficient for convicting a person under this section. It must be proved that the said stamp paper could not have been issued to the public at that date. 35 P. L. R. 599.

Procedure.—Non-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session,—When valuable security is a promissory note—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Forgery for the purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cheating. Where the offence is committed after the offence of cheating is completed, the accused cannot be convicted under this section. 15 P. R. 1876 Cr. The offence under s. 468 is complete as soon as there is a forgery with the particular intent. When the intent is accomplished another distinct offence is committed. A. I. R. 1924 Nag. 120=25 Cr. L. J. 475=77 Ind. Cas. 827. Process-server filing a forged *attakshi* to explain delay in returning the process is guilty under ss. 468 and 471. 42 M. 558=36 M. L. J. 201=20 Cr. L. J. 287=25 M. L. T. 345=(1919) M. W. N. 433=50 Ind. Cas. 175. Where offence has been committed by a party in civil proceedings and document was given no evidence in suit, complaint of civil court is necessary. 143 Ind. Cas. 15=34 Cr. L. J. 526= A. I. R. 1933 Cal. 481. A partner commits forgery if he forges a document in the name of the firm. 6 Bom. L. R. 533. Conviction under this section is bad when the use of the forged document by the accused is not proved. 89 Ind. Cas. 398=26 Cr. L. J. 1358. J who was on friendly terms with S one day called on W, a Railway Superintendent, and asked for a vendor's contract and in support of his request handed to him a closed envelope containing a letter alleged to be written by the Governor of the Punjab. It was proved that as a matter of fact the letter was forged by S at the instigation of J. *Held* on those facts, that it may be presumed that S wrote the document knowing it will be used to defraud W and on that the Magistrate rightly convicted S of the offence under s. 468 I. P. Code and J of the offences under s. 468 read with s. 109 and ss. 471 and 511 I. P. Code, namely of the offences of abetment of forgery and attempt to cheat. 9 Lah. L. J. 103=101 Ind. Cas. 493=28 Cr. L. J. 461. Where Court-fees stamp was purchased for client but was not used, client's name was altered and stamp was used, offence under s. 468 held not committed. A. I. R. 1931 Lah. 337. Forgery though a substantive offence, partakes the nature of an attempt. It is usually an act done in furtherance of some criminal design. If it can be proved that the purpose of the offender in committing the forgery is to obtain property dishonestly, or if his guilty purpose comes within the definition of cheating (section 136) he is punishable under the present section. The intention of the forger may be fairly inferred in most cases from the contents of the forged document.—*Morgan and Macpherson.*

Procedure.—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Forgery for the purpose of harming reputation.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Scope.—A, with the intention of harming B's reputation or knowing that what he does is likely to have this effect writes a letter in imitation of B's handwriting purporting to be addressed to confederate in some disgraceful and dishonest transaction and shows this letter to other persons. He has committed this offence. As to what written statements may be said to harm a person's reputation the chapter (XXI) of defamation should be consulted.—*Morgan and Macpherson.* For a case under this section. Vide, 10 W. R. Cr. 61 ; 2 B. L. R. A. Cr. 12.

Procedure.—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

"A forged document."

470. A false document made wholly or in part by forgery is designated "a forged document."

Using as genuine a forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

Scope.—The use of forged documents contemplated by this section is such use as causes wrongful gain or wrongful loss. That is to say, the section applies to the case of a person, who appears before some other person, or before a Court, with a document, and endeavours to induce that person or Court to do some act which he or it would not do, if the document was known to be a forgery. 11 C. W. N 838=5 C. L. J. 454 ; 1 Weir 550. Deprivation of property, actual or intended, is not a necessary ingredient of the pretext to defraud in this section. 5 C. W. N. 897. A copy of a document alleged to be false does not come within the definition of a "false document" and a conviction under section 471, upon such copy, cannot stand. 20 M. L. J. 534 ; but see A. I. R. 1932 Sind. 90=1932 Cr. C. 530=33 Cr. L. J. 452. Where it has been held that production of certified copy of forged document with necessary knowledge and intention is offence under s. 471. The production by a party of a document which he is bound by law to produce can not by itself constitute a user of document by him. 22 M. L. J. 181. The filing of a forged document in a Court with the intention of relying on it at the trial of a case, amounts to an attempt to use such document, though the document itself was not actually used, and the person filing it may be prosecuted for offences under ss. 511 and 471. 13 Ind. Cas. 99. Where a person gave his pleader a copy of a false document for the purpose of using it in the trial of his suit, *held*, that he was guilty of an offence under this section and not merely an attempt to commit that offence. 26 Cr. 863. See also 19 C. W. N. 125 ; 5 C. L. J. 233 ; 5 C. 717. "There must be a using of the document by a person who knows or has reason to believe that it is forged, and such using must be with the intention to defraud or to cause wrongful gain or wrongful loss. In deciding whether there has been a "using as genuine" of the document. the Courts will advert to the nature of the document. Some document, such as receipts are intended to remain in the holders' possesson, other documents such as cheques or promissory notes must be tendered to the persons who are to pay them. Whatever the document, the dealing with it by the accused person, must be such as to satisfy the Court that he intended to defraud, but it is not necessary that wrongful gain or wrongful loss should actually be caused by the use."—*Morgan and Macpherson.*

The fact that the primary object of the appellant in using the forged receipt was to get out of the difficulty in which he was put by the criminal case and that he did not support the document by production of perjured evidence may be taken into account in mitigation of punishment. 16 C. W. N. 633.

Cases.—The fact that a person charged with an offence under s. 471, Penal Code is himself, the forger of the document, is no reason why he should not be charged under s. 471, Penal Code, especially when he cannot be charged under s. 467. 13

Cr. L. J. 862=17 Ind. Cas. 798. In order to sustain a conviction under this section for using a forged document as genuine, it is not sufficient to prove that the accused was responsible for its use and should have been aware of its contents. It should also be proved that the accused himself used the document, that is, put in the document. 1 Weir 550 ; A W. N. 1887, 195 ; 25 P. R. 1913 Cr.=14 Cr. L. J. 667. It is extremely doubtful whether the mere filing of a copy of which the original is alleged to be forgery, is user of forged document. 20 C. W. N. 262=43 C. 783=17 Cr. L. J. 130.

A *hundi* purporting to have been drawn by a firm which never had any existence is a forgery. 30 P. W. R. 1916=17 Cr. L. J. 574=36 Ind. Cas. 154. The production of a document which was a title deed in answer to a citation in which no particular deed was specified is a voluntary production and amounts to user within the meaning of s. 471. 18 Cr. L. J. 839=41 Ind. Cas. 663. Using false *attkshi* with forged signature to defraud Court is an offence under this section. 42 M. 558. An accused cannot be convicted under this section, for making change in a document so that it may be taken in evidence, where the change is not material to facts. 17 A. L. J. 872=52 Ind. Cas. 61=20 Cr. L. J. 575. Where pending a police investigation a person tenders a forged document to the investigating officer and thereby causes that officer to do something which he would otherwise not have done, he is guilty of having used a document within s. 471 I. P. Code. 60 Ind. Cas. 674=22 Cr. L. J. 274. Accused obtained a prescription from a medical man for one tube of *morphia* and altering the words "one tube" to "four tubes" presented the precription to a chemist and obtained four tubes of morphia from him. *Held* that the accused was guilty of an offence under s. 471 I. P. Code. 63 Ind. Cas. 617=22 Cr. L. J. 681. Where evidence is insufficient to prove that accused actually committed forgery, he may be convicted under s. 471 and not under Penal Code s. 465. A. I. R. 1931 All. 258. Section 471 of the Penal Code is no bar to the imposition of separate sentences on an accused person who is convicted at the same trial of both the offences of forgery and using the forged document as genuine. Section 35 of the Criminal Procedure Code authorises the imposition of such separate sentences. 52 M. 532=29 L. W. 559=119 Ind. Cas. 63=30 Cr. L. J. 983=A. I. R. 1929 Mad. 450=56 M. L. J. 554. In order to qualify for appearance at a certain competitive examination C attached a copy of a certificate certified as a true copy of original along with his application. On being asked to produce the original C produced it. The date of birth in the original certificate was changed from 5th January 1901 to 15th January 1904, so as not to debar him from appearing in the above competitive examination. *Held*, that the original document was a forged one inasmuch as the original date in it was altered and that C knew that it was a false document ; that it was made with intent to cause damage and injury to other candidates for the examination and to support C's claim to appear. 10 Lah. 545=30 P. L. R. 724=118 Ind. Cas. 385=30 Cr. L. J. 900. An offence under s. 471 of the Penal Code, has no relation to the Registration Act and is governed entirely by different principles. Where therefore a prosecution was ordered both under s. 82 of the Registration Act under s. 471 I. P. Code, and the proceedings under the Registration Act are found to be illegal, such illegality in no way affects the validity of the prosecution under the Penal. Code. 10 Pat. L. T. 889=119 Ind. Cas. 888=30 Cr. L. J. 1101=A. I. R. 1929 Pat. 500. S was convicted under s. 471 for having used a forged document and P for having abetted the same ; S was sentenced to 4 year's and P to 2½ year's rigorous imprisonment. *Held*, that the sentence was not severe. 49 C. L. J. 193=116 Ind. Cas. 632=30 Cr. L. J. 656=A. I. R. 1929 Cal. 203. Party setting up two titles and supporting one by false document is guilty. 2 A. I. R. C. R. 58. If a forged document is presented for registration, that amounts to user for purposes of s. 471 I. P. Code. 89 Ind. Cas. 1050=29 Cr. L. J. 1482.

Where the accused, who was a witness in the suit from some interest in, or desire to assist, the defence, filed certain document for the purposes of the suit in advance of a trial. *Held* that he used the document within the meaning of s. 471. 49 C. L. J. 193=116 Ind. Cas. 632=30 Cr. L. J. 656=A. I. R. 1929 Cal. 203. If a person puts forward a document as supporting his claim in any matter whether that document is acted upon by the Court or used in evidence is immaterial for the purpose of constituting use of the document by the party within the meaning of s. 471=111 Ind. Cas. 433=29 Cr. L. J. 849.

The user of a forged document for the purpose of securing an acquittal is dishonest and the same can form the basis of a conviction under s. 471 I. P. Code. 9 Pat. L. T. 800. Where the accused dishonestly used as genuine a forged document in a

suit against an illiterate man. *Held* that he could be punished under s. 471 with the punishment provided by s 467 I. P. Code. 109 Ind. Cas. 903=29 Cr. L. J. 631= A. I. R. 1927 Oudh. 630. Even if a man uses a false document to support a good title, he is guilty of an offence under s. 471 I. P. Code. 1924 Cal. 718=83 Ind. Cas. 504=51 C. 469. Section 471 is only directed against persons other than the forgerer. 29 Cr. L. J. 1387=89 Ind. Cas. 523=21 N. L. R. 152. Where a person has been convicted for forgery under s. 467 I. P. Code, he can not be convicted under s. 471 for using the forged document as genuine. 88 Ind. Cas. 1051=26 Cr. L. J. 1295=A. I. R. 1925 Nag. 440. Whenever a person fraudulently or dishoneestly presents a document to another person as being what it purports to be or causes the same to be so presented, knowing or having reason to believe that the said document is a forged document, the document is "used as genuine" within s. 471. It matters not whether the document is presented by the accused himself or by his agent or whether it is produced by the accused of his own motion or persuant to the order of the Court. 52 C. 881. Although a person who produces documents in obedience to the order of the Court may not be held guilty of using forged documents even if they are found to be forged, the case would be different were the production of the documents in Court not voluntary, but is in pursuance of a conspiracy between the accused, one of them being made the custodian of the documents in order to get over some technical objection. 88 Ind. Cas. 181=26 Cr. L. J. 1093=A. I. R. 1925 Nag. 345. A complainant when asked by Court to produce documents in support of his complaint produced certain forged ones. *Held*, he was guilty of an offence under s. 471 I. P. Code, and he could not escape on the ground that it was an involuntary production of documents in Court. 6 Lah. 50=26 P. L. R. 156= 88 Ind. Cas. 595=26 Cr. L. J. 1171. Intention to produce material gain or material loss is not essential. Using a document for securing an acquittal would fall under s. 471 as it is the obtaining of an advantage. A. I. R. 1929 Pat. 60= 9 P. L. T. 800=30 Cr. L. J. 236=113 Ind. Cas. 712. "Fraudulently" does not necessarily connote deceit or injury to the person deceived. A. I. R. 1926 Cal. 89= 52 C. 881=27 Cr. L. J. 117=91 Ind. Cas. 993. Whenever a document is used as genuine with intention to deceive and gain an advantage to the user or to the injury of some other, an offence under s. 471 has been committed. A. I. R. 1926 Cal. 89=52 C. 881 ; see also 5 O. W. N. 138=A. I. R. 1927 Oudh. 630. Whether there has been user or not must depend upon the circumstances of each case. A. I. R. 1926 Cal. 89=52 C. 881=27 Cr. L. J. 117=91 Ind. Cas. 993. Presentation of a forged document before the Sub-Registrar amounts to user. A. I. R. 1924 Pat. 128=2 Pat. 459=4 P. L. T. 727=24 Cr. L. J. 792=26 Cr. L. J. 1482. Filing of forged document with plaint amounts to user within the meaning of this section. 19 Cr. L. J. 709=3 Pat. L. J. 386=46 Ind. Cas. 293. Insolvent who uses a forged document with intent to support his claim to be declared insolvent is guilty under s. 464. 43 A. 225=18 A. L. J. 1137=22 Cr. L. J. 56=59 Ind. Cas. 200. Production of a forged will before a Dy Tasildar in proceedings to transfer of *patta* amounts to production before a Revenue authority. A. I. R. 1929 Mad. 87=16 M. L. W. 534=24 Cr. L. J. 15=71 Ind. Cas. 63. Neither acquisition nor definition of property is essential under s. 471. A. I. R. 1926 Cal. 89=52 C. 881=27 Cr. L. J. 177=91 Ind. Cas. 993. That accused did not rely on the document as a valuable security is no defence to a charge under s. 471. A. I. R. 1924 Cal. 960=28 C. W. N. 947=40 C. L. J. 135 =25 Cr. L. J. 1217=82 Ind. Cas. 145. Where accused filed certain receipts in a rent suit against him and placed them before the plaintiff for admission or denial and the plaintiff denied them. *Held* if the plaintiff had been deceived and had admitted them the appellant would have achieved his object. The term "use" in section 471 is of wide meaning and the accused did use the receipts. A. I. R. 1935 All. 521. It is user whether the party files the document personally or as more usually happens, through a legal representative. Further such legal representative will be presumed to have filed the document with the knowledge and authority of his client until the contrary is shown. A. I. R. 1932 Cal. 545=55 C. L. J. 336=140 Ind. Cas. 544.

The use of certified copies of forged originals by a person who knows that the originals are forged clearly amounts to making use of forged documents within the meaning of s 471. 26 Cr. L. J. 929=A. I. R. 1925 Oudh. 413; see also A. I. R. 1926 Oudh. 255=1 Luck. 306=13 O. L. J. 391=27 C. L. J. 402=93 Ind. Cas. 66. If a party to a suit sets up two different titles and supports one of them with a false document, he has commited an offence under s. 471 even if it be found that the other title is good. 96 Ind. Cas. 850=27 Cr. L. J. 994=A. I. R. 1926 Mad. 1072. Prosecution under s. 471 alone without complaint of District Munsif before whom document is used does not lie. A. I. R. 1933 Mad. 413=34 Cr. L. J. 800=1933

M. W.N. 217=144 Ind. Cas. 519 ; see also A. I. R. 1932 Sind. 90=33 Cr. L. J. 452= 1932 Cr. C. 530=20 S. L. R. 73.

Procedure.—Non-Cognizable—Warrant—Bailable- —Non-Compoundable—Triable by the same Court as that by which the forgery is triable. When the forged document is a G. P. Note—Cognizable—Warrant—Bailable—Not-Compoundable—Triable by Court of Sessioon.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under secteon 467 of this Code, or with such intent, has in his possession any such seal, plate, or other instrument knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and also be liable to fine.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.

Scope.—This section covers only the case of a counterfeit of an existing thing. 81 Ind. Cas. 986.

Procedure—Not-Cognizable—Warrant—Bailable—Not-Compoundable—Triable by Court of Session.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Making or possessing counterfeit seal, etc, with intent to commit forgery punishable otherwise.

Cases.—13 W. R. Cr. 16.

Procedure.—Not-Cognizable—Warrant—Bailable—Not-Compouudable—Triable by Court of Session.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and, if the docement is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of document described in section 466 or 467 knowing it to be forged, and intending to use it as genuine.

Gist of the offence.—To support a charge under this section it is neeessary for the prosecution to prove (1) that the documents, the subject of the charge, were forged ; (2) that the accused knew them to be forged ; (3) that he was in possession of them : (4) that he intended that they should be fraudulently or dishonestly used as genuine ; and (5) that each of the documents was of the description mentioned either in s. 466 or in s. 467. 16 B. 165. The guilty intent cannot be suspected or surmised. W. R. 1864 Cr. 12 ; 2 P. R. 1895 Cr. See the case in 6 M. L. T. 466. The "intention to use" in s. 474 should fructify into an actual use to attract s. 195. Cr. Pro. Code. A. I. R. 1927 Mad. 1060=28 Cr. L. J. 225=99 Ind. Cas. 1025.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

475. Whoever counterfeits upon or in the substance of any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark, shall be used for the puspose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material, upon, or in the substance of which, any such device, or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents described in section 467 or possessing counterfeit marked material.

Scope.—To support a charge under the latter part of the section it is necessary to prove (1) that the accused was in possession of the papers referred to in the charge ; (2) that the devices or marks on these papers were counterfeited on them ; (3) that the devices or marks were such as are used for the purpose of authenticating any document described in s. 467 ; (4) that the accused intended that the devices or marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. 16 B. 165. See Rat. Un. Cr. C. 165 ; B 15 189.

Procedure.—Not-cognizable—Warrant—Bailable—-Not-compoundable—Triable by Court of Session.

476. Whoever counterfeits, upon, or in the substance of, any material, any device, or mark, used for the purpose of aurhenticating any document other than the documents described in section 467. of this Code, intending that such device or mark, shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of which any such device or mark has been counterfeited shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents other than those described in section 467 or possessing counterfeit marked material.

Notes.—Where application for agricultural loans bearing signature of tenants was not signed by him but by the accused but tenant returned the same and received the same, the accused is not guilty under s. 476 as there was no gain or advantage to him nor any injury or loss to the Government. 145 Ind. Cas. 229=34 Cr. L. J, 922=A. I. R. 1933 Rang. 114. Under special circumstances substances may be reduced. A. I. R. 1934 Cal. 532=35 Cr. L. J. 1279.

Procedure.—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface or secretes or attempts to secrete, any document which is, or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in any respect to such document, shall be punished with transporation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, &c., of will, authority to adopt, or valuable security.

Scope.—The words "purpoports to be" in this section make the law of India upon this matter what it has in a along succession of cases, been held to be in England. In order to constitute an offence under this section, it is not necessary that the document must be stamped and receivable in evidence. 1 Weir 552. Where a document purports to be a valuable security under this section, the question whether

it is invalid for want of consideration is immaterial. 1 Weir 554; 1 Weir 553. To support a prosecution under this section, the proof of the fraudulent secretion of a document is sufficient and it is not necessary to prove the validity of such a document. 97 Ind. Cas. 1054=27 Cr. L. J. 1230. A person may secrete a document not only when its existence is unknown to other persons for preventing its becoming known, but also when its existence is known to others. In the latter case he may secrete it preventing its being produced in Court, mere failure to produce when there was duty to produce is not enough though this is evidence of secretion. Falsely denying the possession of the document is also good evidence. A. I. R. 1931 Cal. 184=1931 Cr. C. 248=25 C. W. N. 425=58 C. 1051 (F. B); see also 58 C. L. J. 283. Document destroyed must amount to valuable security. Administration order of court is not valuable security. 35 Bom. L. R. 1062= A. I. R. 1933 Bom. 494. Where a Post-master received a V. P. letter and handed over the same to the addressee without getting payment on or before 20-10-25 and then altered his accounts so as to make it appear that he only handed it over on 24-10-25. *Held*, that he was guilty of criminal breach of trust and falsification of accounts in the absence of proof by him of the dishonest intention. 102 Ind. Cas. 488=28 Cr. L. J. 552=A. I. R. 1927 Mad. 626.

Procedure.—Not-Cognizable—-Warrant—-Not-bailable—-Not-compoundable—Triable by court of Session.

Falsification of accounts.

477A. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer, or servant, wilfully, and with intent to defraud destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security or or account, which belongs to, or is in the possession of, his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters, or abets the omission or alteration of, any material particular from or in, any such book, paper, writing, valuable security, or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

Legislative changes.—This section has been added by Act III of 1895, s. 4.

Scope.—It is sufficient to satisfy the words of the section, that the person charged under the section is one who undertakes to perform and does perform the duty of a clerk or servant, whether, in fact, he is a clerk or servant, or not, and though he is under no obligation to perform such duties and receives remuneration. By fraud is meant an intention to deceive, whether it be from any expectation of advantage, to the party himself or from ill-will towards the other is immaterial. I Weir 554. Where a partner in a firm is appointed as such to manage the business of the firm or to write its accounts, he acts as its servant; and if he falsifies the account, he is liable under this section. 6 Bom. L. R. 552; see also 14 Ind. Cas. 603. Replacing stamps on documents by used up stamps, is not an offence under this section; 47 C 71=23 C. W. N. 935=30 C. L. J. 258. Where it is found that the accused made false entries in the accounts to cover his own defalcation he cannot be convicted under s. 477 A. I. P. Code. 20 A. L. J. 662=68 Ind. Cas. 824=23 Cr. L. J. 610=20 A. L. J. 662. Where a person is charged with falsification of accounts any number of false entries or omission of entries may be proved in order to prove falsification; such a course is not contrary to s. 234 Cr. Pro. code. 34 C. W. N. 925=129 Ind. Cas. 356=32 Cr. L. J. 318=A. I. R. 1931 Cal. 8. A series of falsification of accounts made to cover a single act of defalcation may be laid in one charge under s. 477 A. 11 Lah. L. J. 384=30 Cr. L J. 958=118 Ind. Cas. 645=A. I. R. 1929 Lah. 843. A criminal case was commenced in the court of first class Magistrate and involved charges against the accused under ss. 408 and 477 A. I. P. Code. At the time the case commenced the charge under s. 477 A. was exclusively triable by a Court of Sessions. Since the amended Cr. P. Code came into force charges under s. 477A, were triable by a Magistrate with

first class powers. *Held*, that the trial by the Magistrate after the amended Code came into force of the charges under ss. 408 and 477 A. I. P. Code was quite legal and proper. The amendment of the law which enables a Magistrate with first class powers to try charges under s. 477 A, I. P. Code is a matter of procedure only and the amending Act applies notwithstanding that the case was commenced before the amending Act came into force. 28 C. W. N. 998=1924 Cal. 983.

Where a partner of a firm has been appointed to manage its business and write its accounts, he is liable under s. 477 A, of the Penal Code if he falsifies the accounts. 88 Ind Cas. 189=26 Cr. L. J. 1131=A. I. R. 1925 Sind. 828 ; see also A. I. R. 1932 Sind, 53=25 S. L. R. 62 . An accountant in a Bank, fearing that the bank may fail any day, and being anxious to recover his money deposited as security, obtained securities equal to the amount of his deposit by falsifying the accounts. He thus deceived the higher authorities of the Bank. *Held*, that as the falsity of the account was made to deceive the Bank authorities in case of liquidation and as together with the intention of deceiving there was an attempt to obtain an undue advantage there was in law an intent to defraud. 23. A. L. J. 657=89 Ind. Cas. 520=26 Cr. L. J. 1384 "Falsely" applies to the preparation of an entirely new document containing false information. A. I. R 1926 Lah. 385=22 Cr. L. J. 1383=98 Ind. Cas. 599. Where fraud has already been committed and the false document is made to conceal fraud, the maker of the document is guilty under s. 477 A. 145 Ind. Cas. 749=1933 A. L. J. 1372=34 Cr. L. J. 1056 =1933 Cr. C. 850=A. I. R. 1933 All. 525 ; see also 11 Mys. L. J. 321. Charges of embezzelement and falsifications can be linked together. A. I. R. 1931 Pat. 349=12 P. L. T. 696=32 Cr. L. J. 1026=133 Ind. Cas. 450. Not section 477A but s. 463 is governed by Cr. Pro. Code. s. 195 (1) (c). 136 Ind. Cas. 766=25 S. L R. 471=1932 Cr. C. 194=33 Cr. L. J. 328=A. I. R. 1932 Sind. 53. In a case under this section the prosecution should examine the complainants when the defence is that the accused a servant of the firm made the entries on the authority of one of the partners. 59 C. L. J. 83=A. I. R. 1934 Cal. 800=152 Ind. Cas. 226.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

Of Trade, property, and other Marks.

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark,

Trade-mark.

and, for the purposes of this Code, the expression "trade mark" includes any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs, and Trade Marks Act 1883, and any trade-mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade-marks Act, 1883, are under order in Council for the time being applicable.

Legislative changes.—Ss. 478-489 have been substituted for the original by the Indian Merchandise Marks, Act (IV of 1889) s. 3.

Trade mark.—A distinction mark may be adopted by a person who is not the manufacturer but the importer of goods and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him. 14 A. L. J. 1080=17 Cr. L. J. 535=36 Ind. Cas. 583. Under s. 478 complainant has to prove that the goods which are the subject of the mark are manufactured and sold by himself and that goods are known in the market as being of his manufacture alone. A. I. R. 1928 Cal. 235. In India there is no method by which a trade-mark may be registered. But a right may be acquired by user. A. I. R. 1929 Rang. 322=1929 Cr. C. 498 ; 49 A. 92=24 A. L. J. 975=A. I. R. 1927 All. 81=99 Ind. Cas. 353. Altough there is no Trade Mark Act in India a declaration of the description of a trade-mark serves as evidence of genuineness. A. I. R. 1930 Cal. 678=129 Ind. Cas. 612. In England where trade mark can be registered, property in the trade mark can be acquired from the date of registration but in India trade mark can be acquired by long user. 66 M. L. J. 440=57 M. 600=39 L. W. 319=A. I. R. 1934 Mad. 211. There being no statutory law in British India as regards trade-mark cases of alleged infringement of trade-marks have to be decided according to the

rules of justice equity and good conscience. English law on the subject may be applied not because it is applicable as such in India, but because it embodies rules of justice, equity and good conscience. 4 A. W. R. 1028.

A mark to be a trademark or property mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mark, in itself, does not denote anything of the kind and it is not necessary that it should do so. The mere fact, that a certain firm imported and sold goods with the mark of a firm which had ceased to exist, in the absence of proof of any transfer or assignment of the mark or of the former having succeeded to the business or the good will of the latter, is not sufficient to warrant a conviction for infringement of trade or property mark. 27 C. 776=4 C. W. N. 423. The word "trade" taken in its ordinary acceptance does not include lending money at interest. 22 P. R. Cr. 1903=14 P. L. R. 1903. The get-up does not constitute a trade-mark. 2 L. B. R. 159. In an action for infringement of trade-mark the standard of comparison of the goods is not that of the experts, but it is of the lay public, of the unwary purchaser. 34 C. W. N. 339=51 C. L. J. 477=A. I. R. 1930 Cal. 274=127 Ind. Cas. 555 ; see also A. I. R. 1930 Cal. 678=129 Ind. Cas. 612 ; 4 Rang. 401=99 Ind. Cas. 723 ; 49 A. 92=24 A. L. J. 975=A. I. R. 1927 All. 81=99 Ind. Cas. 353 ; 41 B. 49=18 Bom. L. R. 206=34 Ind. Cas. 529. There is no protection in this country to a registard trade-mask as such and the owner has to prove by evidence that he has acquired a right thereto in the sense that the trade-mark or the trade-name is associated in the minds of the public with the goods manufactured by him. 38 C. W. N. 265=151 Ind. Cas. 5=A. I. R. 1934 Cal. 600. A dispute relating to the infringement of a trade-mark can be entertained by a criminal court but the criminal court may direct the complainant to establish his rights in civil court. 29 Cr. L. J. 425=9 Lah. 491=29 P. L. R. 610=A. I. R. 1928 Lah. 186=108 Ind. Cas. 607.

Trademarks Act, 1883.—Stat. 46 and 47 Vtct. C. 57.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

Property-mark.

Property-mark.—A property-mark, is intended to denote ownership over all moveable property belonging to a person whether it is all of one kind or different kinds. So long as the person owns moveable properties his property-mark impressed upon them remains his, though any particular article out of it may, after such impression, pass out of his hands and cease to be his. The function of a property-mark to denote certain ownership is not destroyed because any particular property on which it was impressed has ceased to be of that ownership. 6 Bom. L. R. 513=1 Cr. L. J. 581.

480. Whoever marke any goods, or any case, package, or other receptacle containing goods or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.

Using a false trade-mark.

Notes—Merchandise in ss. 478 and 480 of the Penal Code implies goods not only offered for sale but also selected and so to say guaranteed by the proprietor of the trade-mark. 12 S. L. R. 129=50 Ind. Cas. 165=20 Cr. L. J. 277. In order to establish a case under s. 480 the prosecution must prove that the accused marked goods, that he did so in a manner reasonably calculated to cause it to be believed that the goods so marked were the manufacture or merchandise of some other person and that such goods are not the manufacture or merchandise of such person. It is unnecessary for a prosecution to prove that an accused in such a case had acted with intent to defraud ; should the latter, however, prove that he acted without intent to defraud, he is entitled to be acquitted. A. I. R. 1929 R. 322. Where owing to the mistake of the manufacturer the accused in acting good faith sells goods bearing complainant's mark he is not guilty either under s. 480, or s. 482 or s. 486. A. I. R. 1926 Rang. 134=4 Rang. 16=27 Cr. L. J. 755=95 Ind. Cas. 275. Not only person who makes the goods but also person who uses any such package with mark is said to use false trade mark if the goods are tried to be passed as goods of certain manu-

facturer when they are not actually so. A. I. R. 1932 Sind. 94=1932 Cr. C. 534=33 Cr. L. J. 778=26 S. L. R. 241=139 Ind. Cas. 335.

Using a false property mark.

481. Whoever marks any moveable property or goods, or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Punishment for using a false trade-mark or property-mark.

482. Whoever uses any false trade-mark or any false property-mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cases.—The intention of the legislature will be frustrated if it is held, that the owner of a trade-mark can stand by for several years while his trade-mark is being infringed continuously, and then bring a criminal case in respect of some recent instance in which there has been an infringement. 12 Cr. L. J. 246=10 Ind. Cas. 787=4 Bur. L. T. 83. A trade-mark must be some visible concrete device or design affixed to goods, to indicate that they are the manufacture of the person whose property the trade mark is. It may consist of a name impressed in some distinctive way. 17 C. W. N. 227=18 Ind. Cas. 404=14 Cr. L. J. 68=40 C. 281. Where the title page of the alleged piracy and the title page of the complainant's book are so different that no one is likely to have been misled, a conviction under ss. 482, 486 Penal Code cannot be sustained. 7 M. L. T. 309=6 Ind. Cas. 683=11 Cr. L. J. 393. Where the marks on the accused's bars constitute such an imitation as is sufficiently close to deceive an ignorant and unwary purchaser, the accused could be convicted under s. 482 I. P. Code, which covers the case of using a false trade-mark. 8 S. L. R. 199=16 Cr. L. J. 230=27 Ind. Cas. 902. When the accused, who had opened a shop in close proximity to the shop of the complainant, sold rose water in bottles similar to those which contained the rose water sold by the complainant, but on closer examination great differences in the labels were discernable, *held* that the accused was not guilty under ss. 482 and 486. 11 C. W. N. 887=6 Cr. L. J. 151. A body corporate can be punished under ss. 482 and 486, Penal Code. The word "whoever" in those sections does not refer only to a definite individual or definite individuals and can apply to a corporate body. 15 Cr. L. J. 337=23 Ind. Cas. 689=7 Bur. L. T. 116. Where a manufacturer of *buris* flagrantly and dishonestly imitated the label and slip of another with the object of causing it to be believed that the goods of one quality in fact belonged to another ; *held*, that he was liable to be convicted under s. 482 I. P. Code. A. I. R. 1930 Oudh. 360=7 O. W. N. 598. Although a criminal Court has a discretion in cases of *bona-fide* dispute or long delay to refer the matter to a civil court, it can refuse remedy to an aggrieved person. *Ibid.* For the purpose of establishing a case of infringement it is not necessary to show that there has been the use of a mark in all respects correspoding with that which another person has acquired an exclusive right to use, but that the resemblance is such as not only to show an intention to deceive but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade mark belongs. In other words the standard of the comparison is not that of the expert but of the unwary purchaser. 34 C. W. N. 339=51 C. L. J. 477=A. I. R. 1930 Cal. 274. A body corporate such as a firm may be prosecuted for an offence under s. 480 and 482. A. I. R. 1929 Cal. 498=A. I. R. 1929 Rang. 322. Test of an infringement is whether a purchaser would be decieved into believing goods of accused as those of the complainant from looking at the get up where no confusion is likely to be caused, either by having both, side by side or by the purchaser having recollection of the get up of the complainant's goods, prosecution under s. 482 is not sustainable especially where that is no evidence of any purchaser having been misled. A. I. R. 1929 Rang. 345=7 Rang. 169=30 Cr. L. J. 882=118 Ind. Cas. 113. There is no registration of trade.mark in India. Right of action is based on deceit. Complainant to prove reputation of his trade-mark. 20 Cr. L. J. 277=12 S. L. R. 129=50 Ind. Cas. 165. Where accused has used a false trade-mark but had no intent to be defraued, he could not be convicted under s. 482. 19 Cr. L. J. 722=16 A. L. J. 476=46 Ind. Cas. 402.

Under s. 482 an intent to defraud is an ingredient of the offence but when it has been proved that a trade mark is a false trade-mark then it is to be presumed that the accused had that intent unless he rebuts the presumption when only he is entitled to be acquitted. 118 Ind. Cas. 113=30 Cr. L. J. 882=882=A. I. R. 1929 Rang. 345. Even though no case of purchasers having been deceived by the use of false trade-mark is proved this fact standing alone is insufficient to justify the contention that the accused acted without intent to defraud. The state of mind of persons responsible for the introduction of the trade-mark is a most relevant fact which can be established by evidence. In the absence of such evidence, the accused cannot be held to have discharged the onus of proving want of intention which was upon him. A. I. R. 1929 Rang. 322. It is no where laid down by the legislature that under no circumstances could a dispute relating to the infringement of a trade-mark be entertained by a Criminal Court and that it should always be adjudicated upon by a Civil Court. The only thing which can be said is that the Criminal Court may, in view of the peculiar circumstances of a particular case, stay its own hands and direct the complainant to establish his right in Civil Court. 9 Lah. 491=29 P. L. R. 610=29 Cr. J. J. 425=A. I. R. 1928 Lah. 186. For a conviction under s. 482 evidence of actual deception is not necessary. It is enough if the Court finds on a comparison of the two trade marks that the accused was likely to deceive. 1925 Cal. 149=81 Ind. Cas. 922=25 Cr. L. J. 1098. In a trade mark case issue of search warrant for searching a house and for production of account books is not proper. 17 Cr. L. J. 543=9 L. B. R. 45=10 Bur. L. T. 216=36 Ind. Cas. 591. Mere imitation is no offence where there is no infringement of patent or copyright and no attempt to pass of goods as being that of others. 1933 Cr. C. 1423=A. I. R. 1933 Nag. 344. S 15 of the Merchandise marks Act, does not prevent prosecution under s. 482 provided imfringement is within 3 years. 36 Ind. Cas. 168.

Procedure.—Not-Cognizable—Warrant—Bailable—Compoundable with Court's permission—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Counterfeiting a trade-mark or property-mark used by another.

483. Whoever counterfeits any trade-mark or property-mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Notes.—Where in a case of alleged counterfeiting a trade-mark similar to that of the complainant had been moulded in the glass of the bottles on which the name of the hair oil had also been moulded. *Held* that according to s. 28 it must be presumed that the accused intended to sell that hair oil in those bottles and thereby cause deception. In this case, the onus was on the accused to show that in making these bottles he had no fraudulent intention. A. I. R. 1931 Cal. 445. If two labels are not so similar as to deceive ordinary person there can be no conviction under s. 483. 134 Ind. Cas. 477=8 O. W N. 827=1931 Cr. C. 637=32 Cr. L. J. 1117.=A. I. R. 1931 Oudh. 277.

Procedure.—Not-cognizable—Warrant—bailable—Compoundable with Court's permission—Triable by Presidency Magistrate or Magistrate of the first or second class.

Counterfeiting mark used by a public servant.

484. Whoever counterfeits any property-mark used by a public servant, or any mark used by a public servant, to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the property is of a particular quality, or has passed though a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade-mark, or property-mark, or has in his possession a trade-mark, or property-mark, for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making or possession of any instrument for counterfeiting a trade-mark or property mark.

Notes.—A mark to be a trade or property mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mark, in itself, does notd enote anything of the kind and it is necessary that it should do so. 27 C. 776=4 C. W. N. 423. Where a trade-mark consists of an impression moulded in the glass of which the bottles are made together with label and the person is found in possession of the mould in question with the intention of counterfeiting that trade mark, although the apparatus for counterfeiting the label which would complete the trade mark has not been found, the person can be convicted under s. 485. A. I. R. 1930 Cal. 664=1930 Cr. C. 1104.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first class.

486. Whoever sells, or exposes, or has in his possession for sale or any purpose of trade or manufacture any goods or thing with a counterfeit trade-mark or property-mark affixed to, or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall unless he proves—

Selling goods marked with a counterfeit trade-mark or property-mark.

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had, at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by, or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting trade mark.—In order to prove that the trade mark is in imitation of another, it is not necessary that there should be a resemblance in every case. It is sufficient if the resemblances are of such a nature as to be calculated to mislead an unwary purchaser. 9 Bom. L. R. 732=6. Cr. L. J. 75. Books are subject of trade and are covered by the word "goods". Therefore a person selling a book with a counterfeit property mark is liable to be convicted under this section. 26 C. 232=3 C. W. N. O. 97. The onus is upon the accused to show that he comes within the exception. 8 C. W. N. 421. Counterfeiting a label falls within this section. 16 Bom. L. R. 78. See also 32 C. 431. ; A. W. N. 1897, 99 ; 32 P. R. 1902 Cr. No coviction under this section stands for the use of another firm's bottle innocently and according to common practice. A. I. R. 1928 Cal. 873. Section 486 specifically confines the offence to selling a thing. The prosecution is within time if launched within three years of specified offence complained against. The starting point for limitation is not termination of three years from the date of the first of a series of offences. A. I. R. 1921 Mad. 276 ; see also A. I. R. 1928 Cal. 495 ; A. I. R. 1930 Cal. 274 ; 22 M. 488 ; A. I. R. 1931 Mad. 276=1930 M. W. N. 1263.=1931 Cr. C. 353. In a prosecution for an offence under s. 486 I. P. Code the test is not whether a person who is in the best on the alert and who knows the original well would have been deceived. The proper test is to consider the question from the point of view of the unwary purchaser. 34 C. W. N. 524 =128 Ind. Cas. 334=32 Cr. L. J. 137=A. I. R. 1930 Cal. 728. If a person who employs a label which in general resembles the lables issued by another manufacturer is guilty of counterfeiting a trade mark under s. 486 irrespective of the circumstances that the registered trade mark of the one is quite different

from the trade mark of the other. 35 P. L. R. 749=A. I. R. 1934. Lah. 687=1934. Cr. C. 1005.

Procedure.—Non-cognizable—Summons—Bailable—Compoundable with Court's permission—Triable by Presidency Magistrate or Magistrate of first or second class.

Making a false mark upon any receptacle containing goods.

487 Whoever makes any false mark upon any case, package, or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods, which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extand to three years, or with fine, or with both.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of first or 2nd class.

Punishment for making use of any such false mark.

488. Whoever makes use of any such false mark in any manner prohibited by the last foreging section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Procedure.— Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the 1st or 2nd class.

Tampering with property mark with intent to cause injury.

489. Whoever removes, destroys, defaces, or adds to any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Of Currency-notes and Bank-notes.

Counterfeiting currency-notes or banknotes.

489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of section 489 B, 489 C and 489 D, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

Legislative changes.—Ss. 489 A to 489D have been added by Act 12 of 1899 s. 2.

Scope.—A conviction under this section cannot stand unless it is proved that the accused were performing the process or part of the process of counterfeiting a note. Where no counterfeiting was done and where there was no part of any process which could have ended in producing a counterfeit worthy of the name and there was no intention of trying to counterfeit, the conviction under this section

must be set aside. 38 Ind. Cas. 746. The words "as genuine" govern only the verb "uses" and not any other verb. 7 Lah. 80=27 Cr. L. J. 638=27 P. L. R. 514. The object of the legislature in enacting the section is to stop the circulation of forged note by punishing all persons who knowing or having reason to believe them to be forged do any act which could lead to their circulation. 7 Lah. 80=27 Cr. L. J. 638=94 Ind. Cas. 414. A person who knowingly sells a forged note to another is guilty under section 489B, whether the purchaser knows it to be forged or not. 7 Lah. 80=27 Cr. L. J. 638=44 Ind. Cas. 414. Under s. 489 A of the Indian Penal Code, for the counterfeiting of a currency note both ability and materials of a particular kind are required, and if either of them be absent, then there cannot be an attempt to counterfeit. A. I. R. 1928 All. 754=51A. 470=30 Cr. L. J. 690=1929 A. L. J. 127.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Sessions.

Using as genuine forged or counterfeit currency-notes or bank-notes.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in, or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—To convict a man under this section for using a forged note as genuine, the possession of the note does not necessitate the explaining the fact of his possession but the prosecution must prove that he knew it to be forged when he passed it. 81 Ind. Cas. 551. No guilty knowledge or intention can be inferred from the mere circumstance that the accused was found in possession of a counterfeit currency-note. 145 Ind. Cas. 1013=34 Cr. L. J. 1156=34 P. L. R. 890=1933 Cr. C. 881=A. I. R. 1933 Lah. 596. "As genuine" govern only the verb "uses" and not any other verb. A. I. R. 1926 Lah. 72=7 Lah. 80=27 Cr. L. J. 638=27 P. L. R. 514=94 Ind. Cas. 414. Knowingly selling a forged note is an offence whether the purchaser knows it to be forged or not. *Ibid*; see also A. I. R. 1929 Bom. 128=53 B. 344=31 Bom. L. R. 148=30 Cr. L. J. 588=116 Ind. Cas.243. No guilty knowledge or intention can be inferred from the mere circumstance that the accused was found in possession of a counterfeit currency-note. 34Cr. L. J. 1156=34 P. L. R. 890=1933 Cr. C. 881=A. I. R. 1933 Lah. 596.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Sessions.

Possession of forged or counterfeit currency-notes or bank-notes.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Notes.—The onus lies on the prosecution to prove circumstances which lead clearly, indubitably and irresistibly to the inference that the accused had the intention to foist the notes on the public. 11 Lah. 555=31 P. L. R. 867=129 Ind. Cas. 494=A. I. R. 1931 Lah. 24. The mere possession of forged notes in not an offence under the Penal Code. In order to bring a case within section 489 C it is not only necessary to prove that the accused was in possession of forged notes but it should further be established (a) that at the time of his possession he knew the notes to be forged or had reason to believe them to be so and (b) that he intended to use them as genuine or that they might be used as genuine. 11 Lah. 555=31 P. L. R. 867=129 Ind. Cas. 494=A. I. R. 1931 Lah. 74.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Sessions.

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument, or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or possessing instruments, or materials for forging or counterfeiting currency-notes or bank-notes.

Scope.—In order to establish a charge under this section what the prosecution, has to prove in the first place, is that the machinery, instrument or material found in the possession of the accused person is such as would be used in the production of a counterfeit note, and if that is proved the next element which is to be proved is that the accused knew or intended that such article would be used for the purpose of counterfeiting currency-notes. 10 M. L. T. 108. Possession of articles sufficient in expert's opinion to be counterfeit, without explanation of the same by the accused raises a presumption of dishonest intention. A. I. R. 1928 All. 759. Under this section it is not necessary to prove that the accused had the ability to produce counterfeit currency notes with materials in his possession. A. I. R. 1928 All. 754=51. A. 470=30 Cr. L. J. 690=1929 A. L. J. 127=116 Ind. Cas. 797.

Procedure.—Cognizable—Warrant—Not-bailable —Not-compoundable—Triable by Court of Session.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. [Breach of contract of service during a voyage or journey.—Repealed by Act III of 1925.]

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to attend on and supply wants of helpless person.

Application.—This section does not apply to a person who is engaged only as an ordinary cook to a family and is not bound by a contract to attend on or to supply the wants of any helpless person. Rat. Un. Cr. C. 354=Cr. Rg. 43 of 1887.

Principle.—"Persons who contract to take care of infants, of the sick, and of the helpless, lay themselves under an obligation of a very peculiar kind, and may, with propriety, be punished if they omit to discharge their duty. The misery and distress which their neglect may cause, is such as the largest pecuniary payment would not repair. They generally come from the lower ranks of life and would be unable to pay anything. We therefore propose to add to this class of contracts the sanction of the penal law".—*Report of the Law Commissioners.*

492. [Breach of contract to serve at a distant place to which servant is conveyed at master's expense.—Reapealed by Act III of 1925.]

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to co-habit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Co-habitation caused by a man deceitfully inducing a belief of lawful marriage.

Scope.—The offence here made punishable is committed when a man, whether married, or unmarried induces a woman to become, as she thinks, his wife, but in reality his concubine. The form of the marriage ceremony depends on the race or religion to which the persons contracting the marriage may belong. When the races are mixed as in India, and religion may be changed or dissembled, this offence may be committed by a person falsely causing a woman to believe that he is of the same race or creed as herself, and thus inducing her to contract a marriage, in reality unlawful, but which according to the law under which she lives, is valid. Suppose a person half English and half Asiatic by blood, calls himself a Mahomedan or a Hindu and by this deception causes a Mahomedan or a Hindu woman to go though the ceremony of marriage in a form which she deems valid and to co-habit with him, he has committed this offence. A man who deceives a woman into the belief that a certain ceremony which he causes to be performed by some accomplice, constitutes a valid marriage and thus induces the woman to co-habit with him, may be punished under this section.—*Morgan and Macpherson*, 433.

Procedure.—Not-Cognizable—Warrant—Not-bailable—Non-compoundable—Triable by Court of Session.

Marrying again during lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction ;

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.

Esssentials.—Where polygamy is not legal, the charge of bigamy requires to be supported by the following proofs : (1) the first marriage of the accused must be proved ; (2) his second marriage must then be proved ; and (3) it must be shown that his first wife or husband was alive at the time of the second marriage.—*Morgan and Macpherson*, 434. Amongst the Hindus and Mahomedans in the case of males polygamy is allowed ; hence bigamy is possible only in the case of a woman. In such a case it must be proved that the accused had a husband living ; (2) that she married during the lifetime of the first husband ; and (3) that such second marriage is void by reason of its taking place during the life of such husband. When the accused belonged to a caste, in which a second marriage is allowed, no such offence is committed. 7 C. L. R. 354. The causing of the publication of the bans of marriage is not an attempt to marry, but only a preparation for such an attempt. 1 A. 316. Under this section no distinction is made between void and invalid marriages. A. I. R. 1928 Lah. 844.

Cases.—A native Christian having a Christian wife married a Hindu woman according to Hindu rites, without renouncing his religion. *Held* that the second marriage of the accused should be treated in law as an adulterous union, and, therefore, void within the terms of s. 494 of the Code, by reason of its having taken place during the life-time of the first wife. 30 M. 550=2 M. L. J. 345=17 M. L. J. 476 =6 Cr. L. J. 338. Where the divorce is invalid a wife commits an offence under this section by going through a second marriage. 6 B. 126. A woman who contracts a *Pat* marriage with another man during the life-time of her first husband and without his consent is punishable under s. 494 of the Code. 12 C. P. L. R. Cr. 19 ; See also 19 Bom, L. R. 56=4 Bom. Cr. Cas. 3. The accused, a Hindu convert to Christianity, married a Christian wife according to the rites of the Roman Catholic Church. Subsequently he reverted to Hinduism, and during the life-time of her

Christian wife, married a Hindu woman in accordance with Hindu rites. *Held* the offence of bigamy was not committed. 3 M. H. C. App. 7 ; 1 Weir. 563.

The parties contracting a second marriage will not be held guilty of bigamy if the marriage is solemnised in their infancy and has never consummated by co-habitation. S. C. 16 Oudh. A *bonafide* belief that the authority of the caste made a second marriage valid, although it was not so according to law, is no defence to a charge under s. 494 I. P. Code, but it may be taken into account in mitigation of punishment. 1 B. 347. Marriage of a Mahomedan man and woman is rendered *ipso facto* void by the apostacy of the former, though there are certain methods by which the marriage tie may be renewed. 15 C. L. J. 263=16 C. W. N. 451=39 C. 409=14 Ind. Cas. 641. Under s. 198 a husband can institute a complaint under this section as he is the person aggrieved. 7 A. L. J. 10=32 A. 78=5 Ind. Cas. 167=11 Cr. L. J. 51 ; 13 Cr. L. J. 204=14 Ind. Cas. 204. Cr. Rg. 7 of 1886 ; 57 Ind. Cas. 459. When the accused is convicted of an offence under s. 498 of the I. P. Code, and it appears that the woman, being not on good terms with her husband, went to accused of her own accord, a sentence of one year's rigorous imprisonment is too severe. 33 P. L. R. 1910=24 P. R. 1910 Cr.=8 Ind. Cas. 226=11 Cr. L. J. 597. This section requires proof of a second contract of marriage in the lifetime of the husband or wife of the party as the case may be, and of the invalidity of such contract by reason of the husband or wife being alive. 1 Weir 565 (F. B.). The Hindu Law, which recognises the right of a Hindu husband to contract a valid second marriage, notwithstanding the continuance of a former marriage, does not recognise a correlative right on the part of a Hindu wife. In a case under s. 494, the point for determination is whether there was a valid subsisting marriage at the date of the second marriage. 1 Weir 563. Custom of caste authorising dissolution of marriage without husband's consent and second marriage is contrary to law and as such void in law. 2 B. H. C. 117. But a conviction under s. 494, Penal Code, cannot be supported where there is evidence to to show that, by the custom of the caste, *sagai* or *nikha* marriage was admissible and that the husband has relinquished his wife. 19 C. 627 ; see also 7 Pat. L. T. 443=96 Ind. Cas. 115. A *nikha* marriage falls within ss. 494 and 495, I. P. Code. 6 W. R. Cr. 60. The fact that a certain school of Mahomedan lawyers have declared that a woman is competent to marry again, if her husband has been absent for 4 years, will not bring a case under the exception to s. 494 I. P. Code. 27 P. R. 1878 Cr. The *jhingara* ceremony of marriage does not by custom constitute a valid marriage within the meaning of s. 494 I. P. Code. 25 P. R. 1888 Cr. An apostacy of a Hindu wife does not dissolve marriage union. 32 P. R. 1870 Cr. Where a person, not governed by Muhammadan law, contracts, or otherwise celebrates, a valid marriage, in accordance with a system of law other than Muhammadan law, the marriage and its dissolution will be subject, in British India, to the provisions of that other system of law, and not according to Mahomedan law, notwithstanding that one of the parties to the marriage has after being so married become a convert to *Islam*. 26 M. L. J. 260 ; 4 B. 330 ; 9 M. 466 ; 18 C. 264 ; 1 Lah. 440 ; 30 M. 550 ; 32 C. 871 ; 22 Cr. L. J. 1=1 Lah. 440=59 Ind. Cas. 33. "Void" includes both classes "void" and "invalid" marriages under the Mahomedan law. A. I. R. 1931 Lah 194=1931 Cr. C. 314. Re-marriage by a Christian wife after conversion to islam is an offence under s. 494, as the conversion does not dissolve the Christian marriage. 20 Cr. L. J. 3=5 P. R. 1919 (Cr.)=48 Ind. Cas. 493. Where the first marriage was made with the consent of legal guardian though he was in jail and as such valid a second marriage is bigamny. A. I. R. 1927 Cal. 480=28 Cr. L. J. 327=100 Ind. Cas. 711.

In order to entitle the accused to the benefit of the exception of s. 494 I. P. Code, it is not necessary to prove that the other party to the marriage has been continually absent from, and not been heard of as alive by, the accused for the space of seven years, it being immaterial under such circumstances, whether or not the accused made any inquiries or had reasonable grounds for believing the other party to be dead. 1 P. R. 1900 Cr.=P. L. R. 1900 p. 1b. Going through a form of marriage with a married girl under a mistake of fact that her earlier marriage had been declared void by a competent Court is not an offence. 19 Cr. L. J. 680=31 P. W. R. 1918 (Cr.)=46 Ind. Cas. 40. Where a caste punch has no authority to dissolve a marriage a re-marriage subsequent to such alleged dissolution could amount to bigamy. 18 Cr. L. J. 468=19 Bom. L. R. 56=39 Ind. Cas. 308. Where a person is unaware of prior secret marriage, he is not guilty of bigamy A. I. R. 1933 Lah. 164=33 P. L. R. 1060=1933 Cr. C. 309 ; see also A. I. R. 1931 Lah. 194 ; A. I. R. 1934 All. 589=35 Cr. L. J. 1053. Where a Hindu male marries Christian woman in England and marries second time in Hindu form in India, no bigamy is committed.

A. I. R. 1932 Lah. 116=33 P. L. R. 339=136 Ind. Cas. 262. Second marriage in first husband's life-time without annulling first marriage is an offence which cannot be obliterated by subsequent divorce. 138 Ind. Cas. 518=1932 Cr. C. 660=36 M. L. W. 237=33 Cr. L. J. 647=1932 M. W. N. 1082=A. I. R. 1932 Mad. 561.

Under Muhamadan law a second marriage during period of *iddat* is not valid. 43 P. R. 1882 Cr. In a prosecution for bigamy, if proof of either marriage is unsatisfactory, there ought not to be any conviction. 19 C. 79. A Hindn father giving his married daughter, who on account of her youth has not the knowledge and intelligence to commit an offence under s. 494 again in marriage to another in the life-time of her husband, is guilty of the abetment of bigamy although the girl, herself cannot be convicted under s. 494. 6 C. W. N. 343; see also Rat. Un. Cr. C. 876. Where a widow, charged with bigamy, contended that her second marriage was invalid, as she was married when she was a minor without the consent of her relations, *held* that the marriage was legal. 2 P. R. 1869 Cr. To substantiate a charge of bigamy, the first marriage of the complainant and his alleged wife must be strictly proved. Rat. Un. Cr. C. 190. Consumption is not required to complete a marriage.. 4 P. R. 1874 Cr. A criminal Court is bound to decide the question of marriage when it is essential to the decision of the question whether an offence has been committed or not. 27 P. R. 1878 Cr. Where during the subsistence of a first marriage, a person goes through a form of marriage recognised by law, he is guilty of bigamy, although the second marriage may be void for other reasons than that of his being bigamous. 19 P. R. 1876 Cr. In arriving at a decision as to whether there has been a valid subsisting first marriage the criminal Court is not bound by the fact of the decision of a Civil Court for custody of the wife or by proceeding in execution of that decree. 18 P. R. 1881 Cr. In order to sustain the conviction of a woman under s. 494 it must be proved (1) that the accused has a husband living; (2) that she married during the life-time of the first husband; and (3) that such second marriage is void for reason of its taking place during the life-time of such husband. 17 C. L. R. 354. A Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professing Christian. 3 M. H. C. App. 7. A, in her childhood, was with her parents baptised into the Roman Catholic church, but after her father's death, the family relapsed into Hinduism. A was then married to a Hindu. The husband, after sometime discarded her on the ground of her former baptism, which was not known to him at the time of marriage. She was then re-admitted to the Roman Catholic church by the second accused and was married by him to a Roman Catholic Christian. *Held*, that the woman was guilty of bigamy under s. s. 494 Penal Code, and the second accused of abetting the same. 10 M. 218=1 Weir. 566. The causing of the publication of the bans of marriage is not an attempt to marry, but only a preparation for such an attempt. 1 A. 316. It cannot be said that the only "person aggrieved" under s. 494 is the person with whom the second ceremony was gone through. The husband is also a "person aggrieved" under s. 198 Cr. Pro. Code, and the Court should, therefore, take cognizance of an offence under s. 494, Penal Code, on a complaint by the husband. 26 C. 336; 7 A. L. J. 10=32 A. 78. The brother of a lunatic whose wife is charged with having committed bigamy is not a person aggrieved by such offence within the meaning of s. 198, Cr. Pro. Code. 10 B. 340; see also 32 A. 78.

A mona Sikh can validly perform his marriage under the *Anand* rites, and in respect of the same, the offence of bigamy can be committed. 82 Ind. Cas. 277=25 Cr. L. J. 1269. Under the Criminal Procedure Code as amended in 1923 a first class Magistrate can try an offence of bigamy without committing it to the sessions. 25 Cr. L. J. 39=75 Ind. Cas. 727=1925 Oudh. 60. The Ahamadiya faith is within the pale of *Mahomedanism* and a *Mussalman* who embraces the *Ahamadiya* faith does not become an apostate. Where a Mahomedan husband become an *Ahamadiya* and thereafter the wife treating him as an apostate marries another she is guilty of bigamy. There is no question of *mens rea* in the case of an offence under s. 494. 71 Ind. Cas. 65=24 Cr. L. J. 17.

Although a marriage brought about by fraud by the mother of a minor girl without the father's knowledge might be declared invalid, it is not a nullity and is binding until is set aside by a competent Court. Consequently unless it is declared invalid, a person marrying the girl again is guilty of bigamy and the father who gives the girl in marriage is guilty of abetment. 2 Lah. 288. Where the first complaint under s. 494 I. P. Code. was dismissed on the ground that the complainant had not proved that the woman was his lawfully wedded wife, *held*,

that he could not lodge a fresh complaint on the same facts. A. I. R. 1928 Lah. 544=11 Lah. L. J. 197=1929 Cr. 87. A person who marries a woman, who is re-marrying during the life-time of her husband, cannot be convicted under this section. At the most he could be charged with abetment of the offence only. L. R. 6 A. 209 Cr.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section, having conceald from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Object.—"The act which, in the English law, is designated as bigamy is always, an immoral act. But it may be one of the most serious crimes that can be committed. It may be attended with circumstances which may excuse, though they cannot justify it.

"The married man who, by passing himself off as unmarried, induces a modest woman to become, as she thinks, his wife, but in reality his concubine, and the mother of an illegitimate issue, is guilty of one of the most cruel frauds that can be conceived. Such a man we would punish with exemplary severity.

"But suppose that a person arrives from England and pays attention to one of his country women at Calcutta. She refuses to listen to him on any other terms than those of marriage. He candidly owns that he is already married. She still presses him to go through the ceremony with her. She represents to him that if they live together without being married she shall be an outcast from society, that nobody in India knows that he has a wife, that he may very likely never fall in with his wife again, and that she is really to take the risk. The lover accordingly agrees to go through the forms of marriage. It cannot be disputed that there is an immense difference between these two cases."—*Report of the Law Commissioners.*

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by a Court of Session.

Marriage ceremony fraudulently gone through without lawful marriage.

496 Whoever, dishonestly or with a fraudulent intention goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.—"A person, who by deceit, causes a woman to co-habit with him, under the belief that she is his lawful wife is punishable under section 493. Whether there is deceit or not as between the man or woman, if there is a dishonest or fraudulent intention on the part of those or either of those who go through the marriage ceremony knowing the marriage is not a lawful one, the present section is applicable. As in the case of a pretented lawful marriage, to enable the parties to obtain property so settled to come to one of them on marriage or as if a man wishing to obtain money, jewels or other property belonging to a woman, should deceive her into going through an invalid marriage ceremony, in order that he may obtain them. The mere abuse of the formalities of marriage where there is no deceit practised on the woman, and no, "dishonest or fraudulent intention, is not an offence punishable by this Code where the ceremony partakes of a religious character or not"—*Morgan and Macpherson*, 437. A conviction under this section for falsely undergoing a marriage ceremony must be supported by proof of fraudulent or dishonest intent. The mere act of permitting an illegal marriage to take place in one's house does not constitute the abetment thereof, as the law construes abetment. W. R. 1864 Cr. 13. Section 496 of the Penal Code applies to cases in which a ceremony is gone through which does not constitute, but it is believed by one of the parties to constitute a marriage. Rat. Un. Cr. C. 77. Where the accused are charged with the principal offence under s. 496 and for abetment thereof there must be a complaint

under s. 198 Cr. Pro. Code. A. I. R. 1931 Mad. 247. Where the parties were Mahomedans and all that was alleged was that the complainant objected to the marriage on account of its being within prohibited degrees and the parties went to another place and got married. *Held* that an offence under s. 496 was not committed. A. I. R. 1931 Mad. 247.

Procedure.—Not-cognizable—Warrant-—Not-bailable—Not-compoundable—Triable by Court of Session.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Adultery.

Scope. The offence of rape has been defined by section 375. When the sexual intercourse does not amouut to that offence, and when it takes place between a stranger and a woman who is and whom the offender knows or has reason to believe to be, the wife of another man, the offence of adultery is committed. In support of a charge of adultery, there must be proof; (1) that the woman is married; (2) that there was sexual intercourse; (3) that there were the circumstances which tended to show that the accused person at the time knew, or had reason, to beheve, that the woman was the wife of another man. If it appears that the intercourse was by consent or connivance of the husband, this offence has not been committed. The character of both husband and wife, and the terms on which they live together, should be regarded. *Morgan and Macpherson*, 438. Actual fact of marriage must be proved. 17 Bom. L. R. 75. Desertion of the husband by the wife for one year does not *ipso facto* dissolve the marriage tie. 18 Cr. L. J. 321=38 Ind. Cas. 433. In all prosecution, under this section the marriage must be strictly proved. 4 Bur. L. J. 107=A. I. R. 1925 Rang. 328=27 Cr. L. J. 651; A. I. R. 1928 P. 481. In a prosecution under s. 497 or s. 498 it must be proved to the satisfaction of the Court that there is existence of legal marriage, before conviction can take place. 28 Cr. L. J. 311=100 Ind. Cas. 535=A. I. R. 1927 Oudh. 140. Section 61 of the Divorce Act does not forbid the Crown to prosecute and punish an alleged adulterer under s. 497 when moved to do so by the injured husband. A. I. R. 1928 Lah. 50. In cases of adultery direct fact need not be proved. Fact is to be inferred from circumstances. 1928 Pat. 375. Every intercourse amounts to an offence. A. I. R. 1928 B. 530. To constitute connivance within the meaning of s. 497, Indian Penal Code, the facts established must lead to a direct and necessary inference that adultery would be committed by the person charged. They may not go to prove privity to the actual commission of adultery, but they must show that the husband acquiesced in by wilfully abstaining from taking any steps to prevent that adulterous intercourse which, from what passes before his eyes or within his knowledge he cannot but believe or reasonably think is likely to occur. L. R. 6 A. 209 Cr.

Object.—This section is intended for the protection of husbands who alone can institute prosecution for offences under it. 1 Weir. 569.

Cases.—Where the husband of a woman preferred a complaint of offence under ss. 494 and 498 of the Penal Code, *held*, that the complaint did not include an offence under s. 497, and that the Magistrate had no jurisdiction to try the accused for such offence. Rat. Un. Cr. C. 531; A. W. N. 1881, 112. Where after a decree had given an option to the wife to return to her husband or to pay him money, the accused contracted *Natra* marriage with the woman, after payment of the money mentioned in the decree, *held* that the accused could not be convicted for adultery, as it could not be held that the accused and the woman did not believe that the latter was at liberty to remarry. 5 B. H. C. Cr. 17. Where a husband omits to take any steps against the accused for six or seven years, *held* that the offence under the section has been condoned by the husband and the accused cannot be convicted under the section. 1 C. W. N, 498. Evidence of adultery must be satisfactory in order to convict a person under this section. A. W. N. 1883, 129. Sections 497 and 498 are evidently, intended for the protection of husbands who alone can institute prosecution for offences against him. 1 Weir, 569=2 M. H. C. 331. Where the

accused was discharged for want of a proof of marriage, retrial for the examination of the wife cannot be allowed. 11 C. 81. The question of the validity of the marriage is vital to the commission of an offence under Ch. XX of the Penal Code. The proof of a *defacto* marriage is not sufficient for a conviction under ss. 497, 498, Penal Code. 7 C. W. N. 143. A conviction under s. 498, on a complaint by the husband of an offence under s. 497. I. P. Code, was set aside by the Chief Court. 18 P. R. 1873 Cr. In a prosecution for adultery, the marriage of the complainant with his alleged wife must be strictly proved. Rat. Un. Cr. C. 539; see also 5 A. 233; 5 C. 566=5 C. L. R. 597 (F. B.) It is not necessary to make a marriage complete that there should be co-habitation. 4 P. R. 1874 Cr. In a case of adultery, sexual intercourse must be proved, the sexual intercourse required for adultery being there as identical thing as the sexual intercourse required for rape. The difference lies in the mode of proof; in rape no presumption of sexual intercourse can be made; In adultery, it can be from evidence pointing strongly to an inference of guilt. It is not necessary, therefore, that there should be direct evidence of an act of adultery, nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman. 21 W. R. Cr. 13.

In a criminal case adultery must be proved in the same degree as in a divorce suit. 1 P. R. 1874. *Sagai* marraiges, that is, the custom of marriage of widows, prevails among certain low castes of Behar, and is legal and valid. Persons committing adultery with a *sagai* wife are punishable. 3 C. L. R. 410. Where a prisoner accused of adultery sets up in defence a *natra* marriage contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is whether or not the accused honestly believed at the time of contracting the *natra* marriage that the woman was the wife of another man. 5 B. H. C. Cr. 17; 2 B. H. C. Cr. 117. Adultery with a Mahomedan's sixth wife is no offence, as a Mahomedan can enter into a legal marriage with four wives only. 1. P. R. 1875 Cr. The offences of adultery and marrying again during the life-time of the husband should not be tried together. Rat. Un. Cr. C. 4. If a man, who has been convicted of adultery with another man's wife, continues his adulterous intercourse, he will be liable to a second conviction and punishment for the fresh act, notwithstanding that the woman had not returned to her husband's protection after the conviction of her paramour. Rat. Un. Cr. C. 150. If a criminal charge of adultery is to be preferred a formal complaint of that offence must be instituted in the manner provided by law, and if it is not, the provision of law will not have been satisfied. 5 A. 233= A. W. N. 1883, see also 24 W. R. 18 Cr.; 4 M. H. C. App. 55. A minor husband cannot be represented by another in a prosecution for adultery. 2 Weir. 235. A prisoner need not be convicted both for adultery and enticing away the woman. 2 W. R. Cr. 35. An adultery being an act which requires the consent of both the parties, it is not sufficient in order to convict a man of an attempt to commit adultery, that he was found in a place in which adultery might have been committed and he was minded to commit it. 1 Weir 569. A conviction under the section cannot stand where the husband has condoned the offence. 4. W. R. Cr. 31. Desertion of the husband by the wife for one year does not *ipso facto* dissolve the marriage tie. A complaint under s. 497 should not be summarily dismissed on the ground that the man and woman had been living apart for over a year especially. 18 Cr. L. J. 321= 38 Ind. Cas. 433.

Section 497, I. P. Code is not restricted in its application and applies to all classes of persons, including Europeans. The accused took up his above in the house of another man's wife and there was evidence that for 15 days he and she slept in the same bed and there was considerable attachment between them. *Held*, that the evidence, although circumstantial, was amply sufficient to hold that sexual intercourse had taken place and accused was guilty of an offence under s. 497 I. P. Code. 24 P. L. R. (A) 419=61 Ind. Cas. 238. Where in a case of a charge for adultery the only evidence was a letter written by the complainant's wife to the accused, which was not proved to have been received nor read by the accused. *Held* that the conviction on such evidence must be set aside. A. I. R. 1928 Cal. 248. In a prosecution under this section, the question of marriage must be proved strictly and any inference, tacit or otherwise, e. g., a tacit admission on the part of the accused that the woman was the wife of the complainant will not avail the prosecution if they fail to prove strictly the marriage between the complainant and the woman whose chastity has been violated. A. I. R. 1928 Pat. 481. Adultery *per se* is not an offence in India. To come under this section the adultery must be without consent or connivance of the husband. 9 Pat. L. T. 397=A. I. R. 1928 Pat.

375. A presumption of valid marriage between a husband and woman arises from their living together as husband and wife even though they belong to different class which ought not to intermarry. A. I. R. 1927 Rang. 261=6 Bur. L. J. 122=21 Cr. L. J. 868=104 Ind. Cas. 708 ; but see A. I. R. 1934 Sind. 10=35 Cr. L. J 816. Where validity of marriage is challenged, factum of marriage as well as strict observance of custom or law applicable must be proved. A. I. R. 1933 Cal. 880=145 Ind. Cas. 874. Complaint by husband is necessary in an offence under s. 497 or s. 498. A. I. R. 1933 Oudh. 163=10 O. W. N. 107=1933 Cr. C. 318=34 Cr. L. J. 496 ; see also 36 P. L. R. 209=1934 Cr. C. 1333=A. I. R. 1934 Lah. 945.

Procedure.—Not-cognizable—Warrant—Bailable—Compoundable—Triable by Court of Session, Presidency Magistrate, or Magistrate of the 1st class.

Enticing or taking away or detaining with a criminal intent a married woman.

498. Whoever takes or entices away any woman, who is, and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—The offence which the present section punishes is the taking or enticing away for the unlawful purpose mentioned, a married woman from her husband or from those who have the care of her on his behalf. It is immaterial whether the wife is shown to be a consenting party or not. Her consent is not in question. To support a charge under this section, it must be proved (1) that the woman is married and that fact known to the offender, or that he has reason to believe it ; (2) that she has been taken away or enticed from her husband, or from her relatives or friends with whom she may be living in her husband's absence ; (3) that the woman may have illicit sexual intercourse with himself or some other person. Persons who conceal or detain a woman who has been taken away knowing the circumstances and having the guilty intention above mentioned, are also punishable under the present section. It is this intention which is the main ingredient in the offence. A person who, being a relative of a married woman would take her away from her husband's house or would conceal or detain her from her husband on account of the misconduct or cruelty of the husband or for any other cause, but without any intetion that she should have illicit intercourse with any person, commits no offence. *Morgan and Macpherson*, 439.

The two essential ingredients of an offence under this section are that the woman enticed away is the wife of the complainant, and that the fact of the marriage is known to the accused. 15 Ind. Cas. 813 ; 10 A. 580 ; 1 Weir. 569 ; 9 P. R. 1889 Cr. 1 Weir 571 , 16 P. R. 1891 Cr ; 61 Ind. Cas. 652=22 Cr. L. J. 412. A. I. R. 1931 Lah. 194. ; 141 Ind. Cas. 40=10 O. W. N. 833. The fact and the legality of the marriage is a material element in such a case 11 A. L. J. 994 : 9 M. 9 ; 20 A. 166 ; 3 O. C. 342 ; 17 P. R. 1893 Cr. ; 2 P. R. 1879 Cr. ; 2 S. L. R. 22 Cr. ; 5 P. R. 1894 ; 6 M. 374 ; 26 Cr. L. J. 1376. ; 5 Cr. R. 252 ; 78 P. R. 1866 Cr. ; 13 C. L. R. 125 ; A. W. N. 1898, 186 ; A. I. R. 1925 Oudh. 300=26 Cr. L. J. 1376=89 Ind. Cas. 464. Where the marrriage is disputed there should be strict proof of the same. 145 Ind. Cas. 874=34 Cr. L. J. 1092=38 C. W. N. 113=A. I. R. 1933 Cal. 880=1933 Cr. C. 1530. The word "conceals or detains" must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband and assisting her to do so, so well as to physical restraint or prevention of will or action. 28 S. L. R. 140=151 Ind Cas. 175=35 Cr. L. J. 1254=1934. Cr. C. 625=A. I. R. 1934 Sind. 72. The enticement of the wife must be from the control of the husband before the enticer can be convicted under this section. A. I. R. 1934 Sind. 10=27 S. L. R. 482=35 Cr. L. J. 816=148 Ind. Cas. 753.

It must be proved that the accused enticed the complainant's wife from her husband's or father's house with intent to have illicit intercourse with her. 1 C. W. N. 498. ; 13 A. L. J. 251 ; 4 W. R. Cr. 50 ; 15 P. R. 1883 Cr. ; 22 W. R. Cr. 72. The Chief Court declined to interfere with a conviction in a case where the husband charged a wife with bigamy and her father and mother with abetment of it—these latter being convicted under s. 498, because the facts complained of as constituting an offence under s. 494, Penal Code, were held sufficient to bring the proceedings under s. 498, Penal Code, within the Magistrate's jurisdiction. 19 P. R. 1882, Cr. The offence contemplated by this scetion 498 is complete if it

appears that the accused went away with the woman in such a manner as to deprive her husband of his control over her; the fact that the woman accompanied the accused of her own free will does not diminish the criminality of the act. 4 Bom. L. R. 435.

It is not necessary to inflict a severe sentence on an accused person convicted under s. 498 I. P. Code when the husband did not taken care of his wife, and took no action for a number of months against the accused after he was informed of the abduction. 26 P. L. R. 429. In a prosecution under this section when it appears that the woman is an active abettor in her own abduction, the sentence should be a light one. 27 P. L. R. 642. The word "detains" means by derivation and according to the ordinary use of language "keeps back." But there may be various ways of keeping back. It need not necessarily be by physical force, it may be by persuation or by allurements and blandishments. 35 Bom. L. R. 1046=A. I. R. 1933 Bom. 489; see also A. I. R. 1933 Oudh. 256. To "detain" means to keep back from some body or to restrain. Where the woman was willing to live with another and there was nothing to show she was in any way restrained, *held* that she was not "detained" within the meaning of this section. 103 Ind. Cas. 559=28 Cr. L. J. 703=A. I. R. 1927 Oudh. 318, Detention is a continuing offence. Previous acquittal on a charge of detention on one occasion is no bar to a subsequent trial. A. I. R. 1921 Lah. 186= 4 L. L. J. 535=73 Ind. Cas. 524. Acquittal on a charge of abduction is no bar to a trial on a charge of detention. A. I. R. 1924 Lah. 330=24 Cr. L. J. 780=74 Ind. Cas. 444. The omission to state in a chargesheet the accused had knowledge or reason to believe that the person abducted was married woman would not by itself affect the prosecution under this section. 28 Cr. L. J. 419=A. I. R. 1927 Lah. 432= 101 Ind. Cas. 451. Where two persons are living as husband and wife the Court may draw a presumption of a valid marriage and a person who misbehaves with the wife during that period is liable to be convicted of an offence under this section. 6 Bur. L. J. 122=104 Ind. Cas. 708=28 Cr. L. J. 868=A. I. R. 1927 Rang. 261. Where a woman lives with a man of her own free will and refuses to go back to her husband, the man with whom she thus lives is not guilty under this section. A. I. R. 1928 A. 194; see also 149 Ind. Cas. 228=35 Cr. L. J. 932=11 O. W. N. 672=A. I. R. 1934 Oudh. 258; but see A. I. R. 1934 Sind. 72=35 Cr. L. J. 1254=151 Ind Cas. 175= 28 S. L. R. 140. Where a Mahomedan marriage is voidable being performed during a girl's minority, mere non-consummation of marriage after she had attained puberty is not sufficient to give rise to the inference that she exersied the option under Mahomedan law. 1928 Lah. 898. Where the accused is of the neighbouring village and of the same brotherhood as that of the girl, he may be presumed to have necessary knowledge that she is the lawful wife of her husband. 1928 Lah. 898. Where a wife was in charge of her mother and where there was no quarrel between the husband and the wife, *held*, that the charge of the mother could only be on behalf the husband and a person who took the woman away from the mother would be guilty under s. 498. 1 Weir 573. A marriage between a *Banya* and a woman born of a Brahman father and *Banya* mother, which is recognized by the caste to which her husband belongs, is valid and a person who entices away such a woman is guilty of an offence under s. 498 of the Penal Code. 34 A. 589. Where a Mahomedan wife renounces religion and is then taken away by accused, marriage being dissolved no offence is committed. 145 Ind. Cas. 156=1933 Cr. C. 739=1933 A. L. J. 733=34 Cr. L. J. 869=A. I. R. 1933 All. 433. Where the prosecution and charge are under s. 366 A, conviction under s. 498, without complaint by husband in respect of that offence is bad. 145 Ind. Cas. 922=1933 A. L. J. 701=1933 Cr. C. 1005=A. I. R. 1933 All. 626. Imprisonment for one month and 12 days is not adequate punishment for aggravated form of offence under s. 498. Nor is sentence of six months rigorous imprisonment is excessive. 1933 Cr. C. 1391=A. I. R. 1933 Lah. 932.

If no complaint is made by any person of an offence under s. 498, proceedings cannot be initiated on a police charge sheet. 2 Weir. 235; 39 P. L. R. 1911=12 Cr. L. J. 50. In a case under s. 498, Penal Code a light sentence is sufficient to meet the ends of justice where the abducted woman is an active abettor. 20 P. W. R. 1914 Cr.=123 P. L. R. 1614=15 Cr. L. J. 529 As *Khatiks* are low class *sudras* they do not follow strict Hindu law, consequently there was no prohibition among them of driving wife by a written deed. 31 P. W. R. 1914 Cr.=181 P. L. R. 1914. Enticing or taking away wife temporarily living alone, constitutes an offence under this section. 5 W. R. Cr. 50. But the case is quite different where the husband turns his wife out of doors. 15 P.R. 1883 Cr.; 5 P. W.R. 1915 Cr.=16 Cr. L.J. 216=27 Ind. Cas. 840=129 P.L.R. 1915 A woman cannot be convicted of abetting the offence described in s. 498 of the Penal Code. 11 P. R. 1883 Cr.; 26 M. 463; but see 17 P. R. 1868 *Contra.* A

conviction by a Magistrate under s. 498 Penal Code, while the husband made a specific complaint under s. 497, was *held* to be untenable. 18 P. R. 1873 Cr.; 23 P. R. 1895 Cr. Where a husband had driven his wife before making a complaint under s. 498, Penal Code, an order of acquittal of the offence under that section was *held* valid. 27 P. R. 1870 Cr. Where the woman went to the accused of her own accord a sentence of one year's imprisonment is too severe. 33 P. L. R. 1910=24 P. R. 1910 Cr.=8 Ind. Cas. 226. In a charge under s. 498 of the Penal Code, the proof that the woman and a man, other than the accused were living together, is sufficient to throw the burden of proof on the accused that they were not husband and wife. 8 B. L. R. Ap. 63=17 W. R. Cr. 5. In a case of abduction of a woman admittedly of bad character married to an immature boy, the accused is to be treated very leniently, even if all the ingredients of an offence under s. 498 are technically proved. 12 Cr. L. J. ; 500=12 Ind. Cas. 220. Where a man keeps a woman under his protection in a house provided by him, with the knowledge and intent specified under s. 498, he detains her within the meaning of the said section. 14 Cr. L. J. 595. The mere fact that the girl is living in the same house with the accused does not prove that she was enticed away by any or all of them. 149 Ind. Cas. 1106=35 Cr. L. J. 1032=A. I. R. 1934 Lah. 86. In cases under s. 498 consent is immaterial. But it is essential to see that there is evidence that the accused took or enticed away the woman, within the meaning of the section. The mere fact that the wife went away of her own accord from her husband's house, and was accompanied a part of the way by the accused, is not sufficient to show that the accused took or enticed the woman away within the meaning of the section. There must be some tangible evidence of taking or enticing. A. I. R. 1935 Cal. 345.

A complainant is incompetent to prosecute another man under s. 498, Penal Code, for enticing away a woman, unless he establishes that he is her lawful husband. 22 P. W. R. 1909 Cr.=12 P. L. R. 1910=4 Ind. Cas. 1042=11 Cr. L. J. 155. If an offence under this section be compromised before the police, it can not be prosecuted subsequently. 22 P. L. R. 1910 Cr.=6 Ind. Cas. 497=11 Cr. L. J. 366. In order to convict an accused under this section the case for the prosecution must be strictly proved. 100 P. L. R. 1916. Where on a charge under s. 366, Penal Code, the police took up the proceedings in which the husband of the woman appeared as a witness, and he asked the Magistrate to drop the proceedings thereunder but said that he intended to prosecute the accused under s, 498, Penal Code, and get him punished, *held* that there was a complaint in as much as he made an allegation before the Magistrate that the offence should be enquired into. 14 A. L. J. 233=276=32 Ind. Cas. 664=1738 A. Cr. L. J. 72 ; see also 64 Ind. Cas. 134. For the purposes of conviction under s, 498 Penal Code, there must be an intention that the woman should leave her husband's control without any definite intention that she should return to him or an intention that she should remain away indefinitely. 145 P. L. R. 1917. A conviction under s. 498, Penal Code, can not be said to be illegal on the ground that the only evidence before the Court was not subjected to cross-examination. 18 Cr. L. J. 1016=42 Ind. Cas. 760 In a case under this section, the trying Magistrate is competent to issue a warrant instead of issuing a summons for the attendance of the woman alleged to have been enticed away. 50 P. L. R 1918=44 Ind. Cas. 917. A complaint under s. 498, Penal Code, for detaining a married woman for the purpose of illicit intercourse can be enquired into only in the District where such detention occurs. 51 P. L. R. 1918=44 Ind. Cas. 966. By custom among *Rathis*, one of the lowest sub-divisions of *Rajputs* of the Kangra District, a marriage with a widow is valid. The accused who had abducted a woman, so married, with knowledge of the marriage, was guilty of an offence under s. 498. 10 P. R. Cr. 1919=51 Ind. Cas. 842. When a complaint has been made by the husband, the prosecution does not abate by the death of the husband. 4 Lah. 7=71 Ind. Cas. 77=24 Cr. L. J. 29.

It is clear that to constitute an offence under this section, it is not necessary that the woman should be physically restrained or that she be actually prevented from the exercise of her free will or action. 69 Ind. Cas. 458=23 Cr. L. J. 730=1923 Lah. 45 ; 55 Ind. Cas. 863=21 Cr. L. J. 383. Where the complaint was of the offence of kidnapping and theft of jewels, and there was no allegation that the purpose was to have illicit intercourse. *Held* that the conviction under s. 498 was illegal. 45 M. L. J. 543=74 Ind. Cas. 949=24 Cr. L. J. 837. Mere statement of the complainant is not sufficient to prove marriage. 42 A. 401=55 Ind. Cas. 736. A conviction under this section is not bad merely because the husband connived at the taking away or concealing of the wife. 54 Ind. Cas. 619=21 Cr. L. J. 139. Where the wife of the complainant is living with the accused of her own free will, the

accused cannot be convicted under the section. 18 A. L. J. 311=56 Ind. Cas 209= 21 Cr. L. J. 147. To sustain a conviction under s. 498 I. P. Code, the first essential to be proved is that the complainant and the enticed woman were legally married. 107 Ind. Cas. 98=29 Cr. L. J. 210=A. I. R. 1928 Lah. 165. In order to prove marriage, evidence of marriage ceremony must be given. 34 C. W. N. 524=A. I. R. 1930 Cal. 447. There may arise a presumption that by co-habitation for a period of 13 years marriage took place, but persons cannot be convicted on presumption of that kind. 30 P. L. R. 643=119 Ind. Cas. 332=30 Cr. L. J. 1051. Where the evidence on a charge of abduction showed no complaint was made for some days after the event, that no steps were taken to trace her and she herself behaved as if she acquiesced in the movement of her abductor, the case is one of elopement and not of abduction 26 Cr. L. J. 1500=90 Ind. Cas. 156. Where the evidence on a charge of abduction showed that no complaint was made for some days after the event, that no steps were taken to trace her and she herself, behaved as if she acquiesced in the movements of her abductors, the case is one of elopement and not of abduction. 26 P. L. R. 517. Mere negligence or inactivity does not prove connivance. There must be proof that the husband acquiesced in by wilfully abstaining from taking steps to prevent adultery. A. I. R 1926 All. 189=24 A. L. J. 155=27 Cr. L. J. 101=91 Ind. Cas. 533. Only the husband can compound an offence under s. 498. A. I. R. 1924 Lah. 330=24 Cr. L. J. 780=74 Ind. Cas. 444. In case of complaint under s. 498 by a person other than husband, Court's leave must be obtained. Absence of such leave is not cured by s. 537 Cr. Pro. Code. 145 Ind. Cas. 874=A. I. R. 1933 Cal. 880=1933 Cr. C. 1530=38 C. W. N. 113=34 Cr. L. J. 1092 ; see also A. I. R. 1933 Cal. 144=34 Cr. L. J. 290=142 Ind. Cas. 150 ; A. I. R. 1933 All. 626=1933 A. L. J. 701=145 Ind. Cas. 922 ; A. I. R. 1934 Lah. 122=1934 Cr. C. 239.

Procedure.—Not-Cognizable—Warrant—Bailable—Compoundable—Triable by Court of Presidency Magistrate or Magistrate of 1st or 2nd class.

CHAPTER XXI

OF DEFAMATION.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Defamation.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a*) A says, "Z is an honest man, he never stole B's watch ;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(*b*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch intending it to be believed that Z stole B's watch. This is defamation unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good, is a question of fact.

Imputation of truth which public good requires to be made or published.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Public conduct of public servants.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Illustration,

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceeding of a Court of Justice, or of the result of any such proceedings.

Publication of reports of proceedings of Courts.

Explanation.—A Justice of the Peace or other office holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the couduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Merits of cases decided in Court or conduct of witnesses and others concerned.

Illustrations.

(*a*) A says "I think Z's evidence on that trial so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But, if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance, and no further.

Merits of public performance.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a*) A person who publishes a book, submits that book to the judgment of the public.

(*b*) A person who makes speech in public, submits that speech to the judgment of the public

(*c*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d*) A says of a book published by Z, "Z's book is foolish, Z must be a weak man ; Z s book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further,

(*e*) But if A says, "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court ; a head of a department censuring in good faith those who are under his orders ; a parent censuring in good faith a child in the presence of other children ; a school-master whose authority is derived from a parent, censuring in good faith a a pupil in the presence of other pupils ; a master censuring a servant in good faith for remissness in service ; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Accusation preferred in good faith to authorized person.

Illustration.

If A in good faith accuses Z before a Magistrate : if A in good faith complaints of the conduct of Z, a servant, to Z's master ; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Imputation made in good faith by person for protection of his or other's interests.

Illustrations.

(*a*) A, a shop-keeper, says to B, who manages his business,—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person interested, or for the public good.

Caution intended for good of person to whom conveyed or for public good.

Principle.—The offence of defamation, as it is defined in this Code, consists in the injury offered to reputation, not in any breach of the peace or other

consequence that may result from it. The essence of the offence consists in its tendency to cause that description of pain, which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creature and those inconvenience to which a person who is the object of such unfavourable sentiments is exposed. No distinction is made between written and spoken defamation. The offence is committed whether the words are spoken, written, printed or engraved, or in whatever manner the words, signs, or visible representations conveying the imputations, are expressed.—*Morgan and Macpherson.*

Scope.—In criminal prosecution question whether statement is made on privileged occasion is to be decided with reference to s. 499. A. I. R. 1931 Rang. 83=32 Cr. L. J. 934=1931 Cr. C. 371=132 Ind. Cas. 553. Defamation in civil and criminal law is quite distinct. 128 Ind. Cas. 371=32 Cr. L. J. 132=8 Rang. 359=A. I. R. 1931 Rang. 81. Mere assenting to a third party's report of what one had said may be defamation. 85 Ind. Cas. 361=26 Cr. L. J. 521=A. I. R. 1925 Mad. 320=47 M. L. J. 746. Defamatory statements by a party to a civil proceeding is punishable. 16 S. L. R. 150=84 Ind. Cas. 58=26 Cr. L J. 234. But Courts should be careful when a complaint of defamation is filed with respect to proceedings in a Civil Court to see whether the provisions of s. 209, Cr. Pro. Code and of the Cr. P. Code generally have not been evaded. 86 Ind. Cas. 1005=26 Cr. L. J. 941. Statements in course of judicial proceedings as such have no absolute privilege. 84 Ind. Cas. 977=A. I. R. 1925 Rang. 15. Publishing an imputation intending to harm and knowing and having reason to believe, that such imputation would harm the complainant's reputation is enough. 27 Cr. L. J. 868; 22 Bom. L. R. 1224. The rules of the English common law apply to question of civil liability for defamation in India, but criminal liability is determined exclusively by the Penal Code. A defamatory statement whether on oath or otherwise, or contained in a plaint falls within s. 499 and is not absolutely privileged. 7 Pat. L. T. 587; 40 C. 433; 48 C. 388; 24 A. L. J. 329=92 Ind. Cas. 429=97 Cr. L. J. 253. Where a notice published in the newspaper contained an imputation that the complainant has been dishonest in the management of the affairs of a company and was trying to conceal that dishonesty by methods that were themselves dishonest, the imputation is defamatory. 97 Ind. Cas 431=27 Cr. L. J. 1119. A newspaper is not a person and therefore it is not a criminal offence under s. 499 to defame a newspaper. 99 Ind. Cas. 347=28 Cr. L. J. 139=A. I. R. 1927 Rang. 43; but see A. I. R. 1933 All. 434=34 Cr. L. J. 926=1933 Cr. C. 740. An imputation of insolvency against a person in the way of his trade is *per se* defamatory. 21 S. L. R. 130=98 Ind. Cas 124=27 Cr. L. J. 1276=A. I. R. 1927 Sind. 54. Calling a persoh a discharged bankrupt and gambler in an affidavit amounts to defamation. 96 Ind. Cas. 409=27 Cr. L. J. 247 =1927 Sind. 58. Publication is sufficiently proved when it is shown that the accused did the act which has the quality of communicating to third persons. 27 Cr. L. J. 1276=21 S. L. R. 130=98 Ind. Cas. 124. A plea, that, though there was publication of the statement, there was no publication to person mentioned in the charge, is a highly technical plea and the defect in the charge is curable under s. 537. 96 Ind. Cas. 496=27 Cr. L. J. 947. Prosecution must make out a case for conviction but the accused must prove that his case comes within the exceptions under s. 105 of the Evidence Act. A. I. R. 1928 Nag. 58. Imputation to a Hindu that he is an outcast is defamatory and is not covered by s. 95. A. I. R. 1928 A. 213. There is a distinction between "fair comment" based on well kown or admitted facts and the assertion of unsubstantiated facts for comment. Where comment is made on allegations of fact which do not exist, the very foundation of the plea disappears. A wilful misrepresentation of fact or any misstatement which an editor could have discovered to be a misstatement if he had made proper enquiries cannot support the plea of "fair comment" as an editor must make due inquiries as to its truth before disseminating the statement of those facts. 116 Ind. Cas. 99=23 S. L. R. 216. Comment based on misstatement of facts is not protected. A. I. R. 1927 All. 116=27 Cr. L. J. 1361=98 Ind. Cas. 481. Editor should make enquiry before publishing defamatory matter. 145 Ind. Cas. 126=A. I. R. 1933 All. 434=34 Cr. L. J. 926 Truth is not an absolute defence to a prosecution for defamation. 17 N. L. J. 66=A. I. R. 1934. Nag. 129.

Harm the reputation.—In order to establish the offence under this section, it is not necessary to prove that actual harm has been caused. It is sufficint to show that harm was intended to the complainant's reputation or that the accused person knew or had reason to believe that the imputations made by him would harm his reputation. 9 Ind. Cas. 775. If an imputation has no tendency to harm a person

in his reputation, it will not amount to defamation although its effect may be to cause that person to suffer in his interest. An imputation which is defamatory when directed against one person, is not necessarily defamatory when directed against another person.—*Morgan and Macpherson.*

The accused a barrister, and the complainant a pleader, were engaged in a criminal case. The latter made a remark conveying an imputation on the former upon which the former called the latter a liar. *Held*, that even if the expression made use of by the appellant amount to defamation in point of law, the case came under the provisions of s. 95. A. W. N. 1883, 46. The use of common abusive terms does not constitute an offence under the section. A. W. N. 1883, 36. Although the language of s. 499 I. P. Code is open to the most elastic application, yet Magistrates will act wisely in refusing to adopt it to cases in which no real harm has been done or where civil remedy might more appropriately be sought. A. W. N. 1883, 167. The accused referred to the complainant, who was a *Parsutia Kaisth*, as a "Kori Chamar" with the result that none of the priests attended the religious ceremony which had to be performed at the complainant's house. *Held*, that the accused were guilty of an offence under this section. 6 Ind. Cas. 876=11Cr. L. J. 413. The head man of a caste issued a notice to a member of that caste, intimating that a complaint had been received by the caste that his daughter had committed adultery with a certain person, and requiring him to appear before the caste with his daughter in order to clear her character. *Held*, that the notice would not furnish the basis of a charge of defamation, as it contained no imputation by the persons who signed it, against the daughter. Rat. Un. Cr. C. 387. Although a person who defames another may so compose himself that little injury results from his offence, yet, he is not excused from the penalties attached to the offence. 1 Weir 594. What the imputation was which a man intended to convey who did not directly express it, and whether he believed or had reason to believe that the imputation should produce a particular sentiment or opinion on the part of those to whom the communication was made are matters of fact, or inference from fact belonging where the judicial functions are divided, to the province of Jury. Rat. Un. Cr. C. 140. An imputation charging a woman of being pregnant by adultery is defamatory. Rat. Un. Cr. C. 474. An expression of opinion by the members of a caste that their caste is superior to another caste is not such an imputation as would warrant a conviction under s. 500 Penal Code. 1 Weir 575. When the question arises whether the words used were intended to form or had the effect of harming the reputation the Court must be put in possession not only of the words used but also of the content in which they were used in order to find the intention and effect of the words. 51 A. 313=26 A. L. J. 1334=30 Cr. L. J. 101= 113 Ind. Cas. 213=A. I. R. 1929 All 1. A mere abuse is not ordinarily a defamation but the fact that the words used were those of abuse does not of itself take the article out of the definition of defamation, if, taken as a whole, it was calculated to harm the reputation of the complainant. 112 Ind. Cas. 772=30 Cr. L. J. 4; 30 Cr. L. J. 379=A. I. R. 1929 Lah. 234. In the matter of a case under s. 500 when it is said to rest upon allegation made in petition to a Court in determining whether due care was taken by the accused allowances should be made for the intelligence of the accused, his capacity to reason, the circumstances under which he was placed, and the occasion which necessitated his making the imputation. A. I. R. 1929 Cal. 779. The essence of the offence of defamation is the publication of an imputation with the knowledge that it will harm the reputation of the person defamed. A. I. R. 1935. All. 743.

Words either spoken or intended to be read etc.—No distinction exists between written and spoken defamation. 2 W. R. Cr. 36; 3 W. R. Cr. 45; 8 M. 175. The making and publicity exhibiting of the effgy of a person, and beating it with shoes amounts to defamation. 2 N. W. P. 435.

Cases.—A complaint of defamation cannot be dismissed on the technical ground that the offence of defamation charged against the accused merged in an offence punishable under s. 182 for which previous sanction was required under s. 195 Cr. Pro. Code. 1 Weir. 585; 1 Weir 580. Where a defamatory poem was contributed to a newspaper and the accused the Editor, Printer, and Publisher of the newspaper, refused to give up the name of his correspondent, but contended that the poem was a satire on *ulitera pursists* and did not refer to any individual, *held*, that the jury must look at the whole poem and must take it as a whole, and that they must read the poem as reasonable men, and should see whether it was capable of the construction put by the prosecution. *Held* also that it was not necessary that the whole word should read it as libel but, it is sufficient

that those who know the accused would consider it to refer to the complainant by putting reasonable construction on the poem. I. C. W. N. 465. The Indian Penal Code makes no exception in favour of a second or third publication of a defamatory statement as compared with the first. Such an exception would obviously be made a means of defeating the principal provisions of the law of defamation. 12 B. 167. In reply to a book written by the complainant attacking *Vaisnavism* and its founders, the accused retorted by a similar publication and both books dealt with highly controversial religious matters. Very violent language was used in the latter about the complainant. *Held* it did not amount to defamation, as the personal character or respectability of the complainant was not in any way assailed. 47 M. L. J. 664=1924 Mad. 898=1924 M. W. N. 768. Where the articles in question described the girls in a particular college that they were habitually misbehaving: *Held* that the inevitable effect on the reader must be to make him believe that it was habitual with the girls of the college to behave in this way; that being so all the girls in the college individually must suffer in reputation and not a complaint by some of them was competent. A. I. R. 1935 All. 743.

Intention.—The essence of the offence is the intention or knowledge of the offender that the imputation may harm some person's reputation. Where no such intention or knowledge exists, the offence of defamation is not committed. The journeyman printer may be acquitted of defamation on the ground that in setting the types for printing defamatory matter and so aiding towards the circulation thereof, he had not the intention described in the definition, while the person who wrote the defamatory matter, for printing which the journeyman ignorantly set the types, may be convicted, because it may be clear that his purpose was to defame.—*Morgan and Macpherson*, 442. It is not necessary to constitute an offence under this section that there should be evidence to show that the complainant has been injuriously affected by such alleged defamation. The law requires merely that there should be an intent and the person, who makes or publishes any imputation, should do so intending to harm or having reason to believe that such imputation will harm the reputation of such person. 28 C. 63=5 C. W. N. 819; 1 Weir 575; 6 N. W. P. 66; 21 Ind. Cas. 478=14 Cr. L. J. 606; 83 Ind. Cas. 503; 22 Bom. L. R. 1224=59 Ind. Cas. 202=22 Cr. L. J. 58; 43 Ind. Cas. 403=19 Cr. L. J. 115.

Where defamatory statement is made on a privileged occasion the complainant must show malice in fact. 7 C. W. N. 246; 11 C. W. N. 390.

Makes or publishes any imputation concerning any person.—In a case of defamation it must be proved that an alleged libel was made or published. 27 M. 238. The defamatory matter must be published *i. e.* it must be communicated to some person other than the person to whom it is addressed. 1 Weir 579; 7 C. W. N. 74=30 C. 402. Where a person sends a notice in closed cover containing defamatory matter about the recipient of the notice, but which is not communicated by the writer to any other person it is not such a making or publication as could harm the prosecutor in the sense given to that word in Explanation 4. 7 A. 205 (F. B.)=A. W. N. 1884, 340; 18 B. 205. Handing over manuscript to the printer for being printed is publication. 1 Weir 579. The dictating of a defamatory letter to a third person would amount to publication. 1 Weir 579. In order to sustain a charge under s. 499, it is not material whether the accused originally intended to publish the defamatory matter or not, It is sufficient that he ultimately publishes it. 1 Weir 580. The sending of a newspaper, containing defamatory matter published in Calcutta by post, addressed to a person in Allahabad is a publication of the defamatory matter in the latter place. 3 A. 342. When a defamatory petition presented to a superior public officer is sent to a subordinate officer for inquiry there is a publication of the defamation in the place where the latter may receive the petition. 14 P. R. 1889 Cr. Filing in Court a petition containing imputations against a person calculated to injure his reputation, with intention that other persons should read it amounts to making or publishing the imputation within s. 499 Penal Code. 14 W. R. Cr. 27. Where a person to whom a claim is presented by a legal practitioner on behalf of his client, in replying exceeds the privilege by sending to the legal practitioner a letter containing defamatory statements concerning the client, the publication is complete when the letter is received and read by the legal practitioner. 6 P. W. R 1910 Cr.=5 Ind. Cas. 892. Defaming husband in wife's presence and *vice-versa* is sufficient publication within the meaning of this section. But the uttering of a libel by a husband to his wife is no publication. It is settled law that the

communication of defamatory matter concerning a particular person to that person only is not publication within the purview of section 499, Penal Code. *Ibid.* Making allegations in a memorial to the Lieutenant Governor is pulication. 13 A. L. J. 681 =16 Cr. L. J. 482=29 Ind. Cas. 322. To be guilty of the offence of defamation it is not necessary that the accused should himself have actually altered the words complained of. Where another person uses defamatory words purporting to report what the accused himself had told him and the accused, who is present at the time, by his conduct and by a few words which he speaks, intends to give and does give the impression that he adopts the words of that other as his own, the accused is guilty of the offence of defamation. 20 L. W. 921=47 M. L. J. 746. To constitute the offence of defamation there must be publication to a stranger of the libel complained of. To maintain a prosecution in a particular Court there must be publication within the jurisdiction of the Court. The originals of the libel alleged should be adduced in evidence. 45 M. L. J. 754=33 M. L. T. 168 (H. C.)=1923 M. W. N. 913. For publication it is sufficient if the accused intentionally does an act which has the quality of communicating the alleged libel to a third person or persons generally. 55 A. 253=145 Ind. Cas. 392=34 Cr. L. J. 952=1933 A. L. J. 266=A. I. R. 1933 All. 210; see also A. I. R. 1927 Sind. 54=21 S. L. R. 130. Sending letter containing defamatory matter about President to President of Committee and the letter was placed by President in course of official routine on record and read by other members is sufficient publication within section. A. I. R. 1933 All. 210=34 Cr. L. J. 952=55A. 253=1933 Cr. C. 366=1933 A. L. J. 266. Where A and B conspires to defame Y by drawing a document containing the imputations and the document is left with B, there is no publication. A. I. R 1931 Mad. 487=32 Cr. L. J. 767=1931 Cr. C. 551= 1931 M. W. N. 366=131 Ind. Cas. 654.

Explanation I.—It is a defamatory libel and crime, though not actionable wrong [*Broom* v. *Richie*, (1905) 6 F. 942; 5 B. 580] to write and publish words injurious to the reputation of any deceased person, provided it is done with a malevolent purpose to vilify the memory of the deceased and with a view to injure the posterity and therefore with a design to break the peace. *Per Lord Kenyon* in *Rex* v. *Topham*, 4 T. R. 126; see also *R.* v. *Labouchere*, (1884) 12 Q. B. D. at 322. In the last named case, *Lord Coleridge observed*: "*The locus classieus* on this subject is *Rex* v. *Topham*, (1791) 4 T. R. 126"; see also *R.* v. *Ensor*, 3 T. L. R. 366, where *Stephen J.* said: "There must be a vilifying of the deceased with a view to injure his posterity." So "publication tending to disturb the minds of living individuals and to bring them into contempt and disgrace by reflecting upon persons who are dead, is an offence against the law." *Per Abbot C. J.* in *Rex* v. *Hunt*, (1824) 2 St. Tr. N. S. at p. 98. Here the essence of the offence consists in its tendency to cause that description of pain which is felt by a person who knows herself to be the object of his fellow creatures and in those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. 41 A. 311=17 A. L. J. 214=49 Ind. Cas. 855=20 Cr. L. J. 231.

Explanation 2.—This explanation is intended to include a company or an association or collection of persons as such with the word "persons" as used in the definition so that the latter should not be limited to individuals. In a case in which the explanation is properly called into use the indentity of the company or association or collection of persons must be maintained throughout with reference to the imputation said to have been made concerning them as such with intention of harming their reputation so that thereby they are defamed. 29 C. W. N. 904=42 C. L. J. 178=26 Cr. L. J. 1539; see also 55 C. 1280; 1 Pat. 414; 55 C. 1280.

According to English law it is also a defamatory libel and a crime to write and publish words injurious to the reputation of any body of individuals without refering to any individual in particular. *Rex* v. *Osborn*, W. Kel. 230; *Rex* v. *Williams*, 2 B & Ald. 595; *Rex* v. *Gathercole*, 2 Lewein. C. C. 237; see also *South Hilton Coal Co*, v *N. E. News Association* (1894) 1 Q. B. 133.

Explanation (3).—This explanatian has followed the English law on the subject where it has been held that ironical phrase may amount to a libel. *Boydell* v. *Jones*, 4 M. & W 446.

Explanation (4).—It will be the duty of the Judge in the trial of cases of defamation not to decide the question whether an imputation is or is not defamatory by reference to any particular standarad, however correct, of honour, or morality, or of taste; but to extend an impartial protection to opinions

which he regards as erroneous, and to feelings with which he has no sympathy. India is inhabited by races which differ widely from one another in manners, tastes and religious opinions. Practices which are regarded as innocent by one large portion of society, excite the horror of another large portion. A Hindu would be driven to despair if he knew that he was believed by persons of his own race to have done something which a Christian or a Mussalman would consider as indifferent or as laudable Where such diversities of opinion exist, that part of the law which is intended to prevent pain arising from opinion ought to be sufficiently flexible to those diversities—*Morgan and Macpherson*, 440. An imputation that a Mahomedan had killed a cow in his compound cannot be said to harm his reputation, or lower his moral or intellectual character, or lower his character in respect of his caste or calling or lower his credit within the meaning of this section, 5 C. P. L. R. 53. It must lower him in other people's estimation. Anything which lowers him in his own estimation is not defamation. 7 A. 205 (F. B.). It is defamatory to say without cause that any one is ex-communicated. The fact that all Muhammadans are generally speaking, of one caste does not make it any the less defamatory, and the word 'caste' is not entirely confined to Hindus. It refers to any class who keep themselves socially distinct or inherit exclusive privileges. 25 L. W. 357=99 Ind. Cas. 943=28 Cr. L. J. 207=A. I. R. 1927 Mad. 397.

This explanation does not apply where the words used and forming the basis of a charge are *per se* defamatory. 9 A. 420.

Exceptions.—The exceptions to s. 499. I. P. Code would seem to have been drafted with reference to the question of qualified privileges as recognised by the law of England, omitting all reference to the question of privilege in connection with statements made in judicial proceedings or to other classes of absolute privilege recognised by the law of England. The provisions of the I. P. Code and also those of the Evidence Act of 1872 are mainly based upon the English Law. Whenever the legislature in this country intended to depart from the English Law, they made their intention clear by express enactment. In considering the intention of the legislature, the law of England at the time of passing of the Indian enactment can be taken into consideration. The canons of construction laid down by *Lord Herschell* are applicable only where it is intended to codify existing law but not where new law is created. The English common law right of absolute privilege in respect of judicial proceedings is inapplicable to India. 14 Ind. Cas. 659=13 Cr. L. J. 275=23 M. L. J. 39=36 M. 216. Even where the accused deny having made the statements alleged to be defamatory, they are entitled to call evidence to prove that the allegations if made by him would bring them within one of the exceptions of the section. A. I. R. 1928 Rang. 167. Although it is for the prosecution to make out a case for conviction, the accused person must prove the existence of circumstances bringing the case within the exceptions to s. 499. 105 Ind. Cas. 120=28 Cr. L. J. 996=A. I. R. 1928 Nag. 58.

First exception—To entitle a person to the benefit of this exception, the statement made must not only be proved to be true, but it must be shown that their publication was for the public good. 9 Ind. Cas. 775; see also A. I. R. 1934 All. 904=152 Ind. Cas. 1057=1934 Cr. C. 1129; A. I. R. 1933 Sind. 403=34 Cr. L. J. 667=1933 Cr. C. 1538=144 Ind. Cas. 63. In the absence of good faith question of public good need not be considered. 28. C. W. N. 579=26 Cr. L. J. 71=A. I. R. 1924 Cal. 611=83 Ind. Cas. 63. It is good defence in criminal cases that the words complained of are in fact true, and that it was for the public benefit that the matters charged should be published, even though the actual motive of publication is malevolence. The defence of qualified privileges extends to communications made by a person who has a legal, moral or social duty to some particular person or persons, who have a corresponding interest or privilege to receive it, and such communications might be not only allegations of fact that could be proved to be true but also expressions of opinion and personal inferences. In order to be entitled to the benefit of the exceptions, the accused must show that he in good faith made the imputation in self-defence or for public good. He must have acted with due care and caution, and the actual words used, the manner in which the words are published, the persons to whom they are communicated, must all be limited to the reasonable requirements of the occasion. 8 Ind. Cas. 209. In order to come under this exception the imputation must be true and must be made for public good.—*Morgan and Macpherson*, 443. In all such cases the person who publishes such imputation renders a greater service to the public. But where the spreading of the true reports only hurts the feelings of an individual,

without producing any compensating advantage to the public, certainly it is not protected under this exception. *Ibid*, 443. Where a matter is of public interest the Court ought not to weigh any comment on it in a fine scale. 13 Bom. L. R. 1187 ; see also 1 L. B. R. 139 ; 4 C. 124 ; 3 Bom. L. R. 188. The first exception exempts any imputation made or published for the public good and concludes as follows :—Whether or not it is for the public good is a question of fact. Although the imputations are true and made for public good, yet, on considering the manner of the publication, *i. e.*, in a newspaper, the accused may be held not to have published it for the public good. 19. B. 763. In the absence of good faith, the publication of a circular that a person has been put out of caste does not come within this exception. 6 A. L. J. 472=9 Cr. L. J. 535=2 Ind. Cas. 226. A defamatory imputation even if it be true is not by itself good ground for making it. 5 C. P. L. R. Cr. 55. Any exception on the ground of good faith or public good fails if the publication was made in a newspaper. Rat. Un. Cr. C. 769 ; see also 15 M. 214=2 M. L. J. 127 ; 3 Bom. L. R. 188. In an action for defamation, the proper question for the purpose of ascertaining the good faith of the accused is not, whether the allegations made by him are true, but whether he had after due care and attention, good reason for believing them to be true. 4 C. 124. A statement in order to come under the first exception to s. 499 of the Penal Code, must be true in fact. 40 A. 271=16 A. L. J. 201=43 Ind. Cas 823.

Second exception.—The public conduct of public functionaries is allowed to be discussed, provided that such discussion is conducted in good faith. It will be observed that in this and generally in the following exceptions, it is not required that an imputation should be true. It is requisite only that it should be made in good faith. "To require in these cases that the imputation should be true, would be to render these exceptions mere nullities. Whether a public functionary is or is not fit for his situation—whether a person who has bestirred himself to get up a petition in favour of a public measure, ought to be considered as an enlightened and public-spirited citizen or a foolish meddler—whether a person who has been tried for an offence was or was not guilty—which of two witnesses who contradicted each other on a trial ought to be believed—whether a portrait is live—whether a song has been well sung—whether a book is well written—these are questions about which honest and discerning men may hold opinion diametrically opposite ; and to require a man to prove to the satisfaction of a court of law that the opinion which he has expressed on such a question is a right opinion, is to prohibit all discussion on such questions". *Morgan and Macpherson*, 444. "Good faith" does not require logical infallibility but due care and attention. 51 C. L. J. 472=34 C. W. N. 1070. Publishing defamatory statements and also denying it is not using due case. A. I. R. 1933 All. 434= 1933 Cr. C. 740=145 Ind. Cas. 126.

Third exception.—Applies to public men who are not public functionaries. Persons who hold no office may yet take a very active part in urging or opposing the adoption of measures in which the community is deeply interested. Every person is allowed to comment in good faith on the proceedings of these volunteer servants of the public with the same freedom with which he is allowed to comment on the proceedings of the official servants of the public.—*Morgan and Macpherson*, 444. Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make the commentary a cloak for malice and slander. 1 B. H. C. App. 85. The word "malice" in the legal sense of the term, is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind, which is wrong or faulty (whether exercised in action by excess or defect), such as would be unjustifiable in the circumstances, and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment, which is the subject of the compalaint. 31 B. 293. It is impossible to justify allegation of defamation on the ground of fair comment, the moment it is shown that the allegation is based upon a mis-statement of facts. 98 Ind. Cas. 481=27 Cr. L. J. 1361=A. I. R. 1927 All. 116. Publication of a verbatim account of an incident that took place in a municipal meeting by a Municipal councillor is privileged under this section. 8 S. L. R. 143=16 Cr. L. J. 141=27 Ind. Cas. 205. Law does not permit a lower standard of good faith in defamatory statements in the discussion of public statements. Any criticism must be justly and reasonably deducible from the public conduct in question. 76 Ind. Cas. 230=25 Cr. L. J. 134= 17 S. L. R. 245. A printer is liable for defamatory matter printed by him. A. I. R. 1933 All. 434=34 Cr. L. J. 926=145 Ind. Cas. 126.

Fourth Exception.—"The privilege is given to report of proceedings in the Court as it is for the public benefit that they should be informed of what took place substantially as if they were present." Per *Sir Gorell Barnes P.* in *Furniss* v. *Cambridge Daily News, Ltd* (1907) 23 T.L.R. at p. 706. So "a full and faithful report may be considered as enlarging the Court and allowing the great body of the public to be present at the trial." *Per Lord Campbell C. J.* in *Andrews* v. *Chapman*, 3 C. & K 289. But the report must be confined strictly to what actually took place in Court. *Furniss* v. *Cambridge Daily News Ltd.*, 23 T. L. R. 705 (C. A.). A report need not be a verbatim production of what took place in Court but it must be substantially a fair account of what took place in Court. *Andrews* v. *Chapman*, 3 C. & K. 289. A fair abstract can be published. *Millissilah* v. *Lloyds*, 46 L. J. C. P. 404. If any comments are made, they should not be made a part of the report. The report should be confined to what took place in Court and the two things, report and comment, should be kept separate. *Andrews* v. *Chapman*, 3 C. & K. 288.

Explanation.—This privilege is not confined to the proceedings of superior Court. *Usill* v. *Hules*. 3 C. P. D. 310 ; *Kimeer* v. *Press Association*, 1 Q. B. 65.

Cases.—26 M. 464.

Fifth exception.—All persons are allowed freely to discuss in good faith the proceedings of courts of law, and the characters of parties, agents and witnesses, as connected with those proceedings. It is almost universally acknowledged that the courts of law ought to be thrown open to the public. But the advantage of throwing them open to the public will be small indeed, if the few who are able to press their way into a court are forbidden to report what has passed there to the vast numbers who were absent, or if those who are allowed to know what has passed are not allowed to comment on what has passed.—*Morgan and Macpherson*, 445.

Sixth Exception.—The object of this exception is that the public should be aided by comment, in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited, only on such evidence as is supplied by the public performance. It follows that an imputation on an author made by a critic, without reference express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him, apart from what appears in his work, cannot be justified by the critic, on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect, which his comment is calculated to produce, and not by what he says was his intention. It is not enough that he should intend to form his opinion, on the work before him ; he is also bound, in the words of the exception, to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of any thing but the performance submitted to its judgment. 31 B. 293. The word 'malice" in the legal use of the term is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind, which is wrong or faulty (whether evinced in action by excess or defect) such as would be unjustifiable in the circumstances, and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment, which is the subject of the complaint. For, whether fair comment is to be regarded as following under a branch of the law of privilege or not, it cannot excuse an injury, arising not from the mere act of criticism, but from a state of mind in the critic, which is in itself unjustifiable. And the excuse may be so forfeited, either by reason of an evil intent in him or by reason of mere recklessness in making an unwarrantable assertion. For, then, the comment would not be fair comment at all. The right of fair comment involves two essentials first that the imputation should be comment on the work criticised, and second, that it should be fair, that is to say, if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom. Good faith requires not logical infallibility, but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person, whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and

untrained to habits of precise reasoning. At the same time, it must be borne in mind that good faith in the formation or expression of an opinion, can offer no protection to an imputation, which does not purport to be based on that, which is the legitimate subject of public comment. *Ibid.*

Seventh Exception.—"By this exception we allowed a person under whose authority others have been placed, either by their own consent or by the law, to censure, in good faith, those who are so placed under his authority, as far as regards matter to which that authority relates." *Note R.* Caste associations are autonomous: the powers vested in their constituted heads being, subject to any special custom, those necessary for the protection of the interest committed to their charge. The Court's only duty is to see that these powers are exercised in accordance with the principles of natural justice; that is, in the majority of cases, after the person to be affected by their exercise has been heard and his defence has received fair consideration. 45 M. L. J. 116=72 Ind. Cas. 165=24 Cr. L. J. 325=1923 Mad. 587.

Eighth exception.—Two ingredients are essential to the establishing of the protection under exception 8; (1) that the accusation must be made to a person having authority over the party accused; and (2) that the accusation must be preferred in good faith, that is to say, with such reasonable care and attention on the part of the person making it, in first satisfying himself of the truth and justice of the charge, as an ordinary man should be expected to exercise. 6 A. 220=A. W. N. 1884, 53; see also 8 B. H. C. R. Cr. 168. A complaint made *bona fide* to proper public officer is protected. A. I. R. 1924 All. 445=22 A. I. R. 65=70 Ind. Cas. 640. A defamatory statement contained in a complaint filed before a Magistrate is not absolutely privileged. 46 M. 728=27 Cr. L. J. 1026. Report to police that a lost article was in the accused's house falls under this exception. 95 Ind. Cas. 480; see also 27 P. L. R. 171. Doctrine of absolute privilege does not apply in moffussil in India. A. I. R. 1928, Nag. 58. Petition to President of Union Board that person is disqualified for election on account of leprosy does not amount to defamation. A. I. R. 131 Mad. 487. A defamatory statement made by a person opposing the registration of his will in his petition to the registrar, objecting to the registration, is not absolutely privileged. 13 Cr. L. J. 508=15 Ind. Cas. 652. A statement made by a villager casting imputation on the character of a co-villager in a complaint to the higher authorities is privileged only if the imputation is substantially true and made in good faith. 15 Cr. L. J. 281=23 Ind. Cas. 489. Petition to President of Union Board that certain person is disqualified for election on account of leprosy does not amount to defamation. 1931 Cr. C. 551=32 Cr. L. J. 767=A. I. R. 1931 Mad. 487. A petitioner should not be convicted for making defamatory statements in application for transfer. 17 C. W. N. 449=18 Ind. Cas. 349=40 C. 441, Note. In order to deprive a person of the privilege given under this section, express malice on the part of the accused must be proved. 11 C.W.N. 390=5 Cr.L.J. 160; 7 A. 906=A. W.N. 1885. 272. Where a defamatory statement is made on a privileged occasion, the complainant must show malice in fact. 7 C. W. N. 246. Otherwise accusation preferred in good faith to authorised persons are privileged. 1 Weir 608. But in such a case the burden of proving good faith in respect of such accusation lies on the accused. 1 Weir 608. Defamatory statement to a Municipal council is not privileged. 1 Weir 612. The accused, the defendant in a civil suit, in his written petition to the Deputy Commissioner, charged the Munsif trying the case with conspiracy with the plaintiff to get up a false case, but was not able to prove the charge; *held* that he was rightly convicted of defamation. 21 P. R. 1887 Cr. Bringing to the notice of the Deputy Commissioner the fact that the complaintant, a Medical Officer in charge of hospital, was leading an immoral life and to ask for his removal, is no defamation and comes within this exception. 7 C. P. L. R. Cr. 20. To make a statement to a superior officer that a Government servant had borrowed for his immediate superior from persons connected with the department would amount to defamation. 1 Weir 585. A defamatory statement contained in a complaint filed before a Magistrate is not absolutely privileged for the exception applicable expressly lays down that the privilege conferred by it on persons who prefer accusations against others extends only to those who make them in good faith. The burden of proving the same is on the party pleading the exception. 6 Mys. L. J. 496.

Ninth exception.—Exceptions (1) and (9) codify those portions of the law of libel and slander treated in English text book or books under the heads of justifications and qualified privilege. In order to be entitled to the benefit of the exceptions

the accused must show that he in good faith made the imputation in self-defence or for public good. He must have acted with due care and caution, and the actual words used, the manner in which the words are published, the persons to whom they are communicated, must all be limited to the reasonable requirements of the occasion. 8 Ind. Cas. 209 ; 15 B. 351. That the English rule of absolute privilege does not apply *proprio vegore* in India is apparent from the proviso to s. 132 of the Evidence Act, and the case must be decided with reference to this section. 13 Ind. Cas. 217. See also 8 Ind. Cas. 220=11 Cr. L. J. 594 ; 317 P. R. 1913 ; A. I. R. 1928 Nag. 58=28 Cr. L. J. 996=105 Ind. Cas. 820 ; A. I. R. 1927 Cal. 823=55 C. 85=28 Cr. L. J. 877=46 C. L. J. 227=104 Ind. Cas. 717 ; A. I. R. 1935 Sind. 81. But see 14 Ind. Cas. 659=36 M. 216 ; 4 Bur. L. J. 147 ; 97 Ind. Cas. 354. Exception 9 to section 499 only protects certain imputations made in good faith. 128 Ind. Cas. 371=32 Cr. L. J. 132=8 Rang. 359=A. I. R. 1931 Rang. 81. As regards this exception, the Law Commissioners said : "we do not require that an imputation should be true ; we require only that it should be made in good faith. For to require in these cases that the imputation should be true, would be to render these exceptions mere nullities. It is plainly desirable that a merchant should disclose to his partners his unfavourable opinion of the honesty of a person with whom the firm has dealings. It is desirable that a father should caution his son against marrying a woman of bad character. But if the merchant is permitted to say to his partners, if the father is permitted to say to his son, only what can be legally proved before a Court, it is evident that the permission is worth nothing. Whether an imputation be or be not made in good faith is a question for the Courts of law. The burden of the proof will lie sometimes on the person who has made the imputation, and sometimes on the person on whom the imputation has been thrown." *Note* R. Reversioner making imputations against widow if directly interested is protected if the imputations are not disproportionate to the facts. 26 Cr. L. J. 428=85 Ind. Cas. 44=A. I. R. 1925 Mad. 246. It is doubtful whether a complaint for defamation against a lawyer for matters uttered in Court in the course of his professional duties connot be entertained. 50. M. 667=25 L. W. 295. Person claiming protection under this exception must prove good faith for protecting interest. 1929 All. 1. Words altered to protect his own interest and as protest against conduct of tahsilder is protected under exception 9. 35 Cr. L. J. 703=11 O. W. N. 382=1934 Cr. C. 511=A. I. R. 1934 Oudh. 169.

A pleader is entitled to the presumption that the question he asks in cross-examination are asked in good faith for the protection of the interest of his client. The presumtion, therefore, is that a question asked in cross-examination making an imputation, affords no ground for criminal prosecution. To rebut this presumption, there must be convincing evidence that the pleader was actuated by an improper motive personal to himself and not by a desire to protect or further the interest of his client in the cause. 41 C. 514=18 C. W. N. 424 ; 1 Weir 587 ; 1 Ind. Cas. 799=19 M. L. J. 217 ; A. I. R. 1926 Pat. 409=6 Pat. 224=7 P. L. T. 608=27 Cr. L. J. 1090 ; A. I. R. 1927 Mad. 379=50 M. 667=52 M. L. J. 269=100 Ind. Cas. 537 ; A. I. R. 1932 Bom. 490=33 Cr. L. J. 740=34 Bom. L. R. 910 ; A. I. R. 1933 Cal. 185=34 Cr. L. J. 865 ; A. I. R. 1931 Rang. 83. A. I. R. 1927 Cal. 303=54 C. 137=28 Cr. L. J. 472 ; A. I. R. 1928 Nag. 58=28 Cr. L. J. 996=105 Ind. Cas. 820. A pleader must use common sense and caution in asking a defamatory question. The questions asked in absolute bad faith are not protected. A. I. R. 1927 Cal. 303=54 C. 137=28 Cr. L J. 472=101 Ind. Cas. 660. But when not acting as a pleader he is not entitled to any privilege. 9 Bom. L. R. 1287 ; 29 Cr. L. J. 889 ; 50 M. 667 ; 19 B. 340 ; 36 C. 375 ; 15 M. 414 ; 13 C. W. N. 1087 ; 55 C. 58. But no privilege attaches to the profession of the press as distinguished from the members of the public. 18 C. W. N. 785 ; 25 M. L. J. 621=12 A. L. J. 1042=16 Bom. L. R. 544 ; 7 Bur. L T. 167=41 C. 1023 P. C. Witnesses are free from any other consequences except that of indictment for perjury. 11 M. 477 ; L. B. R. (1893-1900) 206. Under the Indian Law a witness has not absolute privilege as regards the statements made by him. 52 M. 432. A. I. R. 1934 Sind. 114=1934 Cr. C. 955=28 S. L. R. 251. Relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not absolutely protected from being made the subject of a prosecution for defamation by the proviso to section 132 of the Evidence Act in cases where the witnesses have not objected to answering the questions put to them. 28 L. R. 1=50 B. 162 (F. B.)=27 Cr L. J 423 ; 14 P. R. 1893 ; 7 P. W. R. 1910 Cr. ; 1 Weir 612 ; 31 P. L. R. 1912 ; 7 P. W. R. 1911 ; 1 Weir 589 ; 13 C. W. N. 1087 ; 27 C. 262 ; 21 C. 392 ; 32 C. 756 ; 2 W. R. Cr. 36 ; 3 W. R. Cr. 45 ;

40 A. 271 ; 29 A. 685 (F. B.) ; 24 A.L.J. 329 : 22 Cr. L.J. 159 ; see also 7 P.W.R 1911 Cr.=10 Ind. Cas. 682 ; 13. Ind. Cas. 494. But no complaint against a witness should be permitted until the Court before whom the witness gave evidence in answer to questions put to him which are relevant to the enquiry has expressed its opinion on such questions. 28 S. L. R. 251=152 Ind. Cas. 346=1934 Cr. C. 955=A. I. R. 1934 Sind. 114. The rule is the same as regards statements of the accused under s. 342 of the Criminal Procedure Code. 28. Bom. L.R. 1 ; 9 Cr. L.J. 276=1 Ind. Cas. 43. A printer to escape liability on the ground of absence must prove that he was absent in good faith and show who was the printer in his absence. A. I. R. 1928 All. 400. The statement of a person charged with an offence in answer to a question by the Court trying him, is an absolutely priviledged one, so as to make him not liable to be punished for an offence under s. 499 in respect of the statement. 14 Ind. Cas. 659=36 M. 216. A plaintiff to a suit is not privileged under exception 9 unless the allegations made in the plaint were made in good faith. 8 Ind. Cas. 220=11 Cr. L. J. 594. A statement made by persons in a pleading is not privileged. 5. C. W. N. 293 ; 3 L B. R 265 ; 8 Ind. Cas. 220 ; 23 C. 867 ; 2 W. R Cr. 36 ; 14 W. R. Cr. 27 ; 3 C. L. R. 122 ; 49 M. 728 (F. B.) ; 37 M. 216 ; 37 M. 110 ; 7 P. L. T. 587 ; 21 P. R. 1887 ; 13 Bur. L.R. 95 ; A.I.R. 1926 Pat. 425=7 P.L.T. 608=27 Cr. L.J. 1090=97 Ind. Cas 354 ; 65 Ind, Cas. 304 ; 18 Cr. L. J. 1018=11 Bur L. T. 104=42 Ind. Cas. 763.

A defamatory statement made in an affidavit is not privileged, if it was wholly irrelevant to the enquiry to which the affidavit related. 8 C. W. N. 292. The English doctrine of absolute privilege is inapplicable but the party can rely on exception to this section. 128 Ind. Cas. 371=32 Cr. L. J. 132=1931 Rang. 81. A defamatory statement made in answer to the question by a police officer, in the course of an investigation, is a privileged communication, because such a person is bound by s. 161 Cr. Pro. Code to answer truly all questions put to him, except such as tend to criminate himself, and is therefore entitled to the protection which the law gives to the witnesses. 16 M. 235=1 Weir 587 ; see also 47 B. 15=24 Bom. L. R. 400 ; 20 Bom. L. R. 601, It is opposed to public policy to prosecute a party to a civil suit, who is under an obligation to speak the truth under ss. 5 and 13 of the Indian Oaths Act, in answer to questions put to him by Court, for defamation in respect of such answers, even though such answers are not true and be not made in good faith. 30 M. 222=6 Cr. L. J. 130 ; see also 11 M. 477. But in later cases it has been beld that such statements enjoin qualified privilege. 52 M. 432. Plaintiff to a suit is not privileged unless the allegations made in the plaint were made in good faith. 8 Ind. Cas. 220=11 Cr. L. J. 594 ; 34 P. R. 1889 Cr. 1 L. B. R. 84 ; 65 Ind. Cas. 204 ; but see 40 A. 341 (F. B.) ; 20 A. L. J. 597.

No defamatory statement by a witness is protected unless it is made in good faith within the meaning of the exceptions to s. 499 I. P. Code. The true test of immunity in the case of witnesses. as of other persons, is whether an exception to that section is established in its entirety. 14 P. R. 1893 Cr. A statement made by a witness under examination, wholly irrelevant to the matter of enquiry, uncalled for by any question put to him, and introduced by the witness voluntarily and maliciously for his own purpose, and in order to injure the reputation of another, is not privileged. 32 C. 756=9 C. W. N. 911. A defamatory statement made by one person regarding another in a complaint presented by the former against the latter are absolutely privileged. 11 M. T. 431=14 Ind. Cas. 757=13 Cr. L. J. 293=37 M. 110. A pleader or Mookhtar is not lible to a charge of defamation, if relying on the statements of his client, he introduced into a pleading in good faith, a defamatory statement. 2 N. W. P. 473. Where a letter, written, by a creditor of a firm and circulated amongst other persons who dealt with the same firm, contained a statement that one of the members of the firm had filed a petition for insolvency, with the object of collecting the outstandings and defeating the creditors of the firm, *held* that the statement came under exception 9, illustration (a) of s. 499, the evidence having shown that the latter was written with the intention of protecting the writer's own interest and in a manner which was honest and *bona-fide*. 9 C. W. N. 195=2 Cr. L. J. 47. Where a defamatory statement is made to his solicitor, it may be that the same amount of care and attention should not be expected as when the statement is made to a stranger, and in deciding the question of the client's honest belief, the Court should consider whether he made the statement to protect his own interest. 5 Bom. L. R. 122. To give out that a woman had miscarriage without any knowledge whether she was married or not would amount to defamation because the person who makes the statement would have reasonable belief that such imputation would harm the reputation of the woman in case she was not married and if such statement is made in a witness box and especially so in examination-in-chief when the character of

the woman is not a fact in issue, the witness is not protected by s. 132, Evidence Act, unless the Judge himself asked the question. A. I. R. 1930 All. 493.

Where an accused who was charged with having beaten the complainant stated before the *panchayat* that he had kept the complainant for 10 years the statement is one made in good faith in order to explain his relations with the woman to account for the beating and is privileged. 96 Ind Cas. 394=27 Cr. L. J. 938.

Exception 9 can only afford protection. when the defamatory statement has been made in good faith for the protection of the person making it or of any other person or for public good. 24 Bom. L. R. 400=69. Ind. Cas. 94. In a contest relating to an office, the allegation that the complainant is a *'pichlay* and *lawaris'* was made in order to disqualify him. *Held*, it is covered by exception 9. 67 Ind. Cas. 589=23 Cr. L. J. 429. Where a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise his liability must be determined by a reference to s. 499 I. P. Code and he is entitled only to the benefit of the privilege mentioned in the section. 48 C. 388=24 C. W. N. 982=22 Cr. L. J. 31; see also 22 Cr. L. J. 159; 49 Ind. Cas. 109=20 Cr. L. J. 125; 17 Cr. L. J. 381=35 Cas. 813. A statement made by a party to suit in good faith and for the prosecution of his interest, and which is relevant to the matter in issue, falls under exception 9 of s. 499 of the Penal Code and is privileged. In order to take such a statement out of the exception express malice must be proved. 45 Ind. Cas. 833=19 Cr. L. J. 641; see also 20 Bom. L. R. 601; 9 Bur. L. T. 136=17 Cr. L. J. 213=34 Ind. Cas. 325. Where an advocate was charged with defamation in respect of statement made by him as party in departmental proceeding, the burden is on him of proving that his case falls under one of the exceptions to s. 499. A. I. R. 1931 Rang. 83.

Communication by members of caste.—"Caste" refers to any class keeping themselves socially distinct or inheriting exclusive privilege A. I. R. 1927 Mad. 397 =28 Cr. L. J. 207=99 Ind. Cas. 943. A privileged communication means a communication which is made by a member of a caste to the other members, inviting an enquiry into the conduct of persons against whom the allegations are directed. 14 Bom. L. R. 585=13 Cr. L. J. 687=46 Ind. Cas. 335. Defamatory statement made by a member of a caste against another member of the same caste for protection of his own interest is privileged under this exception. 1 Weir 609; see also 7 M. 36=1 Weir 610; 11 Bom. L. R. 638=3 Ind. Cas. 744; 22 C. 46; 6 M. 381=1 Weir 595; 6 M.H.C. App. 46; 47 M.L.J. 8; A.I.R. 1924 All. 299=46 A. 64=21 A. L.J. 765=25 Cr. L. J. 327=77 Ind. Cas. 183; 22 A.L.J. 79=77 Ind. Cas. 824; 27 Cr. L. J. 296=24 A. L. J. 171=92 Ind. Cas. 584; 33 Cr. L. J. 472. But in the absence of good faith the statement is not privileged. 3 A. 664. Where the accused made a statement at a caste that a child was born to a woman of adulterous intercourse, it amounts to defamation unless he proves it was true or that he made it in good faith. 76 Ind. Cas. 393=25 Cr. L. J. 168. Imputation that a Hindu is an outcaste is defamatory and is not covered by s. 95. A. I. R. 1928 All. 213.=26 A. L. J. 361=29 Cr. L. J. 451=108 Ind. Cas. 690; see also A. I. R. 1932 Nag. 97=28 N. L. R. 106=33 Cr. L. J. 855. Imputation of outcasting is defamatory even to Mahomedans. A. I. R. 1927 Mad, 397=28 Cr. L. J. 207=99 Ind. Cas. 943. Bringing to notice of *Panchayat* behaviour of person charged with social offence is covered by exceptions 9 and 10. A. I. R. 1933 Oudh. 377=1933 Cr. C. 1094=10 O. W. N. 778.

Public good.—Where a matter is of public interest, the Court ought not to weigh any comment on it in a fine scale. 13 Bom. L. R. 1187=12 Cr. L. J. 595=12 Ind. Cas. 971. In the absence of good faith public good need not be considered. A. I. R. 1924 Cal. 611=28 C. W. N. 579=26 Cr. L. J. 71=83 Ind. Cas. 631.

Good faith.—Under s. 27 of Act XVIII of 1882 proof of existence of the facts relied on as a defence should be given before good faith could be presumed in a case of defamation, and the onus lies on the person making the imputation. 4 W. R. Cr. 22; 1 Weir 580. The absence of reasonable cause is evidence of the absence of good faith. 1 Weir 607. In dealing with exceptions 8 and 9 the question of good faith should be considered. The definition in s. 52 I. P. Code, does away with the presumption that the accused acted *bona fide* until the contrary is proved; and under the Indian Law the accused should show that he has made the imputation not without due care and circumspection. In deciding the question of good faith the Court should take into account the intellectual capacity of the person, his predilections and the surrounding facts. 56 C. 1013=33 C. W. N. 446=A. I. R. 1929 Cal. 346. It is against public policy to prosecute complainants for statements contained in petitions presented in good faith for their protection. 1929 M. W. N.

598. In order to establish good faith it must be shown that the accused acted with due care and caution. 28 C. W. N. 579=83 Ind. Cas. 631. A finding of privilege is not finding of good faith A. I. R. 1926 All. 287=24 A. L. J. 329=27 Cr. L. J. 253=92 Ind. Cas. 429. Good faith should be judged from the intellectual capacity of the person, his predilections and the surrounding facts. Where the accused acted with a desire to protect himself rather than to injure others he is protected by Exceptions 8 and 9. A. I. R. 1929 Cal. 346=33 C. W. N. 446=56 C. 1013; see also A. I. R. 1929 Cal. 779=1929 Cr. C. 523.

Tenth exception.—"To bring this case within Exception X of Section 499 of the Indian Penal Code, it must be proved that the accused intended in good faith to convey a caution to one person against another, that such caution was intended for the good of the person to whom it was conveyed, or of some person in whom that person was interested, or for the public good, and that the caution should be conveyed by the proper means". *Per Collins C. J.* in 15 M. 214 at p. 216. Where in an application for the transfer of a criminal case, the accused in the present case stated the complaint against him was instituted under the instigation of the complainant in the present case, for the purpose of prejudicing him in the defence to a civil suit which the latter had caused to be brought against him *held* that the statement did not amount to defamation, as the imputation was made in good faith for the protection of the interest of the person making it. 22 A. 234=A. W. N. 1900, 46. Statement of the ability of a person working under the accused for his own interest is privileged. Rat. Un. Cr. C. 474. A letter written by a Brahmin to the Brahmin community of the neighbourhood with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahmin community, if written in good faith falls within exceptions 8 and 10 of this section. 8 B. H. C. Cr. 168. Exception 10 deals with cases for instance where one man warns another against employing a third person in his service saying that he is a dishonest person. Where at a caste meeting the accused was proved to have stated that the complainant's wife had been married before and a prosecution for the offence of defamation was launched against him. *Held* that that exception was inapplicable. 34 C. W. N. 580=31 Cr. L. J. 1225=A. I. R. 1930 Cal. 695.

The complainant was put out of caste at a meeting of his caste fellows for having taken water from an untouchable man. The accused told some of the members of the caste not to take water from the hands of the complainant, as in that event they would incur the penalty of excommunication. *Held* that the accused was not guilty of any offence and his case fell within exception 10 to section 499 I. P. Code. 22 A. L. J. 79=25 Cr. L. J. 472.

Who can complain in a defamation case.—Where wife is defamed, the husband can complain against the person defaming his wife. A. W. N. 1891, 188; 25 B. 151 (F. B.); 14 M. 379; but see 22 P. R. 1884 Cr; 37 P. R. 1887 Cr. But for the purpose of instituting a criminal proceeding under this section a mother and son are not in the same position as husband and wife. A. W. N. 1893, 207. The death of the complainant during the course of criminal proceeding for defamation, necessarily terminates those proceedings. 8 P. W. R. 1908 Cr.=7 Cr. L. J. 203=112 P. L. R. 1908. Where the complainant prosecuted the accused person for defaming his sister-in-law, *held* that as there was no imputation made against the complainant, there was no defamation of him within the meaning of s. 499, and that his sister-in-law being the person defamed ought herself to have made the complaint. Rat. Un. Cr. C. 392=Rg. 48 of 1888. The word "aggrieved" in s. 198 of the Code of Criminal Procedure in cases of defamation must be treated as equivalent to the expression "person injured," the object of the section apparently being to limit the right of complaint to person who has suffered the injury L. B. R. (1872—1892), 617. President of a Municipality cannot sue for defamation of subordinate officers of the Municipality. 26 M. 43=2 Weir 232=12 M. L. J. 418. Where a servant of the complainant has been defamed, he cannot bring a case under this section against the accused. 11 Cr. L. J. 594=8 Ind. Cas. 220.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

Cases.—Witnesses as a class are not exempt from the protection from the operation of s. 499, in respect of defamatory statements, simply because they have made them in judicial proceedings. 31 P. W. R. 1912 Cr=13 Ind. Cas. 494=13 Cr. L. J. 494=244 P. L. R. 1912. The defendant in proceedings for defamation, whether in a

civil suit or under s. 500, Penal Code, must for defence depend upon the face of each particular case which the defendant is certain can be proved by him or his witnesses. If there is no substantial defence, an immediate apology in the widest and most unreserved terms may fairly be presumed to decrease the damages and lessen the punishment under s. 500, Penal Code. 26 A. L. J. 509=A. I. R. 1928 All. 321. The first step that a complainant must take for commencing a prosecution or a civil suit for defamatory publication is to satisfy the Court that he is the person aimed at by the article. 26 A. L. J. 509. An editor should be most watchful not to publish defamatory attacks upon individuals unless he first takes reasonable pains to ascertain that there are strong and cogent grounds for believing the information, which is sent to him, to be true. *Ibid.* Publication of a defamatory matter is actionable. 26 A. L. J. 509. Statements made in the course of judicial proceedings are absolutely privileged. Information or a report made to the Police does not come within this principle. A report made at a police station though not within the rule of absolute privilege which covers judicial proceedings, is *prima facie* privileged, that is to say, the person making it has a right to make it if he honestly believes it, and the person receiving it has a duty to receive it. 1923 All. 167. A defamatory statement made in the presence of a number of persons does cease to be such merely because the accused had been challenged by the complainant to make it. 92 Ind. Cas. 694=A. I. R. 1926 All. 237. Where the complainant was invited by the accused to a feast at the latter's house long with a number of people but when he sat down to dinner he was asked by the accused to leave the place ; *held*, that although the conduct of the accused was reprehensible from a social point of view, there was no imputation made against the reputation of the complainant and therefore there was no offence within the meaning of s. 500. A. I. R. 1926 All. 711. A party who gives evidence on his own behalf in a judicial proceeding may be prosecuted for any defamatory statement made in the course of his evidence under s. 500, I. P, Code. Such a person may plead the ninth exception to s. 499 in defence. 4 Bur. L. J. 181= A. I. R. 1925 Rang. 360. A charge under this section can be framed by the Magistrate when the facts stated in the complaint justifies that. 26 P. L. R. 552. Imputation by a member of a caste that another member of the same caste is unfit for association constitutes an offence under this section when there is no decision of the Panchayat to that effect. L. R. 6 All. 207 Cr. There is no absolute privilege in respect of statements made in Court. The accused must show that the imputations were made in good faith and for his own protection. This is a matter of evidence. 35 C. L. J. 527=1922 Cal. 76. Where a woman laid a report at the Police Station that she was raped by some persons who were not named and she gave their names only subsequently in the complaint filed in court and the charge was found to be false and the persons charged filed a complaint against the woman for defamation : *Held* that what she was doing was not defaming these persons but bringing a possibly false charge against them. If her complaint was a false one, her object in making it was not to defame these persons so much as to harass them and cause them the inconvenience of being subject to criminal proceedings. For such an offence s. 211 Penal Code is the appropriate section, and Magistrate must comply with section 195, Cr. Pro. Code. A. I. R. 1935 Rang. 163.

A person calling another a *badmash* and a *baiman* is guilty of an offence under s. 504 I. P. Code and not under s. 500 I. P. Code. 51 P. L. R. 1222=4 Lah. L. J. 408. Where a number of persons, professing a particular faith met together and resolved for proper reasons not to associate with a person ex-communicated by their religious head and sent a copy of the resolution to the person in question it does not amount to defamation. 66 Ind. Cas. 80=23 Cr. L. J. 240 ; 1923 Rang. 16. Where in a fit of passion abusive words are exchanged between two persons the offence does not require a severe sentence. 2 Bur. L. J. 10=1923 Rang. 148. Statements resulting from action taken under ss. 154 and 155 of the Criminal Procedure Code in the course of information given to a police officer are privileged and cannot be made the foundation of a charge of defamation. 41 A. 311=17 A. L. J. 414=49 Ind. Cas. 855. To say of a person that he makes gifts to certain funds not out of charity but from self-advantage is defamatory if the words used incite public contempt and ridicule. 43 Ind. Cas. 417=19 Cr. L. J. 129. Where defamatory words are not addressed in the course of a quarrel and which are calculated to have the reputation of the complainant, an offence under this section has been committed. 16 A. L. J. 498. A witness who being actuated by malicious motives makes a voluntary and irrelevant statement not elicited by any question put to him while under examination to injure the reputation of another, commits an offence punishable under s. 500. 105 Ind. Cas. 820=28 Cr. L. J. 996=A. I. R. 1928 Nag. 58. Every publication or circulation of

libel constitutes a fresh and distinct act and therefore a separate offence. A. I. R. 1935 Nag. 90.

Procedure.—Not-cognizable—Warrant—Bailable—Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

Charge.—Where charge of defamation was clear and unambiguous and the accused was not liable to be misled, the accused was held to be in no way prejudiced even though the charge did not contain the exact words of defamation. A. I. R. 1932 Nag. 158=34 Cr. L. J. 154=1932 Cr. C. 863=141 Ind. Cas. 438 ; see also A. I. R. 1928 All. 222=30 Cr. L. J. 530=26 A. L. J. 196.

Complainant.—In case of complainant under s. 499 I. P. Code on behalf of woman who ought not to be compelled to appear in public leave of court is necessary exempting her from personal appearance. A. I. R. 1935 Oudh. 6. Where a pamphlet contains attack on individual members of Municipal Committee but not on committee as such, committee cannot maintain prosecution unless special damage has been caused to it. A. I. R. 1935 Rang. 108.

Printing or engraving matter known to be defamatory.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Notes.—A Criminal Court is not competent to amend or alter a complaint under s. 501, Penal Code, to one under s. 500. 18 P. R. 1889 Cr.

Procedure.—Not-Cognizable—Warrant—Bailable—Compoundable—Triable by Court of Presidency Magistrate or Magistrate of 1st class.

Sale of printed or engraved substance containing defamatory matter.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Notes.—Publication of a defamatory rumour is an offence under this section. 26 A. L. J. 509. Malicious publication in the sense of active ill-will against the person defamed is not a necessary constituent of the offence of defamation. 26 A. L. J. 509=A. I. R. 1928 All. 321.

Procedure.—Not-cognizable—Warrant—Bailable—Compoundable—Triable by Court of Presidency Magistrate or Magistrate of 1st class.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Chapter XXII.—This Chapter is in some sort supplementary to the Chapter of Defamation. An imputation which is not defamatory under the definitions explanations and exceptions in that Chapter may, under certain circumstances, be

punishable on other grounds. For example, an imputation which is insulting though not defamatory, may be uttered in the hearing of the person who is the object of it, for the purpose of provoking that person to break the public peace. If so, it is punishable under section 504. "There are many cases in which it is fit that unpleasant truth should be told respecting an individual. But there is no case in which it is desirable that such truth should be told in such a way that the telling of it is gross personal outrage. A person who has detected or thinks that he has detected, a dishonest misrepresentation in a book, has a right to expose it publicly. But he cannot be allowed to intrude into the presence of the author of the book, and to tell him to his face that he is a liar. A person who knows the mistress of a female school to be a woman of infamous character, deserves well of society if he states what he knows. But he cannot be allowed to follow her through the streets calling her by opprobious names, though he may be able to prove that all those names were merited. A person who brings to notice the malversation of a public functionary deserves applause. But a person who hangs a public functionary in effigy at that functionary's door, with an opprobious label, does what cannot be permitted, even though every word on the label, and every imputation which the exhibition was meant to convey, may be perfectly true."—*Morgan and Macpherson*, 449.

Scope.—Where the threats are intended to put a person in fear and thereby to dishonestly induce a person to deliver property, they may amount to offences punishable under sections 385 or 389. Such threats as the following would fall within the present definition—Threats to a person or to his child, wife, relative etc.—Threats to cause mischief on property or to kill or wound any animal which is property, or to commit the offence of house-breaking, or to commit any mischief or trespasss by means of a riotous or unlawful assembly, threats to impute unnatural lust to a person, etc.

The threat must be made either with intent to cause alarm to the person threatened or to overcome his free will and to induce him to do or omit to do something which he is not legally bound to do or omit. The question whether the threat amounts to a criminal intimidation or not does not depend on the nerves of the individual threatened ; if it is such a threat as may overcome the free will of a firm man, or whatever the nature of the threat, if it is made with the intention mentioned in the section, it is an offence. A threat of a trivial kind, calculated perhaps to give pain, but not to cause alarm, will probably be deemed to fall within the exception in section 95. If the intention of the person threatening is to cause the person threatened to do an act which he is bound to do, such as to pay a just debt or demand, it may nevertheless amount to criminal intimidation if the intention is to cause alarm to that person by a threat of injury.—*Morgan and Macpherson.* 450. In order to constitute the offence of criminal intimidation, the harm threatened must be illegal. U. B.R. (1897-1901) Vol. I. p. 359. A threat will not amount to an offence unless made with intent to cause alarm to the complainant. 2 Bom. L. R. 55. There can be no criminal intimidation where the injury of which complaint is made is the hardship arising from conventional punishment which a spiritual superior, acting in the exercise of his authority as regulated by the custom of the caste is competent to inflict. 6 M. 681 ; see also 1933 M. W. N. 736. The offence seems to require both a person to be threatened and another in whom he *is* specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. 11 B. 376. The gist of the offence is the effect which the threat is intended to have upon the mind of the person threatened and is equally clear that, before it can have any effect upon the mind, it must be either made to him by the person threatening or communicated to him in some way. In other words it must be a threat communicated or uttered with intention of its being communicated to the person threatened for the purpose of influencing the man's mind. 15 C. 671. An advice given to others not to trade with a particular individual is indeed an injurious act. But it is no threat and the harm caused is only to his opportunities of future gain and not to property already possessed by him. S. C. 146 Oudh. Where the accused, Musalmans, threatened the Hindu population (1) to obstruct and stop the Hindu religious procession ; (2) to commit a riot, (3) to do that in or by which people might happen to be killed. *Held* that such a threat was one contemplated by s. 503 I. P. Code. Rat. Un. Cr. C. 273. Where the accused threatened the complainant that he would get him imprisoned for six months if he continued to detain his adult sister in his house *held*, that this did not amount to the offence of criminal intimidation. 8 B. H. C. Cr. 101. The words "threatened another" in s. 503 show that the threat must be made to the complainant personally, or, if made to a third person, must be made with

intent that he should communicate to the complainant. 5 C. P. L. R. Cr. 50. Where a person complains to a Magistrate that he is threatened with an illegal sentence of excommunication, which will at least injure his reputation unless he abstains from acts which he is legally entitled to do, the allegation, if established, might constitute the offence of criminal intimidation. 8 M. 140=2 Weir 249. The accused told the complainant, a member of their caste, that he should give up his field or else they would put him out of caste. *Held* that this did not amount to criminal intimidation within the meaning of the Indian Penal Code, the injury threatened not falling within the definition contained in s. 44 of the Penal Code. Rat. Un Cr. C. 27.

A threat to commit suicide, if another person refuse to do a particular act, is not criminal intimidation unless the person be interested in the person making the threat. 109 P. R. 1866 Cr. There must be a threat to another person of injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested. 30 C. 418=7 C. W. N. 116. Where a Municipal Commissioner threatens a butcher that, if he bought a cow, he would have him sent to jail and that he would make it impossible for him to continue to live in the town. *Held* that the use of the words did constitute criminal intimidation as defined in s. 503=102 Ind. Cas. 557=28 Cr. L. J. 589=8 A. I. R. Cr. R. 148. The words of this section seem to imply that the threat must be one which can be put into execution by the person threatening. It is not necessary that the injury should be one to be inflicted by the offender; it is sufficient if he can cause it to be inflicted by another, and the infliction of it could be avoided by some act or omission that the person threatening desires. 48 M. 774=21 L. W. 174=48 M. L. J. 190. A treat by a President of a self-constituted arbitration Court is a threat of harm to an individual in his person, reputation or property and it is immaterial that the tribunal is incompetent to execute its own decree. 37 C. L. J. 526=27 C. W. N. 479=72 Ind. Cas. 508. The accused demanded of the complainant certain property of theirs in the possession of the latter and used threats. *Held*, the offence of criminal intimidation was complete even if the object of getting possession was not achieved. 21 A. L. J. 877.

Intentional insult with intent to provoke breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—The insults, however deliberate and intentional, are only punishable as offences when they are intended to provoke a breach of the peace or an affray (Section 159). The Court must be satisfied not merely that there has been intentional insult and provocation, but also that the offender gave the provocation intending or knowing it to be likely that it would cause a breach of the peace. Ordinarily such an intention may be inferred from the circumstances attending the insult. The offence is not made to depend upon the sensitive feelings or excitable temper of the person insulted, but on the intention or knowledge of the offender—*Morgan and Macpherson*, 450. An offence under this section may be committed, although the person, to whom the insult is directly offered, is not a person likely to be provoked to commit a breach of the peace; and an offence may be committed under this section although the person likely to be provoked to commit a breach of the peace is not in fact provoked. 1 Weir 622. To charge a person with an offence is sufficient. U. B. R. (1892—1896) Vol. I, 220. It is sufficient for the prosecution to prove that the abusive language used is ordinarily sufficient to provoke a man of his position and character to commit a breach of the peace. 1 Weir 620; U. B. R. (1897-1901) Vol. 1, 67; see also 11 Mys. L. J. 167. The essence of the offence consists in the effect which it is likely to produce upon the person to whom the provocation is addressed, not upon any other person who may come to know it. U. B. R. (1897-1901) Vol. I, 360. An assault causing a breach of peace may be of spoken words only or of conduct or actions of men. 18 Cr. L. J. 463=1 Pat. L. W. 536=39 Ind. Cas. 303. "Under s. 504 there must be an intentional insult. When the charge is of an insult by words, the words must amount to something more than what in English law is called "mere vulgar abuse." Per *Beamont C. J.* in 56 B. 196=34 Bom. L. R. 282=33 Cr.

L. J. 463=A. I. R. 1932 Bom. 193. But in the same case *Bromfield J.* said : "Words which do not amount to more than vulgar abuse may nevertheless amount to an insult within the meaning of s. 504. Provocation of complainant is not essential. Intentional use of provocation and abusive language is enough. A. I. R. 1932 Lah. 480=1932 Cr. C. 618=33 P. L. R. 695=33 Cr. L. J. 548=138 Ind. Cas. 120. Section 504 provides a remedy for abusive and insulting language and it requires an intention to insult and thereby to give provocation to the person insulted and an intention that such provocation should cause or the knowledge that, that provocation is likely to cause the person so insulted to break the public peace or commit any other offence. A. I. R. 1935 Sind. 107. There is nothing in this section which confines the insult to spoken words and would not cover words written in a letter. A person is within the ambit of the section not only if the provocation offered by him is of such a character as to cause the person provoked to commit a breach of the peace but even if it is of such a nature as to cause him to commit any other offence. 32 Bom. L. R. 103. A. I. R. 1930 Bom. 120=1930 Cr. C. 195. Mere abuse unaccompanied by an intention to cause a breach of the peace or knowledge that a breach of the peace is likely does not come within s. 504. *Ibid.* In dealing with his section of the Court has not to judge the temperament or the idiosyncrasies of the individual concerned. It should try to find out what in the ordinary circumstances would have been the effect of the abusive language used. A. I. R. 1930 Lah. 344. An insult is no less intentional because it is incidental to another insult or even to another statement or proceedings which is not insulting. But to insult another intentionally is not an offence punishable under s. 504 I. P. Code unless the offender intends by that insult to provoke the other person into breaking the peace by assaulting him or getting him assaulted or reviling him in loud and angry tones or in any other way or at least knows that such a disturbance is a probable result 7 N. L. J. 124=81 Ind. Cas. 903. Where the affair is a trivial one a conviction under this section is not proper. 4 Lah. L. J. 230=65 Ind. Cas. 635. Under this section, it is necessary that the insult should have been intentionally caused, and thereby provocation given within the intention or knowledge that such provocation was likely to cause the person provoked to break the public peace or to commit any other offence. 18 A. L. J. 515=56 Ind. Cas. 435=21 Cr. L. J. 451.

To constitute an offence under this section, it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. The public peace can be broken by angry words as well as by deeds. 4 Bom. L. R. 71. 10 M. 353=1 Weir 620 ; 1 Weir 621. In an offence under this section fine should be imposed. 11 Ind. Cas. 619. See also 2 Pat. L. T. 482 ; 65 Ind. Cas. 635 ; 7 A. L. J. 124 ; 45 Ind. Cas. 1002 ; 18 A. L. J. 515. When a person pulls a Mahomedan by his beard in a public place he intentionally insults him and is guilty of an offence under this section. 23 A. L. J. 73=86 Ind. Cas 79=26 Cr. L. J. 202. When the failure of a Magistrate to specifically mention the objectionable words in the charge has caused no prejudice to the accused, conviction is not bad. 104 Ind. Cas. 437=28 Cr. L. J. 821=A. I. R. 1927 Lah. 702. A person comes within the ambit of s. 504, if the provocation offered by him is of such a character as to cause the person provoked to commit any other offence. The provocation need not be likely to cause a breach of the peace. 99 Ind. Cas, 604=28 Cr. L. J. 172. Insult may be inferred from tone and manner of spoken words and consists in provoking the person insulted though he might not commit a breach of peace. 36 Ind. Cas. 849=21 C. W. N. 95=18 Cr. L. J. 17. Calling a man "*beiman*" and "*badmash*" would fall under s. 504. A. I. R. 1922 Lah. 459=4 Lah. L. J. 480=51 P. L. R. 1922. The word *behada* is an offensive expression particularly when it is uttered in the course of a debate. 35 Cr. L. J. 1420=17 N. L. J. 131=1934 Cr. L. J. 1091=A. I. R. 1934 Nag. 239. Sanction of Local Government is necessary for complaint against Magistrate for using insulting language to a witness. 4 A. W. R. 666.

Procedure.—Not-cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate.

Statements conducting to public mischief.

505. Whoever makes, publishes, or circulates any statement, rumour, or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the army, navy or air force of Her

Majesty,* or in the Imperial Service Troops, to mutiny, or otherwise disregard or fail in his duty as such ; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquility ; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community ;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing, or circulating any such statement, rumour, or report, has reasonable grounds for believing that such statement, rumour, or report is true and makes, publishes, or circulates it without any such intent as aforesaid.

Legislative Notes.—This section has been substituted by Act 4 of 1898.

Scope.—The statement, rumour or report, whether it is circulated or made public by words, by writings or by signals or otherwise, if it is known by the person who publishes it to be false and if it is intended to cause mutiny (See Chapter VII of offences relating to the Army and Navy is punishable as an offence under this section. It is also punishable if it is intended to cause fear or alarm to the public. or to any class of the public, or any community (See Section 12) and thereby to induce any person to commit any offence within the sixth or eighth chapter of this Code. *Morgan and Macpherson.* 451. The mere causing of fear of alarm to the public or to a section of the public does not constitute an offence under this section ; but it is necessary that the fear or alarm should be caused in such circumstances as to render it likely that a person may be induced to commit an offence against the state or against the public tranquility. Account cannot be taken of a vague possibility that the state of mind which is caused by alarm may easily induce a person to commit an offence against the public tranquility. 3 C. W. N. 1.

Procedure.—Not-cognizable—Warrant——Not-bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

Punishment for criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

if threat be to cause death or grievous hurt, &c.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Scope.—If the Criminal intimidation is aggravated by a threat of injury of the kind here mentioned, an increased punishment may be awarded. The offences which are punishable with death or transportation, or with imprisonment for seven years, are mentioned in diffrent sections—*Morgan and Macpherson,* 452. To constitute an offence under this section, it must be shown that the person charged actually threatened another with injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause harm. 45 P. R. 1882 Cr. ; see also A. I. R. 1933 Sind. 196=27 S. L. R. 214=145 Ind. Cas. 136=34 Cr. L. J. 711. Intimidating a police constable by holding out a threat of getting him dismissed from service, is not such a threat of injury as is punishable under this section. 20 B. 794. A threat to bring a false charge against a person and to support it by fabricating false evidence is criminal intimidation. 1 Weir. 623. A shop-keeper was asked not to import any foreign cloth for sale or in default threat was held out to him that his shop would be picketted. *Held* an offence under this section was committed. A. I. R. 1931 All. 263.

* Certain words after this repealed by Act 35 of 1934 have been omitted.

Conviction based only on two threats : (1) that complainant would be socially boycotted and (2) on his death his body would not be carried to the place of burial if he continued to deal with foreign cloth, cannot be sustained. A. I. R. 1931 Lah. 288. Where a shop-keeper was asked not to import any foreign cloth for sale or in default thereat held out to him that his shop would be picketted, an offence under this section has been committed. A. I. R. 1931 All. 263=1931 Cr. C. 423=130 Ind. Cas. 193. Where the accused are challaned under s. 341 I. P. Code only, the trying Magistrate is justified in charging them under that section as well as under s. 506 I. P. Code, and his procedure in doing so is perfectly regular. A. I. R. 1931 Oudh. 73. A deterent punishment awarded for the offence of criminal intimidation under section 506 I. P. Code where there is no evidence showing that at or in the neighbourhood of the locality where the incident happened there was any marked popular excitement creating or likely to create breaches of public peace or public tumult or disorder is inappropriate. 2 Pat. L. T. 596=63 Ind. Cas. 615=22 Cr. L. J. 679. Where there was substantially only one offence of criminal intimidation committed, and the Magistrate convicted the accused under ss. 506 and 507 of the Code and imposed sentences for both offences, *held* that the conviction under one of the sections was bad. 4 B. H. C. Cr. 12. A threat to bring a false charge against a person and to support it by fabricating false evidence is criminal intimidation. 1 Weir 623. To constitute an offence under s. 506, Penal Code, it is not necessary that the threat should be uttered directly to the persons intended to be intimidated. 1 Weir 623 ; 1 Weir 622. Intimidating a police constable, by holding out a threat of getting him dismissed from service, is not such a threat of injuring as is punishable under s. 506. 20 B. 794. To constitute an offence described in s. 506, Penal Code, it must be shown that the person charged actually threatened another with injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm. 45 P. R. 1882 Cr. Recommendation by Managing Committee to general body to rescind grant made to member of society is not illegal and hence does not come under s. 506. 145 Ind. Cas. 136=1933 Cr. C. 711 =27 S. L. R. 214=34 Cr. L. J. 884=A. I. R. 1933 Sind. 196.

Cases.—A. W. N. 1886, 41 ; 1 Weir 622 ; 1 Weir. 623 ; 2 A. 351 ; Rat. Un. Cr. C. 850 ; Rat. Un. Cr. C. 330 ; 4 B. H. C. Cr. 12.

Procedure.—Not-cognizable—Warrant—Bailable—Compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class. If the threat be to cause death or grievous hurt, *etc*,—Not-cognizable—Warrant—Bailable—Not-compoundable —Triable by Court of Session. Presidency Magistrate or Magistrate of 1st class.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Criminal intimidation by an anonymous communication

Scope.—If the criminal intimidation is by an anonymous letter, or by a letter signed with a false name, and the letter is dropped on a road or is intended to be put in a place where it is likely to be seen and read by the person for whom it is intended, or to be found by some other person who it is expected will forward it to the person for whom it is intended, the offence will be subject to punishment under this section.—*Morgan and Macpherson* 452. The punishment provided in this section cannot be awarded until there has been a conviction under s. 506. 99 P. R. 1886. Cr.

Procedure.—Not-congnizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do,

Act caused by inducing person to believe that he will be rendered an object of Divine displeasure.

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(*a*) A sits dharna at Z's door with the intention of causing it to be believed that, by so sitting he renders Z an object of Divine displeasure, A has committed the offence defined in this section.

(*b*) A threatens Z that unless Z performs a certain act. A will kill one of A's own children under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

Scope.—Where the accused voluntarily attempts to cause a person to omit to do what he is legally entitled to do, by attempting to induce the latter to believe that he would otherwise be rendered by an act of the accused an object of divine displeasure, the accused commits an offence under this section. Rat. Un Cr. C. 376. The words of this section seem to imply that the threat must be one which can be put into execution by the person threatening. 48 M. 774=86 Ind. Cas. 339= 26 Cr, L. J. 755. To constitute an offence under this section it must be shown that the person accused of such offence threatened to do a future act or illegally to omit to do an act, and that by such threat he induced or attempted to induce the person threatened by that act or illegal omission, the person threatened or some one in whom the person theatended was interested, would become an object of Divine displeasure. 6 M. 381 ; see also A. W. N. 1886, 63.

Procedure.—Not cognizable——Warrant——Bailable——Compoundable with Court's permission—Triable by Presidency Magistrate or Magistrate of the first class.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, with or both.

Word, gesture, or act intended to insult the modesty of a woman.

Scope.—A, intending to outrage the modesty of a woman, exposes his person indecently to her, or uses obscene words intending that she should hear them, or exhibits to her obsence drawing ; A has committed this offence. If the intrusion upon the woman's privacy is by entering her house or rooms, etc., the offence may come within the definition of criminal trespass. (See section 441)—*Morgan and Macpherson*, 453. This section makes intention to insult the modesty of a woman the essential ingredient of the offence. 5 Bom. L. R. 502. To constitute an intrusion upon the privacy of a woman, an offence under this section, the intruder must be intending to insult the modesty of such woman. 6 P. R. 1892 Cr. ; 86 Ind. Cas. 968. An offence under this section is made out when the accused writes a letter to the complainant containing idecent overtures. 82. Bom. L. R. 90=93 Ind. Cas. 247=27 Cr. L. J. 455=50 B. 246. In order to justify conviction under this section the modesty of some particular woman must have been outraged. 19 S. L. R. 87.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it it a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Misconduct in public by a drunken person.

Scope.—Mere intoxication is not punishable. But if a person appears in a public place, as in a street, in a public assembly, in a railway carriage, etc., in a state of

intoxication, or if in such a state, he intrudes into a private house or into any other place, where he has not a right to go, and thereby (it may be unintentionally), causes annoyance, he commits the offence here made punishable. A person whether drunk or sober who trespasses on property with intent to insult or annoy any person in possession of such property, commits "criminal trespass" and may be punished for that offence (see sections 441,447).—*Morgan and Macpherson*, 454.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by any Magistrate.

CHAPTER XXIII

OF ATTEMPTS TO COMMIT OFFENCES.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

Application.—This chapter applies to offences punishable under ss. 121 A, 294 A and 304 A—Vide Act 27 of 1875 s. 13.

Attempt—The illustrations above given are cases of attempts in which the offence contemplated cannot be committed (the box or pocket being empty), but the act done towards the commission has been carried to such a length as the offender considered sufficient to effect his purpose. He has used all such exertions for the purpose in view as he would have used if he had been successful, but he was foild by something not dependent on his own will. It is the same as if he had fired a loaded gun at a man intending to murder him, but had missed his aim. The words "does any act towards the commission of the offence" may well include act less near to the consummation of the offence than those just mentioned. But these words must not, it seems, be construed to include all acts however remote which tend towards the commission of the offence. The thing done may be too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt. The following are illustrations of this (see section 307.)—

A, intending to murder Z, buys a gun for the purpose of loading it and firing at Z.

A, intending to murder Z by poison, purchases poison and has it in his possession.

A intending to commit a murder, is seen to walk towards the place of the contemplated murder.

Such acts are in themselves ambiguous, and are not so immediately connected with the offence as to make the doers punishable under this section.

It is impossible to lay down a clear rule on such a subject, or to define what is such an act done in furtherance of a criminal intent as will constitute an attempt. As it has been said, acts remotely tending towards the commission of an offence are not, it seems, sufficient to bring a case within this section. On the other hand acts immediately and necessarily connected with the commission of the offence, and which constitute a commencement of execution of the offence, not being

completed only because the offender is hindered by circumstances independent of his will, as by seizure by the police, etc., are attempts.

The Court should be satisfied that the offender had in his mind the design to commit a certain offence, and that he had begun to move towards an execution of his purpose ; there must also be proof of some act, of an ambiguous kind, but directly approximating to the commission of the offence. When the offender's design is made manifest by any act, it becomes an attempt cognizable as an offence punishable under this section.—*Morgan and Macpherson*, 456. An attempt is an intentional preparatory action which, fails in object, which so fails through circumstances independent of the person who seeks its accomplishment. In other words, when a man does an intentional act with a view to attain a certain end, and fails in his object through circumstances independent of his own will then that man has attempted to effect the object at which he aimed. 26 Cr. L. J. 1424=89 Ind. Cas. 848. A greater degree of determination distinguishes an attempt to commit an offence from a mere preparation. S. C. 76 Oudh. Fraudulently obtaining signature slip is no offence under section 171 (*f*). read with s. 511. 26 Cr. L. J. 359= A. I. R. 1925 All. 226. Under the Penal Code all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible, of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the purpose was interrupted. 103 In l. Cas. 408=28 Cr. L. J. 680. An attempt to commit an offence is punishable under this section though the final act short of actual commission of that offence has not been accomplished. A. I. R. 1928 Lah. 551=10 Lah. 253=30 P. L. R. 405=110 Ind. Cas. 812.

A person cannot be convicted of attempting to commit an offence, unless the offence would have been committed had the attempt proved successful. 22 C. 131, An attempt is an intentional preparatory action which fails in object which so fails through circumstances independent of the person who seeks its accomplishment. 2 Bom. L. R. 286 ; 2 Bom. L. R. 304 ; 7 C. 352=8 C. L. R. 572. The term "attempt" indicates the actual taking of those steps which lead immediately to the commission of the offence although nothing be done, or omitted, which of itself is a necessary constituent of the offence attempted. 4 N. W. P. 46. In order to constitute an attempt, there must be an intention to commit a particular crime, a commencement of the commission, and an act done towards the commission. The act of raising a knife in a threatening attitude manifesting an intention to stab, but without actually trying to stab the complainant, falls short of an attempt to stab. 1 L. B. R. 264. When once a proposal has been made for the payment of an illegal gratification whether it is completed by agreement or not, the offence of an attempt to commit an offence under s. 215 is complete. 2 L. B. R. 310. It is now settled law that an attempt is possible even when the offence attempted cannot be committed. 5 N. L. J. 16.

Scope.—This section does not relate only to the penultimate act, but to all preceding acts if they were done with intent to commit or facilitate the commission of the act. 15 A. 173 ; 25 B. 90=2 Bom. L. R. 653 ; 15 A. 178. This section which relates to attemps to commit offences, is confined to attempts to commit offences punishable under the Code. 1 Weir 624 ; but see 40 M. 34=35 Ind. Cas. 497 ; A. I. R. 1932 Mad. 507=1932 M. W. N. 545=33 Cr. L. J. 582.

Preparation.—Between the preparation for the attempt and the attempt itself, there is a wide differnce. The preparation consists in devising or arranging means or measures necessary for the commission of the offence ; the attempt is the direct movement towards the commission after preparations are made. The law allows a *locus penitentia* and will not hold that a person has attempted a crime, until he has passed beyond the stage of preparation. 3 M. 4=1 Weir 543 ; 65 Ind. Cas. 492=23 Cr. L. J. 108. There is a distinction between the commission of an offence, the attempt to commit it and a preparation to commit it. Preparation, or providing an opportunity to commit an offence, is a stage of the proceeding short, of attempt, and is not punishable. 7 P. L. R. 1903=25 P. R. 1902 Cr. The real difficulty in distinguishing between preparation and attempt arises in determining where a given act or set of acts passes from the former stage into the latter whether the commission of an offence requires the performance of a series of acts and the person commences this series with a view to carry it out to its completion, he has in the language of s. 511 I. P. Code done an act towards the commission of the offence in the attempt to commit the offence. 5 N. L. J. 16=65 Ind. Cas. 994=23 Cr. L. J. 210 ; see also 7 P. L. R. 1903=25 P. R. 1902 Cr. ; 24 B. 287. Although the provisions of this section

extend to a much wider range of cases than would be deemed punishable under the English law, they would not extend to make punishable as attempts acts done in the mere stage of preparation. Although such acts done towards the commission of the offence, they are not done in the attempt to commit the offence. The term "attempt" indicates the actual taking of those steps which lead immediately to the commission of the offence, although nothing be done or omitted, which of itself is a necessary constituent of the offence attempted. 4 N. W. P. 46 ; see also 28 P. L. R. 575=28 Cr. L. J. 663=A. I. R. 1927 Lah. 580=103 Ind. Cas. 199. Assistance in the preparation of an offence which was not committed cannot amount to an abetment or attempt. A. I. R. 1925 Oudh. 158=25 Cr. L. J. 1162=110. L. J. 640=81 Ind. Cas. 986. Preparation to commit an offence and an attempt are distinct ; if the actual transaction has commenced and would have ended in a crime. if not interrupted, there is an attempt. 18 P.R. 1868 Cr. Preparation consists in devising means necessary for the commission of the offence. 65 Ind. Cas. 492. See also 1923 P. 307. An intent to commit an offence is not the same thing as an attempt to commit such an offence. Intent exists before attempt begins. A mere intent is not by itself an offence. 4 N. L. J. 245 ; 37 C. W. N. 1151. Except in very few offences preparation is not punishable. 18 A. L. J. 636=2 U. P. L. R. 296=21 Cr. L. J. 576=57 Ind. Cas. 96.

Or to cause such an offence to be committed.—A common form of attempt is the soliciting of another to commit an offence—as to incite a servant to steal this master's goods—to incite a person to commit murder or hurt,—to make overtures to another to commit an unnatural offence. The act done towards the commission of the offence may consist in such cases in the solicitation itself, or—if this should not be considered a sufficient act—in the offer of a bribe, or some such act of instigation. It will not affect the offence though the person solicited declines the pursuasion. Attempts of this description will ordinarily amount to offences punishable under the chapter of abetment—*Morgan and Macpherson* 457.

For a term, etc.—In calculating this term when transportation for life is a punishment provided for the offence which has been attempted such transportation must be reckoned as equivalent to transportation for twenty years (see section 57). The Court may impose fine equal in amount to the fine provided for the offence, but where no sum is expressed to which the fine may extend, the amount must not be excessive. —*Morgan and Macpherson*, 457.

Section 75.—Section 75 does not apply to cases which are confined to this section. The offences, which come under this section must be punished entirely irrespective of s. 75. 17 A. 123. See also 21 W. R. 35 Cr. ; 24 O. C. 260=22 Cr. L. J. 750.

Attempt to abet.—It is not legally impossible to attempt the abetment of an offence, which is provided for in s. 511. There is, therefore, no legal obstacle to punish such an offence. 49 P. R. 1887 Cr. ; See also 20 P. R. 1885 Cr.

Section 307.—This section was not intended to exhaust all attempts to commit murder which could be punishable under the Code, but applies only to acts done which are capable of causing death in the natural and ordinary course of things, if the act took effect. In considering, however, an attempt under this section, it is necessary to see whether the causing of death was possible or not, if the act was completed. 4 B. H. C. 17.

Cases.—Where a person attempted fraudulently to obtain the duplicate of a University certificate, when he was not really entitled to it, *held* that his intention, if it would be so presumed, to use the certificate subsequently in order to obtain some temporary advantage by pretending that he has passed the Matriculation examination was a mere preparation not chargeable as an attempt to commit an offence within the meaning of s. 511 Penal Code. 25 M. 726=1 Weir 481=12 M. L. J. 68. The act of a milk-man in going in the direction of the place where the cows are about to be milked with about three gallons of stale milk in his possession, the milk being in a can similar to the cans in which cows are milked, amounts only to a preparation to adulterate the milk intended for sale as food or drink, but not to an attempt. 40 P. R. 1885 Cr. Where the accused was found with an open clash knife in his hands and two gunny bags, coming there for committing theft he could not be convicted under ss. 457 and 511 Penal Code but under s. 447 only. 20 Cr. L. J. 571=12 Bur. L. T. 222=52 Ind. Cas. 59.

Attempt to forgery.—Vide 16A. 409=A. W. N. 1894, 150.

Attempt to commit murder.—Vide 20A. 143 ; 4 B. H. C. Cr. 17 ; 45 P. R. 1882 Cr. ; 4 L. B. R. 311 (F. B.) ; 30 P. R. 1904 Cr. ; 32 P. R. 1867 Cr. ; 24 P. R. 1882 Cr. ; 1 L. B. R. 264 ; 3 Lah. L. J. 191=22 Cr. L. J. 194=60 Ind. Cas. 50.

Attempt to commit suicide.—A person cannot be convicted under section 309 for emasculating himself. 22 P. R. 1878 Cr.

Attempt to commit dacoity.—This section does not apply to a case of dacoity. 7 W. R. Cr. 48.

Attempt to commit house-breaking.—Removing some projecting tiles from the roof of a house is not a step towards committing house-breaking and consequently is not an attempt to commit house breaking. A. W. N. 1886, 290.

Attempt to commit adultery.—An opportunity made for sexual intercourse by a married woman going to the accused's shop, the object being frustrated by people following her and besieging the shop was held to be a mere preparation. 25 P. L. R. 1902 Cr.=7 P. L. R. 1903 ; see also 13 P. R. 1879 Cr.

Attempt at extortion.—Section 385 does not expressly provide for an attempt at extortion. Therefore a charge under s. 384 read with s. 511 is not bad. A. I. R. 1927 Pat. 89=27 Cr. L. J. 1244=98 Ind. Cas. 60.

Attempt to cheat.—In the offence of cheating the actual transaction must have begun before a preparation can be said to be an attempt. A. I. R. 1927 Mad. 77=51 M. L. J. 635=28 Cr. L. J. 95=99 Ind. Cas. 127. Sending false papers as to quantity of paddy burnt amounts to an attempt to cheat. A, I. R. 1924 Rang. 241=2 Rang. 53=3 Bur. L. J. 1=25 Cr. L. J. 1175=82 Ind. Cas. 39. Proposal to recover lost property for consideration is an attempt. A. I. R. 1923 All. 83=45 A. 159=20 A. L. J. 927=25 Cr. L. J. 127=76 Ind. Cas. 191.

Attempt to commit rape.—Where the accused threw down a girl, put sand in her mouth and got on her chest to have intercourse with her but was prevented from doing so by arrival of other persons, his act amounted not only to preparation but to attempt to commit rape. A. I. R. 1933 Lah. 1002=34 P. L. R. 832.

Administering harmless substance believing it to be poison.—An attempt to commit an offence, as defined in s. 511 I. P. Code means not merely an act with the intention to commit an offence which is unsuccessful because it would not possibly result in the completion of the offence, but an act done towards the commission of the offence, that is to say, the offence remains incomplete, only because something yet remains to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent of his own volition. An action complete in itself and not constituting an offence did not constitute an attempt to commit an offence, e. g., as the administration of a harmless substance which the accused wrongly believed to be poison. 9 C. P. L. R. 14 Cr.

Procedure.—Cognizable or not—Warrant or the summons - Bailable or not—Compoundable or not—as in the offence attempted. Triable by the court by which the offence attempted is triable. If punishable with death, transportation or imprisonment for 7 years or upwards—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session. If punishable with imprisonment for 3 years and upwards, but less than 7 years—Cognizable—Warrant—Not-bailable (except in cases under the Indian Arms Act, section 19, which shall be bailable)—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class. If punishable with imprisonment for one year and upwards but less than 3 years—Not-cognizable—Summous—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd class. If punishable with imprisonment for less than one year, or with fine only—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

AMENDMENTS TO THE INDIAN PENAL CODE, 1872.

The Government of India (Adaptation of Indian Laws) Order, 1937.

AT THE COURT AT BUCKINGHAM PALACE.

THE 18TH DAY OF MARCH, 1937.

Present :

The King's Most Excellent Majesty in Council.

WHEREAS by section two hundred and ninety-three of the Government of India Act, 1935, (hereinafter in the recitals to this Order referred to as 'the Act') His Majesty is empowered by Order in Council to provide that as from such date as may be specified in the Order any law in force in British India or in any part of British India shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the Act :

And whereas a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order :

Now, therefore, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:—

1. This Order may be cited as the Government of India (Adaptation of Indian Laws) Order, 1937, and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. (1) In this Order the expression 'Indian Law' means a law as defined in section two hundred and ninety-three of the Act.

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The Indian laws mentioned in the Schedule to this Order shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to the adaptations and modifications directed by those Schedules to be made therein or, if it is so directed, shall cease to have effect.

4. (1) Whenever an expression mentioned in the first column of the Table hereinunder printed occurs (otherwise than in a title or preamble or in a citation or description of an enactment), in a Central or Provincial Act or Regulation, whether an Act or Regulation mentioned in the Schedules to this Order or not, then, unless that expression is by this Order expressly directed to be otherwise adapted or modified, or to stand unmodified or to be omitted, there shall be substituted therefor the expression set opposite to it in column two of the said table.

Table of General Adaptations.

Governor-General of India in Council : Governor-General of India : Governor-General in Council : Governor-General : Government of India.	Central Government.

Governor in Council : Governor (except in the expression "Governor's Province) : Lieutenant Governor in Council : Lieutenant Governor : Chief Commissioner (except in the expression "Chief Commissioner's Province") : Local Government : Local Administration.	Provincial Government.
Gazette of India : local official Gazette : local Gazette : any other expression denoting a Gazette in which official notices of a government are published, not being the Gazette of a district or other sub-division of a Province.	Official Gazette.

Any reference to the Governor (or Lieutenant-Governor) of a named Province in Council shall be treated for the purposes of this paragraph as if it were a reference to the Governor (or Lieutenant Governor) in Council of that Province.

(2) A direction in the Schedules to this Order that a specified Indian law, or section or portion of an Indian law shall stand unmodified shall be construed merely as a direction that it is not to be modified or adapted in accordance with the foregoing provisions of this paragraph.

5. (1) Where this Order requires that in any specified Indian law, or in any section or other portion of an Indian law, certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that law or, as the case may be, in that section or portion.

(2) Where this Order requires that in any Indian law a plural noun shall be substituted for a singular noun and *vice versa*, or a masculine noun for a neuter noun or *vice versa*, there shall be made also in any verb or pronoun in the sentence in question such consequential amendment as the rules of Grammar may require.

6. (1) The following provisions shall have effect where any Indian law which under this Order is to be adapted or modified has before the commencement of this Order been amended, either generally or in relation to any particular area, by the insertion or omission of words, or the substitution of words for other words :—

(*a*) effect shall first be given in the amending law to any adaptation or modification required by paragraphs three and five of this order to be made therein ;

(*b*) the original law shall then be amended, either generally or, as the case may be, in its application to the particular area, so as to give effect to the directions contained in the amending law or, where any adaptation or modification has fallen to be made under sub-paragraph (a), in that law as so adapted or modified ; and

(*c*) all adaptations or modifications required by this Order to be made in the original law shall then be made in that law as so amended, except so far as in the case of any particular area they may be inapplicable.

(2) In this paragraph references to the amendment of a law by the insertion or omission of words or the substitution of words do not include references to an amendment which is effected merely by directing that certain words shall be construed in a particular manner.

7. Subject to the foregoing provisions of this Order, any reference by whatever form of words in any Indian law in force immediately before the commencement of this Order to an authority competent at the date of the passing of that law to exercise any powers or authorities, or discharge any functions, in any part of British India shall, where a corresponding

new authority has been constituted by or under any Part of the Government of India Act, 1935, for the time being in force, have effect until duly repealed or amended as if it where a reference to that new authority.

8. In any Indian law in force immediately before the commencement of this Order any reference by name or description to any territory shall, unless the contrary intention appears or unless it has been, or is by this Order, otherwise expressly provided, be construed as a reference to the territory which bore that name or answered to that description at the date when the enactment containing that name or description came into operation :

Provided that in the application of any enactment to Madras, Bombay, Bihar or the Central Provinces, references in that enactment to Madras, Bombay, Bihar or the Central Provinces, as the case may be, shall be construed as exclusive of so much of those Provinces respectively as was separated therefrom on the constitution of the Provinces of Orissa and Sind.

9. The provisions of this Order which adopt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this Order ; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this Order by the competent authority and under and in accordance with the provisions therein applicable to such a case.

10. Save as provided by this Order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question.

11. Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any Indian law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

12. For the avoidance of doubt it is hereby declared that—

(*a*) nothing in this Order transferring or assigning any functions to the Central Government shall be construed as excluding those functions from the operation of section one hundred and twenty-three or section one hundred and twenty-four of the Government of India Act, 1935 ;

(*b*) the transfer by this Order to a Provincial Government of any jurisdiction theretofore exercisable by the Local Government of the Province shall not be construed as excluding that jurisdiction from the operation of sub-section (2) of section two hundred and ninety-six of the said Act ;

(*c*) nothing in this Order shall affect the provisions of any Order in Council for the time being in force made under section one hundred and fifty-eight, section one hundred and fifty-nine or section one hundred and sixty of the said Act (which empower Orders to be made regulating the relations of India and Burma as to their monetary systems, relief from double taxation, customs, and ancillary and related matters), or under any corresponding provisions in the Government of Burma Act, 1935 ; and

(*d*) no repeal effected by this Order shall affect the operation of sub-paragraph (2) of paragraph fifteen of the Government of India (Commencement and Transitory Provisions) Order, 1936.

(Sd.) M. P. A. Hankey.

The Indian Penal Code.

(XLV of 1860.)

Section 1.—For the words from "the whole of the territories" to the end of the section substitute "British India."

Section 2.—For "the said territories" substitute "British India."

Section 3.—For "law passed by the Governor-General in Council" substitute "Indian law"; and for "the limits of the said territories" and "the said territories" substitute "British India."

Section 5.—For "the said territories" substitute "British India."

Section 14.—For the words from "the said statute" to the end of the section substitute "the Government of India Act, 1935, or by or under the authority of any Government in British India or of the Crown Representative."

Omit sections 15, 16 and 18.

In section 21 : in clause second for "the Government of India or any Government" substitute "any Government in British India or the Crown Representative"; and in clauses eighth and ninth for "Government" substitute "the Crown."

Section 54.—For "the Government of India or the Government of the place" substitute "the Central Government or the Provincial Government of the Province."

Section 55.—For "the Government of India or the Government of the place" substitute "the Provincial Government of the Province."

After section 55 insert—

"**55A.** Nothing in section fifty-four or section fifty-five shall derogate from the right of His Majesty, or of the Governor-General if any such right is delegated to him by His Majesty; to grant pardons, reprieves, respites or remissions of punishment.

Saving for Royal prerogative.

Section 75.—In clause (b) for the words from "in the territories" to "Local Government" substitute "in any Indian State acting under the general or special authority of the Central Government or of the Crown Representative."

Section 121A.—After the second "British India" insert "of British Burma" and for "the Government of India or any Local Government" substitute "the Central Government or any Provincial Government or the Government of Burma."

Section 124.—For "Presidency", where it first occurs, substitute "Province" and omit "or a Lieutenant-Governor" "Lieutenant-Governor" and "or of the Council of any Presidency."

Section 124A.—After "Her Majesty" insert "or the Crown Representative" and after "British India" insert "or British Burma."

Section 141.—For "the Legislative or Executive Government of India or the Government of any Presidency or any Lieutenant-Governor" substitute "the Central or any Provincial Government or Legislature."

Sections 161, 162 and 163.—For "with the Legislative or Executive Government of India or the Government of any Presidency or with any Lieutenant-Governor" substitute "with the Central or any Provincial Government or Legislature."

Section 271.—For "by the Governor of India or by any Government" substitute "by the Central or any Provincial Government or the Crown Representative."

Section 294A.—For "not authorized by Government" substitute not being a state lottery or a lottery authorized by the Provincial Government."

THE GOVERNMENT OF BURMA (ADAPTATION OF LAWS) ORDER, 1937.

WHEREAS by section one hundred and forty-nine of the Government of Burma Act, 1935, His Majesty is empowered by order in Council to provide that, as from such date as may be specified in the order, any law in force in Burma shall, until repealed or amended by the Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be consiquential on the separation of India and Burma :

And whereas a draft of this order has been laid before Parliament in accordance with the provisions of sub-section (1) of section one hundred and fifty-seven of the said Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in this terms of this order :

Now, therefore, His Majesty, in the exercise of power conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :-

1. This Order may be cited as the Government of Burma (Adaptation of Laws) Order, 1937.

2. This Order shall come into operation on the separation of Burma and India.

3. (1) In this Order, 'Burman law' means a law as defined in section one hundred and forty-nine of the Government of Burma Act, 1935.

(2) The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

4. (1) The enactments mentioned in the Schedule to this order shall, until repealed or amended by the Legislature or other competent authority, have effect subject to the adaptations and modifications directed by that Schedule to be made therein or, where so directed, shall cease to have effect.

(2) Save as otherwise provided in that or in any other Burman law, every Burman law shall be deemed to have effect throughout the whole of British Burma.

5. (1) Whenever an expression mentioned in the first column of the Table here-in-under printed occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in any Burman law then, unless that expression is under the last preceding paragraph expressly directed to be otherwise adapted or modified or to stand unmodified or to be omitted, there shall be substituted therefor the expression set opposite to it in the second column of the said Table.

Table of General Adaptations.

Governor-General of India : Governor-General : Governor-General of India in Council : Governor-General in Council : Chief Commissioner of British Burma : Chief Commissioner : Lieutenant-Governor of Burma : Lieutenant-Governor : Local Government of Burma ; Local Government.	Governor.

Gazette of India, Gazette of British Burma, Burma Gazette, Local official Gazette, Official Gazette,	Gazette.

(2) Any words contained in any Burman law, otherwise than in a title or preamble, which require the consent, assent, approval, sanction or control of the Governor-General or the Governor-General in Council in relation to anything done by the Local Government or the Governor shall be omitted.

(3) A direction in the Schedule to this order that a specified Burman law or section or portion of a Burman law shall stand unmodified shall be construed merely as a direction that it is not to be modified or adapted in accordance with the foregoing provisions of this paragraph.

6. Where this Order requires that in any specified Burman law or portion of a Burman law certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall unless the contrary intention appears, be made wherever the words referred to occur in that law or that portion.

7. (1) Where any Burman law has before the commencement of this order been amended by the insertion or omission of words, or the substitution of words for other words, the adaptations and modifications directed to be made therein by this order shall be made in the enactment is in force at the commencement of this order, that is to say, as so amended :

Provided that nothing in this paragraph shall be construed as extending the operation of any temporary amending enactment.

(2) In this paragraph references to the amendment of law by the insertion or omission of words, or the substitution of words, do not include references to an amendment which is effected merely by directing that certain words shall be construed in a particular manner.

8. Where this order requires the substitution in any enactment of a plural noun for a singular noun or *vice versa*, or of a masculine noun for a neuter noun, or *vice versa*, or of a noun or adjective beginning with a consonant for a noun or adjective beginning with a vowel, or *vice versa*, there shall also be made in any verb, pronoun or article in the sentence in question such consequential amendment as the rules of Grammar may require.

9. The provisions of this order which adopt or modify any enactment so as to alter the manner in which, the authority by which, or the law in or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything done before the commencement of this order ; and any such notification of order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case.

10. Nothing in this order shall affect the previous operation of, or anything duly done or suffered under, any Burman law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

11. Save as provided in this order, all powers which under any law in force in Burma or in any part of Burma were at the commencement of this order vested in or exercisable by any person or authority shall continue to be so vested or exercisable until other provision is made by the Legislature or by some authority empowered to regulate the matter in question.

12. (1) References in any Burman law to that or any other Burman law, or to any section or portion thereof, shall, except in so far as the contrary intention appears, be construed—

(*a*) as respects any period before the separation of India and Burma, as references to that law, section or portion as in force in all places to which it then extended, whether within or without Burma:

(*b*) as respects any period after the said separation as referencee to that law, section or portion as in force in Burma.

(2) The foregoing provisions of this paragraph extend to references to, or to any section or portion of, any Burman law by means of the short-title of the law, notwithstanding that the Schedule to this Order alters that short-title and notwithstanding that no consequential alteration is made in the reference.

13. For the avoidance of doubt it it is hereby declared that nothing in this order shall affect the operation of sub-paragragh (2) of paragraph eleven of the Government of Burma (Commencement and Transitory Provisions) Order, 1935, or of any order in Council made under Part XI of the Government of Burma Act, 1935.

The Indian Penal Code

(XLV of 1860)

Throughout the Act, unless otherwise provided, for "British India" substitute "British Burma."

Omit the Preamble.

Section 1.—Omit the words from "and shall take effect" to the end of the section.

Sections 2 and 3.—For "the said territories" substitute "British Burma."

Section 3.—For "passed by the Governor-General of India in Council" substitute "in force in British Burma."

Section 4.—For clauses (1), (2) and (3) substitute—

"(1) any British subjects domiciled in Burma, when committed in any place without and beyond British Burma;

(2) any other British subject or any servant of the Crown, when committed within any part of Burma outside British Burma."

Omit the illustrations.

Section 14.—For "India" substitute "Burma"; for the words from "the said statute "to the end of the section, substitute "the Goverement of Burma Act, 1935, or by or under the authority of the Governor of Burma."

Omit sections 15, 16 and 18.

Section 21.—In clause "second" omit "of India or any Government."

In clause "fifth" for "panchayat" substitute "village committee."

Sections 54 and 55.—For "Government of India or the Government of the place within which the offender shall have been sentenced" substitute "Governor."

Section 75.—In clause (b) for "the territories of any Native Prince or State in India" substitute "Burma outside British Burma" and omit "General in Council or of any Local Government."

Section 121A.—For "the sovereignity of British India" substitute "the sovereignity of British Burma or British India" and for "the Government of India or any Local Government" snbstitute "the Government of Burma or any Government in British India."

For section 124 substitute the following section—

"124. Whoever, with the intention of inducing or compelling the Governor to exercise or refrain from exercising in any manner any of the lawful powers of the Governor, assaults or wrongfully restrains, or attempts wrongfully to restrain or overawes by means of criminal force or the show of criminal force, or attempts so to overawe, the Governor shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 124A.—For "British India" substitute "Burma or British India."

Sections 131 and 139.—After "Army Act, 1911" insert "the Burma Army Act."

Section 141.—For paragraph "First" substitute—

"First.—to overawe by criminal force, or show of criminal force, the Legislature or the Government, or any public servant in the exercise of the lawful power of such public servant ; or."

Sections 161, 162 and 163.—For "with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor", substitute "with the Legislature or the Government" and, in section 161, in the definition of "Legal remuneration" omit "which he serves."

Section 230.—For "any Presidency" substitute "Burma."

Section 271.—Omit "Government of India or by any."

Section 366B.—For "India" substitute "Burma."

Section 505.—In clause (a) omit "or in the Imperial Service Troops."